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Presidential Documents

Title 3—

The President

Proclamation 10006 of April 1, 2020

World Autism Awareness Day, 2020

By the President of the United States of America

A Proclamation

World Autism Awareness Day is a tribute to the millions of Americans living with autism spectrum disorder (ASD). Their numerous triumphs over many and varied obstacles are a testament to the strength and resolve of the American spirit. We also extend our gratitude to all those who, through their unwavering dedication to supporting Americans with ASD, help empower them to thrive at home, in the workplace, and in their communities.

As President, I am committed to ensuring all Americans with ASD can thrive and prosper. Last year, I was proud to sign into law legislation reauthorizing the Autism CARES Act, approving more than $1.8 billion in funding over 5 years to research and develop new treatments and therapies, and enhancing support services for those with ASD throughout their entire lives. This legislation also expanded the Interagency Autism Coordinating Committee to include representatives from 17 Federal agencies and stakeholders from throughout the autism community. The enhanced public-private partnerships made possible by these efforts are providing support to those with ASD.

Early detection and treatment play essential roles in optimizing the lives of people with ASD. To assist in making every resource available to these individuals during the most critical developmental stage of their life, the National Institutes of Health (NIH) recently awarded more than $4 million to research, develop, and validate screening tools that detect signs of ASD during the first year of life. NIH has also awarded more than $36 million to enhance healthcare providers' expertise in caring for Americans with ASD. This funding is vital to those living with ASD, expanding opportunities to live lives full of meaning and joy.

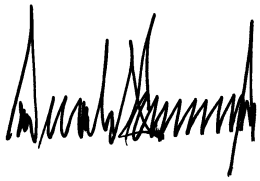
Approximately 1 in every 59 American children lives with ASD. That means that approximately 500,000 of our Nation's young people who turn 18 over the next decade enter adulthood with ASD. My Administration, along with coordinated efforts at the State and local levels, is committed to providing opportunities to assist in their successful transition into rewarding careers and fulfilling lives. Through the Department of Labor's Youth Policy Development Center and the Apprenticeship Inclusion Model initiative, we are expanding opportunities for Americans with ASD to develop high-demand skills that pair with good-paying jobs. Additionally, the Department of Housing and Urban Development has allocated more than $110 million to increase the availability of affordable and reliable housing models to enable individuals with disabilities, including ASD, to live independently.

Today, we join with the international ASD community in reaffirming our resolve to support all those with ASD as they continue to strengthen our families, our communities, our Nation, and the world. Together, we will work to promote more meaningful connections of respect and build a society where everyone has the opportunity to succeed.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2, 2020, as World Autism Awareness Day. I call upon all Americans to learn more

about the signs of autism to improve early diagnosis, understand the challenges faced by individuals with autism, and find ways to support those with autism and their families.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN94

Prevailing Rate Systems; Definition of Pitt County, North Carolina, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to define Pitt County, North Carolina, as an area of application county to the Wayne, NC, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there is one NAF FWS employee working in Pitt County, and the county is not currently defined to a NAF wage area.

DATES:

Effective date: This regulation is effective May 7, 2020.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after May 7, 2020.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2019, OPM issued a proposed rule (84 FR 72250) to define Pitt County, NC, as an area of application county to the Wayne, NC, NAF FWS wage area. This change is based on a majority recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on the administration of the FWS.

The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listing for the State of North Carolina to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS

* * * * *

NORTH CAROLINA

Craven

Survey Area

North Carolina:
Craven

Area of Application. Survey area plus:

North Carolina:
Carteret
Dare

Cumberland

Survey Area

North Carolina:
Cumberland

Area of Application. Survey area plus:

North Carolina:
Durham
Forsyth
Rowan

Onslow

Survey area

North Carolina:
Onslow

Area of Application. Survey area plus:

North Carolina:
New Hanover

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS—Continued

Wayne

Survey area

North Carolina:
Wayne

Area of Application. Survey area plus:

North Carolina:
Halifax
Pitt

* * * * *

[FR Doc. 2020–06891 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 51 and 52

[Doc. No. AMS–LRRS–19–0099; SC–19–331]

Subpart Nomenclature Change; Technical Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes nomenclature changes to subpart headings in the Agricultural Marketing Service's regulations to bring the language into conformance with the Office of the Federal Register (OFR) requirements.

DATES: Effective May 7, 2020.

ADDRESSES: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0240, Washington, DC 20250–0240.

FOR FURTHER INFORMATION CONTACT: Contact Brian E. Griffin, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1536, South Building; Stop 0240, Washington, DC 20250; telephone (202) 720–5021; fax (202) 690–1527; or, email *brian.griffin@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued in 7 CFR subtitle B, Regulations of the Department of Agriculture, chapter I, Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture. This rule is issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and the Egg Products Inspection Act (21 U.S.C. 1031–1056), both as amended. This rule is also issued under 7 CFR parts 51 and 52, which establish grade standards and provide for inspection of certain fresh and processed fruits, vegetables, nuts, and specialty crops under the Agricultural Marketing Act of 1946.

This technical amendment redesignates and revises the heading of title 7, subtitle B, chapter I, subchapter C and of each subpart within 7 CFR parts 51 and 52 so that they are consistent with OFR requirements. The subparts were previously incorporated into 7 CFR parts 51 and 52 without assigned subpart letter designations. Further, some headings in subchapter C include the word ''Regulations'' in the title, which is inconsistent with OFR approved part and subpart headings, as each part under 7 CFR subtitle B represents a body of regulations.

For example, the heading of subchapter C, ''Regulations and Standards under the Agricultural Marketing Act of 1946 and the Egg Products Inspection Act'', is considered redundant by the OFR in that it denotes regulations within a body of regulation. This rule amends subchapter C by revising the heading to read, ''Requirements and Standards under the Agricultural Marketing Act of 1946 and the Egg Products Inspection Act.''

As a further example, the heading for 7 CFR part 51 currently includes two footnotes that might be considered regulatory in nature, which is inconsistent with OFR formatting. This rule amends part 51 by removing the footnotes and incorporating the information from the footnotes elsewhere in the part, as needed. The information in Footnote 1 is incorporated into § 51.2 and the information from Footnote 2 is incorporated into a new paragraph (c) to § 51.1.

Similarly, footnotes in subpart headings are removed where the text of the footnote is addressed in another provision of the subpart or part. Likewise, the note accompanying part 52 has been removed because the substance of that note is already in part 52, specifically § 52.57.

As a final example, the first subpart of part 51 is currently titled ''Subpart—Regulations.'' This rule redesignates the first subpart of part 51 and revises its title to read ''Subpart A—Requirements.'' This document makes similar redesignations and revisions to the other subparts in parts 51 and 52 to bring them into compliance with OFR requirements.

Additionally, 35 FR 6957, May 1, 1970 provided for a title change from U.S. Standards for Pears for Canning to U.S. Standards for Grades of Pears for Processing. This change has not been reflected in the subsequent Code of **Federal Register** publications but is recognized in this rule.

This final rule is administrative in nature and makes technical changes to CFR headings that will have no impact on the regulated industries. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B), notice of proposed rulemaking and opportunity for comment are unnecessary, and there is good cause to proceed with a final rule. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to the address or email under the **FOR FURTHER INFORMATION CONTACT** section.

This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal Governments nor significant Tribal implications.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

List of Subjects

7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, and under the authority of 7 CFR 2.79, the Department of Agriculture amends 7 CFR chapter I as follows:

■ 1. Revise the heading for subchapter C to read as follows:

SUBCHAPTER C—REQUIREMENTS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946 AND THE EGG PRODUCTS INSPECTION ACT

PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ 2. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 3. Revise the heading for part 51 (including removal of the footnotes) to read as set forth above.

[Subpart Redesignated as Subpart A and Amended]

■ 4. Redesignate ''Subpart—Regulations'' as subpart A and revise the heading (including removal of the footnote) to read as follows:

Subpart A—Requirements

■ 5. Amend § 51.1 by revising the heading and adding paragraph (c) to read as follows:

§ 51.1 Administration of the regulations in this part.

* * * * *

(c) None of the requirements in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered by the requirements in this part.

■ 6. Amend § 51.2 by redesignating paragraphs (n) through (u) as paragraphs (o) through (v) and adding new paragraph (n) to read as follows:

§ 51.2 Terms defined.

* * * * *

(n) *Other products.* Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

* * * * *

[Subpart Redesignated as Subpart B]

■ 7. Redesignate ''Subpart—United States Standards for Grades of Apples'' as ''Subpart B—United States Standards for Grades of Apples''.

[Subpart Redesignated as Subpart C]

■ 8. Redesignate ''Subpart—United States Standards for Grades of Apples for Processing'' as ''Subpart C—United States Standards for Grades of Apples for Processing''.

[Subpart Redesignated as Subpart D]

■ 9. Redesignate ''Subpart—United States Standards for Grades of Grapefruit (Texas and States Other Than Florida, California, and Arizona)'' as ''Subpart D—United States Standards for Grades of Grapefruit (Texas and States Other Than Florida, California, and Arizona)''.

[Subpart Redesignated as Subpart E]

■ 10. Redesignate ''Subpart—United States Standards for Grades of Oranges (Texas and States Other Than Florida, California, and Arizona)'' as ''Subpart E—United States Standards for Grades of Oranges (Texas and States Other Than Florida, California, and Arizona)''.

[Subpart Redesignated as Subpart F]

■ 11. Redesignate ''Subpart—United States Standards for Grades of Florida Grapefruit'' as ''Subpart F—United States Standards for Grades of Florida Grapefruit''.

[Subpart Redesignated as Subpart G and Amended]

■ 12. Amend ''Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type)'' by removing the footnote and redesignating the subpart as ''Subpart G—United States Standards for Grades of Table Grapes (European or Vinifera Type)''.

[Subpart Redesignated as Subpart H]

■ 13. Redesignate ''Subpart—United States Standards for Grades of Florida Oranges and Tangelos'' as ''Subpart H—United States Standards for Grades of Florida Oranges and Tangelos''.

[Subpart Redesignated as Subpart I]

■ 14. Redesignate ''Subpart—United States Standards for Cleaned Virginia Type Peanuts in the Shell'' as ''Subpart I—United States Standards for Cleaned Virginia Type Peanuts in the Shell''.

[Subpart Redesignated as Subpart J and Amended]

■ 15. Amend ''Subpart—United States Standards for Summer and Fall Pears'' by removing the footnote and redesignating the subpart as ''Subpart J—United States Standards for Summer and Fall Pears''.

[Subpart Redesignated as Subpart K and Amended]

■ 16. Amend ''Subpart—United States Standards for Winter Pears'' by removing the footnote and redesignating the subpart as ''Subpart K—United States Standards for Winter Pears''.

[Subpart Redesignated as Subpart L and Amended]

■ 17. Redesignate ''Subpart—United States Standards for Pears for Canning'' as ''Subpart L—United States Standards for Grades of Pears for Processing''.

[Subpart Redesignated as Subpart M]

■ 18. Redesignate ''Subpart—United States Standards for Grades of Pecans in the Shell'' as ''Subpart M—United States Standards for Grades of Pecans in the Shell''.

[Subpart Redesignated as Subpart N]

■ 19. Redesignate ''Subpart—United States Standards for Grades of Shelled Pecans'' as ''Subpart N—United States Standards for Grades of Shelled Pecans''.

[Subpart Redesignated as Subpart O]

■ 20. Redesignate ''Subpart—United States Standards for Grades of Fresh Plums and Prunes'' as ''Subpart O—United States Standards for Grades of Fresh Plums and Prunes''.

[Subpart Redesignated as Subpart P and Amended]

■ 21. Amend ''Subpart—United States Standards for Grades of Potatoes'' by removing the footnote and redesignating the subpart as ''Subpart P—United States Standards for Grades of Potatoes''.

[Subpart Redesignated as Subpart Q]

■ 22. Redesignate ''Subpart—United States Consumer Standards for Potatoes'' as ''Subpart Q—United States Consumer Standards for Potatoes''.

[Subpart Redesignated as Subpart R]

■ 23. Redesignate ''Subpart—United States Standards for Grades of Florida Tangerines'' as ''Subpart R—United States Standards for Grades of Florida Tangerines''.

[Subpart Redesignated as Subpart S and Amended]

■ 24. Amend ''Subpart—United States Standards for Fresh Tomatoes'' by removing the footnote and redesignating the subpart as ''Subpart S—United States Standards for Fresh Tomatoes''.

[Subpart Redesignated as Subpart T]

■ 25. Redesignate ''Subpart—United States Consumer Standards for Fresh

Tomatoes'' as ''Subpart T—United States Consumer Standards for Fresh Tomatoes''.

[Subpart Redesignated as Subpart U and Amended]

■ 26. Amend ''Subpart—United States Standards for Grades of Filberts in the Shell'' by removing the footnote and redesignating the subpart as ''Subpart U—United States Standards for Grades of Filberts in the Shell''.

[Subpart Redesignated as Subpart V]

■ 27. Redesignate ''Subpart—United States Standards for Grades of Almonds in the Shell'' as ''Subpart V—United States Standards for Grades of Almonds in the Shell''.

[Subpart Redesignated as Subpart W]

■ 28. Redesignate ''Subpart—United States Standards for Grades of Shelled Almonds'' as ''Subpart W—United States Standards for Grades of Shelled Almonds''.

[Subpart Redesignated as Subpart X]

■ 29. Redesignate ''Subpart—United States Standards for Shelled English Walnuts (Juglans Regia)'' as ''Subpart X—United States Standards for Shelled English Walnuts (Juglans Regia)''.

[Subpart Redesignated as Subpart Y]

■ 30. Redesignate ''Subpart—United States Standards for Grades of Kiwifruit'' as ''Subpart Y—United States Standards for Grades of Kiwifruit''.

[Subpart Redesignated as Subpart Z]

■ 31. Redesignate ''Subpart—United States Standards for Grades of Pistachio Nuts in the Shell'' as ''Subpart Z—United States Standards for Grades of Pistachio Nuts in the Shell''.

[Subpart Redesignated as Subpart AA]

■ 32. Redesignate ''Subpart—United States Standards for Grades of Shelled Pistachio Nuts'' as ''Subpart AA—United States Standards for Grades of Shelled Pistachio Nuts''.

[Subpart Redesignated as Subpart BB and Amended]

■ 33. Amend ''Subpart—United States Standards for Grades for Sweet Cherries'' by removing the footnote and redesignating the subpart as ''Subpart BB—United States Standards for Grades for Sweet Cherries''.

[Subpart Redesignated as Subpart CC]

■ 34. Redesignate ''Subpart—United States Standards for Shelled Runner Type Peanuts'' as ''Subpart CC—United States Standards for Shelled Runner Type Peanuts''.

[Subpart Redesignated as Subpart DD]

■ 35. Redesignate ''Subpart—United States Standards for Grades of Shelled Spanish Type Peanuts'' as ''Subpart DD—United States Standards for Grades of Shelled Spanish Type Peanuts''.

[Subpart Redesignation as Subpart EE]

■ 36. Redesignate ''Subpart—United States Standards for Shelled Virginia Type Peanuts'' as ''Subpart EE—United States Standards for Shelled Virginia Type Peanuts''.

[Subpart Redesignated as Subpart FF]

■ 37. Redesignate ''Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)'' as ''Subpart FF—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)''.

[Subpart Redesignated as Subpart GG]

■ 38. Redesignate ''Subpart—United States Standards for Grades of Walnuts in the Shell'' as ''Subpart GG—United States Standards for Grades of Walnuts in the Shell''.

[Subpart Redesignated as Subpart HH]

■ 39. Redesignate ''Subpart—United States Standards for Florida Avocados'' as ''Subpart HH—United States Standards for Florida Avocados''.

[Subpart Redesignated as Subpart II]

■ 40. Redesignate ''Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions'' as ''Subpart II—United States Standards for Grades of Bermuda-Granex-Grano Type Onions''.

[Subpart Redesignated as Subpart JJ and Amended]

■ 41. Amend ''Subpart—United States Standards for Grades of Potatoes for Processing'' by removing the footnote and redesignating the subpart as ''Subpart JJ—United States Standards for Grades of Potatoes for Processing''.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

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

Authority: 7 U.S.C. 1621–1627.

■ 43. The heading for part 52 is revised (including removal of the footnote) to read as set forth above.

■ 44. In part 52, remove the note preceding the authority citation.

[Subpart Redesignated as Subpart A and Amended]

■ 45. Redesignate ''Subpart—Regulations Governing Inspection and Certification'' as subpart A and revise the heading to read as follows:

Subpart A—Requirements Governing Inspection and Certification

■ 46. Amend § 52.2 by adding in alphabetical order the definition ''Other processed food products'' to read as follows:

§ 52.2 Terms defined.

* * * * *

Other processed food products. Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea; cocoa; coffee; spices; condiments.

* * * * *

[Subpart Redesignated as Subpart B and Amended]

■ 47. Amend ''Subpart—United States Standards for Grades of Canned Red Tart Pitted Cherries'' by removing the footnote and redesignating the subpart as ''Subpart B—United States Standards for Grades of Canned Red Tart Pitted Cherries''.

[Subpart Redesignated as Subpart C]

■ 48. Redesignate ''Subpart—United States Standards for Grades of Frozen Red Tart Pitted Cherries'' as ''Subpart C—United States Standards for Grades of Frozen Red Tart Pitted Cherries''.

[Subpart Redesignated as Subpart D]

■ 49. Redesignate ''Subpart—United States Standards for Grades of Dates'' as ''Subpart D—United States Standards for Grades of Dates''.

[Subpart Redesignated as Subpart E and Amended]

■ 50. Amend ''Subpart—United States Standards for Grades of Processed Raisins'' by removing the footnote and redesignating the subpart as ''Subpart E—United States Standards for Grades of Processed Raisins''.

[Subpart Redesignated as Subpart F]

■ 51. Redesignate ''Subpart—United States Standards for Grades of Dried Prunes'' as ''Subpart F—United States Standards for Grades of Dried Prunes''.

[Subpart Redesignated as Subpart G and Amended]

■ 52. Amend ''Subpart—United States Standards for Grades of Canned Ripe Olives'' by removing the footnote and redesignating the subpart as ''Subpart G—United States Standards for Grades of Canned Ripe Olives''.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–06616 Filed 4–6–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0213; Product Identifier 2020–NM–043–AD; Amendment 39–19889; AD 2020–07–10]

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 certain Airbus SAS Model A320–271N airplanes and Model A321–271N, –271NX, and –272N airplanes. This AD was prompted by a report of a gap found on an engine pylon nose fire seal during an inspection of an in-production airplane. This AD requires a one-time detailed inspection of certain engine pylon nose fire seals for correct installation, and applicable corrective actions if necessary, 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 April 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 22, 2020.

We must receive comments on this AD by May 22, 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–2020–0213.

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–2020–0213; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0053, dated March 10, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–271N airplanes and Model A321–271N, –271NX, and –272N airplanes.

This AD was prompted by a report of a gap found on an engine pylon nose fire seal during an inspection of an in-production airplane. The FAA is issuing this AD to address a potential gap in the engine pylon nose fire seal, which, if not detected and corrected, could lead to loss of firewall integrity and, in case of an engine fire, could prevent the ability to extinguish the fire. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0053 describes procedures for accomplishing a detailed inspection of engine pylon nose fire seals having part number D0003109300000 for correct installation (no gaps and correctly seated on the bifurcation panels) and corrective actions if necessary (replacement of the fire seal and joint plate assembly). 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 2020–0053 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 2020–0053 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0053 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 2020–0053 that is required for compliance with EASA AD 2020–0053 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0213.

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 loss of firewall integrity of the pylon nose fire seal caused by permanent seal deformation could, in case of an engine fire, prevent the ability to extinguish the fire. 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–2020–0213; Product Identifier 2020–NM–043–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.

Costs of Compliance

The FAA estimates that this AD affects 44 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
4 work-hours × $85 per hour = $170	$0	$170	$7,480

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	$4,500	$5,010

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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 has 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):

2020–07–10 Airbus SAS: Amendment 39–19889; Docket No. FAA–2020–0213; Product Identifier 2020–NM–043–AD.

(a) Effective Date

This AD becomes effective April 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–271N airplanes and Model A321–271N, –271NX, and –272N airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0053, dated March 10, 2020 (''EASA AD 2020–0053'').

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by a report of a gap found on an engine pylon nose fire seal during an inspection of an in-production airplane. The FAA is issuing this AD to address a potential gap in the engine pylon nose fire seal, which, if not detected and corrected, could lead to loss of firewall integrity and, in case of an engine fire, could prevent the ability to extinguish the fire.

(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, EASA AD 2020–0053.

(h) Exceptions to EASA AD 2020–0053

(1) Where EASA AD 2020–0053 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0053 does not apply to this AD.

(3) Where paragraph (3) EASA AD 2020–0053 specifies to do actions ''in accordance with the instructions of the applicable Aircraft Maintenance Manual,'' this AD requires doing those actions ''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.''

Note 1 to paragraph (h)(3): Guidance on accomplishing the replacement specified in paragraph (3) of EASA AD 2020–0053 can be found in Airbus aircraft maintenance manual (AMM) task 54–57–22–000–821–A and AMM task 54–57–22–400–821 dated May 2019.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0053 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(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 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 2020–0053 that contains RC procedures and tests: Except as specified in paragraph (i) of this AD and 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 Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@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 2020–0053, dated March 10, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0053, 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–2020–0213.

(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 March 31, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–07342 Filed 4–3–20; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0687; Airspace Docket No. 19–ASO–17]

RIN 2120–AA66

Amendment of Area Navigation Routes, Florida Metroplex Project; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on March 24, 2020, that amends area navigation (RNAV) routes in the southeastern United States in support of the Florida Metroplex Project. This action makes an editorial correction to the order of points listed in the description of RNAV route Q–110.

DATES: Effective date 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.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule for Docket No. FAA–2019–0687 in the **Federal Register** (85 FR 16533; March 24, 2020), amending 11 RNAV Q-routes in the southeastern United States. Subsequent to publication, it was determined that the order of points listed in the description of RNAV route Q–110 was incorrectly changed from a ''west to east'' format to a ''south to north'' format. This rule corrects the Q–110 route description by changing the order of points to a ''west to east'' format in accordance with FAA Order 7400.2 criteria. This is an editorial change only that does not alter the alignment of the route as shown on aeronautical charts, and does not affect use of the route by aircraft.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the description of RNAV route Q–110 as published in the **Federal Register** on March 24, 2020 (85 FR 16533; FR Doc. 2020–05987) is corrected as follows:

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–110 BLANS, IL TO OCTAL, FL [CORRECTED]

BLANS, IL	WP	(Lat. 37°28′09.27″N, long. 088°44′00.68″W)
BETIE, TN	WP	(Lat. 36°07′29.88″N, long. 087°54′01.48″W)
SKIDO, AL	WP	(Lat. 34°31′49.10″N, long. 086°53′11.16″W)
BFOLO, AL	WP	(Lat. 34°03′33.98″N, long. 086°31′30.49″W)
JYROD, AL	WP	(Lat. 33°10′53.29″N, long. 085°51′54.85″W)
DAWWN, GA	WP	(Lat. 31°28′49.96″N, long. 084°36′46.69″W)
JOKKY, FL	WP	(Lat. 30°11′31.47″N, long. 083°38′41.86″W)
AMORY, FL	WP	(Lat. 29°13′17.02″N, long. 082°55′42.90″W)
SMELZ, FL	WP	(Lat. 28°04′59.00″N, long. 082°06′34.00″W)
SHEEK, FL	WP	(Lat. 27°35′15.40″N, long. 081°46′27.82″W)
JAYMC, FL	WP	(Lat. 26°58′51.00″N, long. 081°22′08.00″W)
OCTAL, FL	WP	(Lat. 26°09′01.92″N, long. 080°12′11.60″W)

* * * * *

Issued in Washington, DC, on April 1, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–07182 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM20–13–000; Order No. 870]

Delegation of Authority

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to delegate authority to the Director of the Office of Energy Policy and Innovation, or the Director's designee, to take appropriate action on motions for extension of time to file, or requests or petitions for waiver of the requirements of, FERC Form No. 552 (Annual Report of Natural Gas Transactions) and FERC–730 (Report of Transmission Investment Activity).

DATES: This rule is effective April 7, 2020.

FOR FURTHER INFORMATION CONTACT:

Kaleb Lockwood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8255, *kaleb.lockwood@ferc.gov*

Eric Primosch, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6483, *eric.primosch@ferc.gov*

Michael Tita, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6448, *michael.tita@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. By this instant final rule, the Commission is revising its regulations to delegate further authority to its staff to take action, as provided below, effective on the date of publication of this final rule in the **Federal Register**.

I. Background

2. On March 13, 2020, the President issued a proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19). Entities regulated by the Commission have had to take unprecedented actions in response to the emergency conditions, including directing staff to work remotely for an extended period, which may disrupt, complicate, or otherwise change their normal course of business operations. Regulated entities and the public have since filed motions and other requests for Commission action to relieve regulatory burdens so that they may focus on continuity of operations and ensuring reliable operations of their systems during this emergency period. This has prompted the Commission to review its procedural regulations to ensure that the Commission's work is performed in an efficient manner.

II. Discussion

3. On September 19, 2019, the Chairman of the Commission transferred certain functions performed by the Office of Enforcement's Division of Energy Market Oversight, including the administration of FERC Form No. 552 and FERC–730, to the Office of Energy Policy and Innovation. This final rule amends 18 CFR 375.315 to delegate authority to the Director of the Office of Energy Policy and Innovation, or the Director's designee, to take appropriate action on motions for extension of time to file, or requests or petitions for waiver of the requirements of, FERC Form No. 552 (Annual Report of Natural Gas Transactions) and FERC–730 (Report of Transmission Investment Activity). This authority was previously delegated to the Director of the Office of Enforcement.[1] Given this change, the Commission concludes it is reasonable to now delegate this authority to the Director of the Office of Energy Policy and Innovation. Further, in light of the emergency conditions related to COVID–19, this delegation of authority will allow for more efficient processing of and action on motions for extension of time to file, or requests or petitions for waiver related to FERC Form No. 552 and FERC–730. These delegations apply to uncontested matters.

4. Correspondingly, this instant final rule removes the authority previously delegated to the Commission's Office of Enforcement to grant motions for extension of time or waiver of FERC Form No. 552 and FERC–730. Now that such authority is delegated to the Director of the Commission's Office of Energy Policy and Innovation, it is appropriate to delete that authority from the authority delegated to the Director of the Office of Enforcement.

III. Information Collection Statement

5. OMB's regulations require approval of certain information collection requirements imposed by agency rules.[2] This final rule, however, results in no new, additional, or different public reporting burden. This final rule does not require public utilities or natural gas companies to file new, additional, or different information, and it does not change the frequency with which they must file information.

IV. Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[3] Issuance of this final rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[4] This final rule is exempt under that provision.

V. Regulatory Flexibility Act

7. The Regulatory Flexibility Act of 1980 (RFA)[5] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule changes the Commission's delegations of authority to take certain actions and does not create any additional requirements for filers. The Commission thus certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required

VI. Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning COVID–19.

9. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date

11. The Commission is issuing this rule as an instant final rule without a period for public comment. Public notice of this action, otherwise required by 5 U.S.C. 553(b), is impracticable because of the immediate need to efficiently process and act on waiver and extension requests made in response to the emergency conditions created by COVID–19. The Commission's requirement to protect the public interest creates an immediate need for this action.

12. These regulations are effective April 7, 2020.

List of Subjects in 18 CFR Part 375

Authority delegations

By the Commission.

Issued: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, Code of Federal Regulations, as follows:

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.311, paragraphs (r) and (s) are revised to read as follows:

§ 375.311 Delegations to the Director of the Office of Enforcement.

* * * * *

(r) Deny or grant, in whole or in part, motions for extension of time to file, or requests for waiver of the requirements of the following forms, data collections, and reports: Annual Reports (Form Nos. 1, 1–F, 2, 2–A, and 6); Quarterly Reports (Form Nos. 3–Q and 6–Q); Annual Report of Centralized Service Companies (Form No. 60); Narrative Description of Service Company Functions (FERC–61); and Electric Quarterly Reports, as well as, where required, the electronic filing of such information (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

[1] *See* 18 CFR 375.311(r) and (s).

[2] 5 CFR 1320.13.

[3] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[4] 18 CFR 380.4(a)(2)(ii).

[5] 5 U.S.C. 601–12.

(s) Provide notification if a submitted Annual Report (Form Nos. 1, 1–F, 2, 2–A, and 6), Quarterly Report (Form Nos. 3–Q and 6–Q), Annual Report of Centralized Service Companies (Form No. 60), Narrative Description of Service Company Functions (FERC–61), or Electric Quarterly Report fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or, when appropriate, notify a party that a submission is acceptable.

* * * * *

■ 3. In § 375.315, paragraph (a) is revised to read as follows:

§ 375.315 Delegations to the Director of the Office of Energy Policy and Innovation.

* * * * *

(a) Take appropriate action on:

(1) Any notice of intervention or motion to intervene, filed in an uncontested proceeding processed by the Office of Energy Policy and Innovation;

(2) Applications or motions for extensions of time to file required filings, reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission, including applications or motions for extensions of time to file the Annual Report of Natural Gas Transactions (FERC Form No. 552) and the Report of Transmission Investment Activity (FERC–730); and

(3) Requests or petitions for waiver of the requirements of the Annual Report of Natural Gas Transactions (FERC Form No. 552) and the Report of Transmission Investment Activity (FERC–730).

(4) Notification to a party if a submitted Annual Report of Natural Gas Transactions (FERC Form No. 552) or Report of Transmission Investment Activity (FERC–730) fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or, when appropriate notify a party that a submission is acceptable.

* * * * *

[FR Doc. 2020–07302 Filed 4–2–20; 5:15 pm]

BILLING CODE 6717–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 327

RIN 3220—AB75

Available for Work

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board is amending the definition of ''available for work'' in its regulations in order to facilitate payment of unemployment benefits to railroad employees who are out of work due to the impact of the COVID–19 outbreak and subsequent declaration of a national emergency beginning March 1, 2020.

DATES: This final rule takes effect April 3, 2020.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board pays unemployment benefits to unemployed railroad workers under the provisions of the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). One of the requirements for payment of a claim for unemployment benefits is that the claimant be ''available for work.'' The Board has defined that phrase in its regulations at Part 327. The Board is now revising that definition in order to address the handling of claims for railroad unemployment benefits caused by the COVID–19 pandemic.

On March 13, 2020, President Donald Trump issued a proclamation declaring that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. On March 14, 2020, the House of Representatives passed a bill, H.R. 6201, the Families First Coronavirus Response Act, which includes an expansion of unemployment benefit programs administered by the states. That bill was passed by the Senate and signed by the President on March 18, 2020. Consistent with the President's proclamation and the expansion of state unemployment benefits in the legislation, the Board is expanding the definition of ''available for work'' to address the surge in unemployment caused by the pandemic. The Board has determined that in order to meet the needs of the railroad industry and railroad employees, the definition of ''available for work'' must be modified in order to facilitate the payment of unemployment benefits to railroad employees who will be out of work because of state and local public health orders related to the coronavirus. In light of the President's declaration that the national emergency began March 1, 2020, the Board is issuing this rule as a final rule. If the Board were to invite public comment on a proposed rule, the goal of paying unemployment benefits as quickly as possible to otherwise eligible railroad employees could not be met. The Board thus finds for good cause that it is impracticable to invite public comment and in the public interest that unemployment claims of railroad employees be facilitated in this period of national emergency. 5 U.S.C § 553(b).

The Office of Management and Budget has determined that this is a significant regulatory action under Executive Order 12866, as amended. There are no changes to the information collections associated with Part 327.

List of Subjects in 20 CFR Part 327

Railroad employees, Railroad unemployment.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, subchapter C, part 327 of the Code of Federal Regulations as follows:

PART 327—AVAILABLE FOR WORK

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 45 U.S.C. 362(i), 362(l).

■ 2. Amend § 327.5 by adding paragraph (d) to read as follows:

§ 327.5 Meaning of "available for work."

* * * * *

(d) *Deemed available for work.* During the period extending from March 1, 2020 until December 31, 2020, a claimant will be deemed to be available for work during any period for which he or she is subject to a state or local order related to the public health emergency declared effective March 1, 2020 preventing him or her from reporting to work.

Dated: March 31, 2020.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–06975 Filed 4–3–20; 11:15 am]

BILLING CODE 7905–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–600]

Schedules of Controlled Substances: Placement of Lemborexant in Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On December 20, 2019, the U.S. Food and Drug Administration approved a new drug application for Dayvigo (lemborexant) tablets for oral use. Lemborexant is chemically known as (1*R*,2*S*)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)-*N*-(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide. The Department of Health and Human Services provided the Drug Enforcement Administration (DEA) with a scheduling recommendation to place lemborexant in schedule IV of the Controlled Substances Act (CSA). In accordance with the CSA, as amended by the Improving Regulatory Transparency for New Medical Therapies Act, DEA is hereby issuing an interim final rule placing lemborexant, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV of the CSA.

DATES: The effective date of this rulemaking is April 7, 2020. Interested persons may file written comments on this rulemaking in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before May 7, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for hearing or waiver of hearing in accordance with

21 U.S.C. 811(j)(3) and 21 CFR 1308.44. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written statement of position on the matters of fact and law asserted in the hearing, must be received on or before May 7, 2020.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–600'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at the site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, VA 22152.
- *Hearing requests:* All requests for hearing and waivers of participation, together with a written statement regarding his position on the matter of fact and law involved in such hearing, must be sent to: Drug Enforcement Administration. Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ. 8701 Morrissette Drive, Springfield, Virginia 22152: and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW. 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services (HHS) and DEA eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any,

concerning which the person desires to be heard. 21 CFR 1316.47(a). Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for a hearing and waivers of participation together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above.

Background and Legal Authority

Under the Improving Regulatory Transparency for New Medical Therapies Act, Public Law 114–89, 2(b), 129 tat. 700 (2015), DEA is required to commence an expedited scheduling action with respect to certain new drugs approved by the Food and Drug Administration (FDA). As provided in 21 U.S.C. 811(j), this expedited scheduling is required where both of the following conditions apply: (1) The Secretary of HHS has advised DEA that a New Drug Application (NDA) has been submitted for a drug that has a stimulant, depressant, or hallucinogenic effect on the central nervous system (CNS), and that it appears that such drug has an abuse potential; and (2) the Secretary of HHS recommends that DEA control the drug in schedule II, III, IV, or V pursuant to 21 U.S.C. 811(a) and (b). In these circumstances. DEA is required to issue an interim final rule controlling the drug within 90 days.

The law further states that the 90-day timeframe starts the later of: (1) The date DEA receives HHS' scientific and medical evaluation and scheduling recommendation, or (2) the date DEA receives notice of the NDA approval by HHS. In addition, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause therefore. Thus, the purpose of subsection (j) is to speed the process by which DEA schedules newly approved drugs that are currently either in schedule I or not controlled (but which have sufficient abuse potential to warrant control) so that such drugs may be marketed without undue delay following FDA approval.[1]

Subsection (j) further provides that the interim final rule shall give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, DEA must issue a final rule in accordance with the scheduling criteria of subsections 21 U.S.C. 811(b), (c), and (d) and 21 U.S.C. 812(b).

Lemborexant [(1*R*,2*S*)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)-*N*-(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide] is a new molecular entity with CNS depressant properties. Lemborexant acts as an antagonist at both orexin-1 and orexin-2 receptors (OX1R and OX2R, respectively). On December 27, 2018, Eisai, Inc., submitted an NDA for Dayvigo (lemborexant), 5 and 10 mg oral tablets, with the proposed dosage suggestion of 5 mg, not to exceed a maximum dose of 10 mg once a day. On March 9, 2020, DEA received a letter from FDA, dated March 5, 2020, notifying DEA that FDA, on December 20, 2019, approved the NDA for Dayvigo (lemborexant), under section 505(c) of the Federal Food, Drug, and Cosmetic Act (FDCA), for the treatment of adult patients with insomnia, characterized by difficulties with sleep onset and/or sleep maintenance.[2] Lemborexant has not been marketed in any other country for any medical indication.

Determination To Schedule Lemborexant

On January 9, 2020, DEA received from HHS a scientific and medical evaluation (dated December 19, 2019) entitled ''Basis for the Recommendation to Control Lemborexant and its Salts in Schedule IV of the Controlled Substances Act'' and a scheduling recommendation. Pursuant to 21 U.S.C. 811(b) and (c), this document contained an eight-factor analysis of the abuse potential, legitimate medical use, and dependence liability of lemborexant, along with HHS's recommendation to control lemborexant and its salts under schedule IV of the CSA.

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS, along with all other relevant data, and completed its own eight-factor review pursuant to 21 U.S.C. 811(c). DEA concluded that lemborexant meets the 21 U.S.C. 812(b)(4) criteria for placement in schedule IV of the CSA.

Pursuant to subsection 811(j), and based on HHS's recommendation, the NDA approval by HHS/FDA, and DEA's determination, DEA is issuing this interim final rule to schedule lemborexant as a schedule IV controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its scheduling action. Please note that both DEA and HHS analyses are available in their entirety under ''Supporting Documents'' in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number ''DEA–600.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. Its Actual or Relative Potential for Abuse

As noted by HHS, lemborexant is a new molecular entity that has not been marketed in the United States or any other country. Thus, evidence regarding its diversion, illicit manufacture, or deliberate ingestion is currently lacking. DEA notes that there are no reports for lemborexant in the National Forensic Laboratory Information System (NFLIS),[3] which collects drug identification results from drug cases submitted to and analyzed by state and local forensic laboratories. There were also no reports in STARLiMS,[4] DEA's laboratory drug evidence data system of record.

As stated by HHS, lemborexant is a sedative that is highly selective for both the OX1R and OX2R receptors and has little to no affinity to other CNS receptor sites associated with abuse potential. In a clinical study investigating the abuse potential of lemborexant, HHS concluded that lemborexant produced subjective responses that were similar to those for the schedule IV sedative suvorexant.

[1] Given the parameter of subsection (j), in DEA's view, it would not apply to a reformulation of a drug containing a substance currently in schedules II through V for which an NDA has recently been approved.

[2] *https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2019/212028Orig1s000ltr.pdf,* accessed March 11, 2020.

[3] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011. NFLIS data were queried January 15, 2020.

[4] On October 1, 2014, DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. STARLiMS data were queried January 15, 2020.

2. Scientific Evidence of Its Pharmacological Effects, if Known

According to HHS, lemborexant primarily acts as a dual orexin receptor antagonist and does not bind with any other CNS receptors that are typically associated with abuse, such as opioid or cannabinoid receptors, GABAergic, and other ion channels. According to HHS, general behavioral studies in animals indicate that acute oral administration of lemborexant using supratherapeutic doses (100, 300, and 1000 mg/kg), produced no overt behavioral changes in hindlimb foot splay, forelimb grip strength, hindlimb grip strength, and rectal temperature in cage-side, hand-held, and open-field using functional observational methods. Additionally, lemborexant, even at supratherapeutic doses, does not significantly impair motor coordination. In drug discrimination studies, which are used to predict subjective effects in humans, lemborexant and suvorexant (a schedule IV substance which is another known dual orexin receptor antagonist) did not fully mimic stimulus effects of zolpidem, a schedule IV sedative. In a self-administration study in rhesus monkeys, the rewarding effects of lemborexant were insufficient to produce reinforcement.

According to HHS, in a human abuse potential (HAP) study conducted by the Sponsor, lemborexant (at therapeutic and supratherapeutic doses) produced statistically significant increases on positive subjective measures in the bipolar visual analog scale (VAS) (*i.e.,* Drug Liking, Overall Drug Liking, Good Effects, High, Stoned, and Take Drug Again) that were greater than placebo and statistically similar to suvorexant and/or zolpidem (schedule IV substances). With respect to two subjective measures, such as drowsiness and sedation, lemborexant, similar to zolpidem and suvorexant, produced statistically significantly greater scores than placebo. HHS concluded that lemborexant produces positive subjective effects and has an abuse potential similar to that of schedule IV sedatives, such as suvorexant and zolpidem, which were used as positive controls in the aforementioned study. According to HHS, in multiple-dose Phase I studies, lemborexant produced dose-dependent ''abnormal dreams.'' There were few incidents of abuse-related adverse events (AEs), such as ''euphoric mood,'' ''disturbance in attention,'' and ''memory impairment.'' Furthermore, in Phase 2 clinical studies, lemborexant produced dose dependent somnolence. This response was considered appropriate given the proposed therapeutic use for lemborexant as a treatment for insomnia. No additional abuse-related AEs were reported by participants at an incidence greater than 1.0 percent. As per the adverse event data obtained from Phase 1 and Phase ⅔ clinical safety and efficacy trials, there were no significant abuse-related signals.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

Lemborexant is a new molecular entity, chemically known as (1*R*,2*S*)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)-*N*-(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide. It is nearly insoluble in water and heptane; ''sparingly'' soluble in 1-octanol; very soluble in dimethyl sulfoxide; and freely soluble in methanol, acetone, ethyl acetate, and benzyl alcohol. Additionally, lemborexant is soluble in acetonitrile and ethanol. On December 20, 2019, FDA approved an NDA for lemborexant for medical use for the treatment of insomnia in adult patients with insomnia characterized by difficulties with sleep onset and/or sleep maintenance. Thus, lemborexant has an accepted medical use in the United States. Lemborexant will be marketed as a once daily tablet taken before bedtime, with at least 7 hours remaining before the planned time of awakening. The recommended dose for lemborexant is 5 mg; however, the dosage may be increased to 10 mg based on clinical response and tolerability.[5]

4. Its History and Current Pattern of Abuse

There is no information available relating to the history and current pattern of abuse of lemborexant because this drug is not currently marketed in any country. As stated in Factor 1, DEA notes that there has been no diversion of lemborexant based on NFLIS and STARLiMS data. HHS notes that lemborexant produces abuse-related signals and abuse potential similar to that of the schedule IV controlled substance suvorexant.

5. The Scope, Duration, and Significance of Abuse

Lemborexant as a single active ingredient in a drug product is currently not marketed in any country. Thus, information on the scope, duration, and significance of abuse for lemborexant is lacking. As described in Factor 4, NFLIS and STARLiMS databases have no evidence of law enforcement encounters of lemborexant. However, as HHS notes, data from preclinical and clinical studies summarized in Factor 2 indicate that the scope, duration, and significance of abuse for lemborexant would be similar to those of suvorexant, a schedule IV substance. As stated by HHS, data from animal and human studies indicate that lemborexant has an abuse potential similar to that of suvorexant.

6. What, if Any, Risk There Is to the Public Health

As stated by HHS, the public health risk associated with lemborexant is largely a risk to the individual due to its abuse potential. The extent of abuse potential of a drug is an indication of its public health risk. Data from the preclinical and clinical studies suggest that the abuse potential of lemborexant is similar to schedule IV substances, such as suvorexant and zolpidem. Lemborexant, similar to schedule IV sedatives, is likely to pose a public health risk of abuse upon marketing in the United States.

7. Its Psychic or Physiological Dependence Liability

Physical dependence for lemborexant was tested in a rat physical dependence study and during Phase ⅔ clinical trials. Based on the data from these studies, HHS concluded that lemborexant lacked physical dependence potential. According to HHS, in the HAP study (presented in Factor 2), lemborexant administration was associated with positive subjective effects as assessed by participant responses to measures of Drug Liking, Overall Drug Liking, Good Drug Effects, High, Stoned, and Take Drug Again. The results indicated that the responses for lemborexant were similar to that of positive control drugs, such as zolpidem and suvorexant. Thus, it is likely that lemborexant can produce psychic dependence similar to that of schedule IV drugs, such as zolpidem and suvorexant.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

Lemborexant is not an immediate precursor of any controlled substance, as defined in 21 U.S.C. 802(23).

Conclusion

After considering the scientific and medical evaluation conducted by HHS, HHS's recommendation, and its own eight-factor analysis, DEA has determined that these facts and all

[5] *https://www.accessdata.fda.gov/drugsatfda_docs/label/2019/212028s000lbl.pdf,* accessed February 6, 2020.

relevant data constitute substantial evidence of a potential for abuse of lemborexant. As such, DEA hereby schedules lemborexant as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA lists the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Acting Administrator of DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

1. Lemborexant has a low potential for abuse relative to the drugs or other substances in schedule III.

Lemborexant is a dual orexin receptor antagonist, which produces sedation in human behavioral studies. In the HAP study, therapeutic and supratherapeutic doses of lemborexant produced positive subjective responses such as Drug Liking, Overall Drug Liking, Good Drug Effects, High, Stoned, and Take Drug Again that were statistically significantly greater than those produced by placebo. These responses of lemborexant are similar to those produced by schedule IV drugs suvorexant and zolpidem. Because lemborexant is similar to zolpidem and suvorexant in its abuse potential, lemborexant has a low potential for abuse relative to the drugs and other listed substances in schedule III of the CSA.

2. Lemborexant has a currently accepted medical use in the United States.

FDA recently approved lemborexant oral tablets for the treatment of adult patients with insomnia, characterized by difficulties with sleep onset and/or sleep maintenance. Thus, lemborexant has a currently accepted medical use in treatment in the United States.

3. Lemborexant may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

As stated by HHS, data from a rat physical dependence study, as well as a physical dependence assessment at the conclusion of the Phase ⅔ clinical trials, showed that lemborexant did not produce withdrawal symptoms indicative of physical dependence. In the HAP study, lemborexant produced positive subjective responses to measures such as Drug Liking, Overall Drug Liking, Good Drug Effects, High, Stoned, and Take Drug Again that were greater than placebo and similar to that of the schedule IV drugs zolpidem and suvorexant. This data suggests that lemborexant can produce psychic dependence to a similar extent as zolpidem and suvorexant. Thus, abuse of lemborexant may lead to limited psychological dependence relative to the drugs or other substances in schedule III of the CSA.

Based on these findings, the Acting Administrator of DEA concludes that lemborexant warrants control in schedule IV of the CSA. 21 U.S.C. 812(b)(4).

Requirements for Handling Lemborexant

Lemborexant is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) lemborexant, or who desires to handle lemborexant, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles or intends to handle lemborexant and is not registered with DEA must submit an application for registration and may not continue to handle lemborexant, unless DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to maintain a schedule IV registration must surrender all quantities of currently held lemborexant or may transfer all quantities of lemborexant to a person registered with DEA in accordance with 21 CFR part 1317, in additional to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Lemborexant is subject to schedule III–V security requirements and must be handled and stored in accordance with 21 CFR 1301.71–1301.77. Non-practitioners handling lemborexant must also comply with the employee screening requirements of 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of lemborexant must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of lemborexant must take an inventory of lemborexant on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with DEA to handle lemborexant must take an initial inventory of all stocks of controlled substances (including lemborexant) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including lemborexant) on hand at least every two years, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for lemborexant, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for lemborexant, or products containing lemborexant, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule IV controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of lemborexant may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the FDCA and the CSA.

9. *Importation and Exportation.* All importation and exportation of lemborexant must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving lemborexant not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Section 553 of the APA (5 U.S.C. 553) generally requires notice and comment

for rulemakings. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is: (1) Approved by HHS, under section 505(c) of the FDCA, and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an interim final rule scheduling the drug within 90 days. As stated in the legal authority section, the 90-day time frame is the later of: (1) The date DEA receives HHS's scientific and medical evaluation/scheduling recommendation, or (2) the date DEA receives notice of the NDA approval by HHS. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause.

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This interim final rule is not an Executive Order 13771 regulatory action pursuant to Executive Order 12866 and OMB guidance.[6]

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. Under 21 U.S.C. 811(j), DEA is not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply to this interim final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.14 by:
■ a. Redesignating paragraphs (c)(30) through (c)(56) as (c)(31) through (c)(57); and
■ b. Adding new paragraph (c)(30).
The addition reads as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(30) Lemborexant 2245

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Uttam Dhillon,
Acting Administrator.

[FR Doc. 2020–07089 Filed 4–6–20; 8:45 am]
BILLING CODE 4410–09–P

[6] Office of Mgmt. & Budget, Exec. Office of The President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 Titled ''Reducing Regulation and Controlling Regulatory Costs'' (Feb. 2, 2017).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2019–0007]

RIN 1219–AB88

Electronic Detonators

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Mine Safety and Health Administration (MSHA) confirms the effective date for the direct final rule, Electronic Detonators, which was published on January 14, 2020, to revise certain safety standards for explosives at metal and nonmetal mines.

DATES: The effective date of the final rule published in the **Federal Register**

of January 14, 2020 (85 FR 2022) is confirmed: March 16, 2020.

ADDRESSES:

Federal Register Publications: Access rulemaking documents electronically at *https://www.msha.gov/regulations/rulemaking* or *http://www.regulations.gov* [Docket Number: MSHA–2019–0007].

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov/subscriptions.*

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Effective Date

On January 14, 2020, MSHA published in the **Federal Register** a direct final rule to revise certain safety standards for explosives at metal and nonmetal mines (85 FR 2022). In the same issue of the **Federal Register**, MSHA published a companion proposed rule (85 FR 2064) for notice and comment rulemaking to provide a procedural framework to finalize the rule in the event that the Agency received significant adverse comments and had to withdraw the direct final rule. After reviewing all the comments received during the public comment period, MSHA has determined that these comments are not adverse to the direct final rule. Therefore, the direct final rule took effect on March 16, 2020.

Authority: 30 U.S.C. 811

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health Administration.

[FR Doc. 2020–06649 Filed 4–6–20; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 172

[Docket ID: DOD–2018–OS–0044]

RIN 0790–AK30

Disposition of Proceeds From DoD Sales of Surplus Personal Property

AGENCY: Office of the Under Secretary of Defense (Comptroller), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation that provides instructions to DoD Components on the collection and disposition of cash and cash equivalents received for the sale of DoD surplus personal property. Proceeds from the sale of surplus personal property shall be deposited by the collecting DoD Component promptly to a U.S. Treasury account. Process instructions are conveyed directly to potential buyers and bidders when invitation for bids are distributed or published. Therefore, this rule is unnecessary and can be removed from the CFR.

DATES: This rule is effective on April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Kellie Allison at 703–614–0410.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD guidance that is not required to be codified and is publicly available on the Department's website. DoD guidance will continue to be published in DoD 7000.14–R, Financial Management Regulation, Volume 11A, Chapter 5, ''Disposition of Proceeds from DoD Sales of Surplus Personal Property'' available at *http://comptroller.defense.gov/Portals/45/documents/fmr/current/11a/11a_05.pdf.*

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply.

List of Subjects in 32 CFR Part 172

Personal property, Recyclable material, Surplus Government property.

PART 172—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 172 is removed.

Dated: March 27, 2020.

Aaron T. Siegel,

Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–06773 Filed 4–6–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 160 and 164

Enforcement Discretion Under HIPAA To Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities in Response to COVID–19

AGENCY: Office of the Secretary, HHS.

ACTION: Notification of enforcement discretion.

SUMMARY: This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies the Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Current regulations allow a HIPAA business associate to use and disclose protected health information for public health and health oversight purposes only if expressly permitted by its business associate agreement with a HIPAA covered entity. As a matter of enforcement discretion, effective immediately, the HHS Office for Civil Rights (OCR) will exercise its enforcement discretion and will not impose potential penalties for violations of certain provisions of the HIPAA Privacy Rule against covered health care providers or their business associates for uses and disclosures of protected health information by business associates for public health and health oversight activities during the COVID–19 nationwide public health emergency.

DATES: The Notification of Enforcement Discretion will remain in effect until the Secretary of HHS declares that the public health emergency no longer exists, or upon the expiration date of the declared public health emergency (as determined by 42 U.S.C. 247d), whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION: HHS is informing the public that it is exercising its discretion in how it applies the Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[1]

[1] Due to the public health emergency posed by COVID–19, the HHS Office for Civil Rights (OCR) is exercising its enforcement discretion under the conditions outlined herein. We believe that this guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(A). OCR additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice and comment for this guidance is impracticable, and there is good

I. Background

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information (PHI), namely, the HIPAA Privacy, Security, and Breach Notification Rules (the HIPAA Rules).

The HIPAA Privacy Rule permits a business associate of a HIPAA covered entity to use and disclose PHI to conduct certain activities or functions on behalf of the covered entity, or provide certain services to or for the covered entity, but only pursuant to the explicit terms of a business associate contract or other written agreement or arrangement under 45 CFR 164.502(e)(2) (collectively, ''business associate agreement'' or BAA), or as required by law.

Federal public health authorities and health oversight agencies, state and local health departments, and state emergency operations centers have requested PHI from HIPAA business associates (*i.e.,* a disclosure of PHI), or requested that business associates perform public health data analytics on such PHI (*i.e.,* a use of PHI by the business associate) for the purpose of ensuring the health and safety of the public during the COVID–19 national emergency, which also constitutes a nationwide public health emergency. Some HIPAA business associates have been unable to timely participate in these efforts because their BAAs do not expressly permit them to make such uses and disclosures of PHI.

II. Parameters and Conditions of Enforcement Discretion

To facilitate uses and disclosures for public health and health oversight activities during this nationwide public health emergency, effective immediately, OCR will exercise its enforcement discretion and will not impose penalties against a business associate or covered entity under the Privacy Rule provisions 45 CFR 164.502(a)(3), 45 CFR 164.502(e)(2), 45 CFR 164.504(e)(1) and (5) if, and only if:

- the business associate makes a good faith use or disclosure of the covered entity's PHI for public health activities consistent with 45 CFR 164.512(b), or health oversight activities consistent with 45 CFR 164.512(d); and
- The business associate informs the covered entity within ten (10) calendar days after the use or disclosure occurs (or commences, with respect to uses or disclosures that will repeat over time).

Examples of such good faith uses or disclosures covered by this Notification include uses and disclosures for or to:

- the Centers for Disease Control and Prevention (CDC), or a similar public health authority at the state level, for the purpose of preventing or controlling the spread of COVID–19, consistent with 45 CFR 164.512(b).
- The Centers for Medicare and Medicaid Services (CMS), or a similar health oversight agency at the state level, for the purpose of overseeing and providing assistance for the health care system as it relates to the COVID–19 response, consistent with 45 CFR 164.512(d).

This enforcement discretion does not extend to other requirements or prohibitions under the Privacy Rule, nor to any obligations under the HIPAA Security and Breach Notification Rules applicable to business associates and covered entities. For example, business associates remain liable for complying with the Security Rule's requirements to implement safeguards to maintain the confidentiality, integrity, and availability of electronic PHI (ePHI), including by ensuring secure transmission of ePHI to the public health authority or health oversight agency. This Notification does not address other federal or state laws (including breach of contract claims) that might apply to the uses and disclosures of this information.

III. Collection of Information Requirements

This notice of enforcement discretion creates no legal obligations and no legal rights. Because this notice imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Roger T. Severino,

Director, Office for Civil Rights, Department of Health and Human Services.

[FR Doc. 2020–07268 Filed 4–2–20; 4:15 pm]

BILLING CODE 4153–01–P

cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. 553(b)(B) & (d)(3).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. NHTSA–2018–0103]

Denial of Petition for Reconsideration; Temporary Exemption From Motor Vehicle Safety and Bumper Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration submitted by Advocates for Highway and Auto Safety, Center for Auto Safety, Consumer Reports, Consumer Federation of America, and Ms. Joan Claybrook (collectively, the ''Petitioners'') of a final rule amending NHTSA's regulation on temporary exemption from the Federal Motor Vehicle Safety Standards (FMVSS). The final rule eliminated the provision calling for the agency to determine that an application for a temporary exemption from any FMVSS or bumper standard or for a renewal of exemption is complete before the agency publishes a notification summarizing the application and soliciting public comments on it.

DATES: April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Daniel Koblenz, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone: (202) 366–2992.

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This document denies a petition for reconsideration submitted by the Petitioners requesting reconsideration of a December 26, 2018 final rule (83 FR 66158) amending NHTSA's regulation on temporary exemption from the FMVSS. The intended effect of the final rule was to solicit public comments on a petition more quickly than had been

the case under part 555 prior to the change in procedure.

I. Background

The National Traffic and Motor Vehicle Safety Act (Safety Act), as amended, authorizes the Secretary of Transportation to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from an FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.[1]

In exercising this authority, NHTSA must look comprehensively at the request for exemption and find that an exemption would be consistent with the public interest and with the objectives of the Safety Act.[2] In addition, the Secretary must make at least one of the following more-focused findings, which NHTSA commonly refers to as the ''basis'' for the exemption:

(i) compliance with the standard[s] [from which exemption is sought] would cause substantial economic hardship to a manufacturer that has tried to comply with the standard[s] in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.[3]

Per the Safety Act, once NHTSA receives a petition for an exemption, the agency is required to publish a notice of receipt of the petition and provide the public the opportunity to comment. However, NHTSA does have a certain amount of discretion to set procedural rules regarding time and way in which a petition is filed, as well as the contents of the petition.[4]

NHTSA's procedural regulations implementing these statutory requirements are codified at 49 CFR part 555, ''Temporary Exemption from Motor Vehicle Safety and Bumper Standards.'' Per the requirements in 49 CFR 555.5, a petition for a temporary exemption must, among other things, provide supporting documentation that would enable NHTSA to make the findings required to grant the exemption under one of the four exemption bases. In addition, the petition must also explain why the exemption would be in the public interest and consistent with the objectives of the Safety Act. NHTSA's procedures for processing exemption petitions once they are received are described in 49 CFR 555.7.

The final rule made no changes to the ability of the public to comment on a published petition for exemption, nor to the substantive requirements for a petition. The opportunity for the public to comment on a petition remains the same today as it has always been: The agency publishes a notification in the **Federal Register** summarizing the application and inviting public comment on whether the application should be granted or denied. Before NHTSA issued its December 26, 2018, final rule (83 FR 66158), however, this **Federal Register** notification would only be published after the agency determined that the application was complete (*i.e.,* that the application included all the information required under 49 U.S.C. 30113 and 49 CFR part 555). However, if NHTSA found that the application was incomplete, NHTSA informed the applicant, pointed out the areas of insufficiency, and stated that the application would not receive further consideration until the required information was submitted. Prior to the final rule, the agency would not make the application available to the public and request public comment at this stage in the process unless the additional required information was submitted. Only then would the agency publish the notification requesting public comment.

Importantly, the final rule did not amend 49 CFR 555.7(d) or (e), which describe what steps NHTSA must take after the agency determines whether an exemption petition contains ''adequate justification'' to grant the petition. 49 CFR 555.7(d) states that, if NHTSA determines that the application does not contain adequate justification to grant an exemption after considering the application and the public comments, the Administrator denies the petition and notifies the petitioner in writing. 49 CFR 555.7(e) states that, if the Administrator determines that the application does contain adequate justification to grant the petition, the Administrator grants the petition and notifies the applicant in writing. Under both cases, the Administrator also publishes a notification in the **Federal Register** stating the decision to grant or deny the petition, and the reasons for the decision.

The December 26, 2018 final rule amended 49 CFR 555.7 by eliminating the provision stating that the agency will not publish a notice of receipt of an exemption petition to solicit public comments prior to making a determination that the petition is ''complete.''[5] As was noted in the final rule, the reason for this was NHTSA's difficulty in differentiating between incomplete petitions (for which, prior to the final rule, a notice of receipt would not be published) and petitions which were complete, but which failed to provide adequate justification to grant (for which, prior to the final rule, a notice of receipt would be published). This was especially the case in the context of complex petitions involving new or innovative vehicle designs, which has in the past led to delays in processing these petitions.[6] This final rule did not change the substantive requirements that exemption petitions must meet; the amended regulation continues to provide that the agency will determine whether an application for exemption contains adequate justification in deciding whether to grant or deny the application.[7]

II. Petition for Reconsideration and Agency Response

The Petitioners submitted a petition for reconsideration requesting that NHTSA stay the effective date of the December 26, 2018 final rule, and to proceed with a new notice of proposed rulemaking along with a notice and comment period.

First, the Petitioners argue that by issuing the final rule, NHTSA did not follow its direct final rulemaking procedures for amendments that involve complex or controversial issues because, pursuant to 49 CFR 553.14, direct final rules may not be issued when they are likely to result in ''adverse public comment.'' The Petitioners argue that the final rule would have resulted in adverse public comments because the new procedure is controversial among the Petitioners. (Under NHTSA's direct final rulemaking procedures, if NHTSA receives an adverse comment after issuing a direct final rule, the agency must withdraw the rule and issue an NPRM proposing the amendment.)

Second, the Petitioners argue that, if the agency did not intend for the final rule to be a direct final rule, the agency violated the Administrative Procedure Act's (APA) notice and comment requirement because the agency did not issue an NPRM proposing the change.

[1] 49 CFR 1.94

[2] 49 U.S.C. 30113(b)(3)(A).

[3] 49 U.S.C. 30113(b)(3)(B).

[4] 49 U.S.C. 30113(b)(2).

[5] 83 FR 66158 (Dec. 26, 2018).

[6] *Id.*

[7] *Id.*

Third, the Petitioners argue that the final rule is not in the public interest because it deprives the public of the opportunity to ''review issues of great importance to safety'' and permits the agency to publish incomplete applications. The Petitioners believe that the regulatory change would impose additional burdens on the public because to fully evaluate an incomplete application and its implications on safety, the public would be required to conduct independent research and investigation to obtain missing information not contained in an incomplete application.

Finally, the Petitioners argue that NHTSA has not put forth data or evidence to show that the requirement of waiting until an application is complete before publication has caused an undue delay or hardship on any applicant, the agency, or the public.

A. This Final Rule was Not Issued as a Direct Final Rule Under 49 CFR 553.14

The Petitioners' assumption that NHTSA intended for this rulemaking to be considered a direct final rule, subject to 49 CFR 553.14, is incorrect. The APA includes two circumstances when notice and comment rulemaking procedures do not apply: (1) ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or'' (2) ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b). As described below, this rule falls into the first exception, as a rule of agency procedure. NHTSA's direct final rulemaking regulation is primarily directed at the second exception, as it requires a threshold ''good cause'' finding. *See* 49 CFR 553.14.

In any event, the procedures in 49 CFR 553.14 are not mandatory. 49 CFR 553.14 states that if the Administrator makes a ''good cause'' finding, ''a direct final rule *may* [emphasis added] be issued'' according to the direct final rulemaking procedures. Likewise, it provides that: ''[r]ules that the Administrator judges to be non-controversial and unlikely to result in adverse public comment *may* [emphasis added] be published as direct final rules,'' [8] thereby giving NHTSA discretion to publish a rule according to the specified ''direct final rule'' procedures. NHTSA did not purport to issue the final rule that is the subject of this petition according to those procedures. The petitioned final rule did not refer to 49 CFR 553.14 and instead expressly indicated that it was issued without notice and comment pursuant to the APA exception for procedural rules in 5 U.S.C. 553(b)(3)(A).[9] Petitioners do not support their claim that NHTSA somehow acted ''in violation of'' its discretionary direct final rulemaking procedures in 49 CFR 553.14, when the agency instead applied a statutory exception in the APA.

B. Immediate Adoption of a Rule Under the APA

NHTSA fully complied with the APA when it issued a final rule for immediate adoption without a notice and comment period. Section 553(b)(3)(A) of the APA (U.S.C., Title 5) provides that notice and comment procedures do not apply to rules of agency organization, procedure, or practice, except when notice or hearing is required by *statute.* Under this section, an agency may issue a final rule without seeking comment prior to the rulemaking. Procedural rules are agency provisions that are primarily directed toward improving the efficient and effective operations of an agency, not toward the determination of the rights or interests of affected parties.[10] A rule that simply prescribes the manner in which the parties present themselves or their viewpoints to the agency does not alter the underlying rights or interests of the parties.[11]

The purpose of the petitioned final rule is to expedite the publishing of documents soliciting public comment on exemption applications,[12] which is directly related to improving the efficient and effective operations of the agency. It amended a provision of NHTSA's regulations concerning the agency's ''[p]rocessing of applications.'' [13] The final rule simply eliminated the provision calling for the agency to determine that an application for exemption is complete before publishing a notification summarizing an application and soliciting public comments on it, which is a prescription of the manner in which applicants present themselves to the agency. Therefore, this procedural final rule is not directed toward the determination of the rights or interests of the Petitioners as the Petitioners' public interest argument seems to suggest; it does not alter the underlying rights or interest of interested parties.

Petitioners' assertion that the final rule ''contravenes NHTSA's notice-and-comment obligations under the Administrative Procedure Act'' is unpersuasive. NHTSA expressly found that the final rule met the exception in APA section 553(b)(3)(A) because ''[t]he sole purpose of this rule is to eliminate the provision calling for the agency to determine that a petition is complete before the agency publishes a notification summarizing the petition and soliciting public comments on it. This rule does not impose any additional requirements on exemption applicants or the public. Therefore, NHTSA has determined that notice and public comment are unnecessary.'' [14] Petitioners provided no explanation for why they believe notice-and-comment procedures apply notwithstanding the APA exception cited by the agency in the final rule.

C. Advantages of Removing Completeness Determination Requirement

Contrary to the assertion by Petitioners, the subject final rule is in the public's interest for several reasons. First, the final rule increases transparency by giving the public the opportunity to thoroughly review exemption applications that otherwise may not have been disclosed to the public or subject to public input. Under the prior rule, NHTSA first had to make a threshold finding before opening a public docket on the petition. If NHTSA found that the application was incomplete, NHTSA informed the applicant, pointed out the areas of insufficiency, and stated that the application would not receive further consideration until the required information was submitted. The public did not have the opportunity to review the incomplete application. Under the amended rule, the public can review incomplete exemption applications.

Second, under the final rule, both the agency and the public can comprehensively evaluate applications for exemption. Prior to the final rule, only the agency would make a completeness determination, without input on that issue from the public. The final rule increases the public's opportunity to evaluate the application and provide input because the agency will decide whether to grant an exemption application, complete or not,

[8] 49 CFR 553.14(a).

[9] 83 FR 66158, 66159.

[10] *Clarian Health West, LLC* v. *Burwell,* 206 F. Supp. 3d 393, 414 (D.D.C. 2016), *rev'd on other grounds, Clarian Health West, LLC* v. *Hargan,* 878 F.3d 346 (DC Cir. 2017).

[11] *Inova Alexandria Hospital* v. *Shalala,* 244 F.3d 342, 349 (2001).

[12] 83 FR 66158 (Dec. 26, 2018).

[13] See revised heading of 49 CFR 555.7.

[14] 83 FR 66158, 66159—60.

based on the application *and* the public comments. Among its comments, the public can submit opinions as to whether the application is complete. The public gets to see an application sooner as opposed to not seeing it until NHTSA makes a threshold completeness determination. The public can point out what it sees as insufficiencies to the agency; and if the agency agrees, the application will be denied unless it is later supplemented. If an application is supplemented, the public will have access to any supplemental information to the same extent as if the supplement happened before the application became public under the old rule. In addition, the public can, if it so chooses, comment on completeness, or on any other supplemental information submitted through the public comment process.

Finally, the final rule does not impose additional requirements on the public to perform research, as the Petitioners claimed without support. Although published exemption applications may be incomplete, NHTSA is still required to make an ''adequate justification'' determination based on the information provided by the applicant. An application that lacks merit or critical information will be denied, based on public input and the agency's analysis, regardless of whether there is a threshold completeness determination. A determination that an application is complete is not a determination that the application should be granted. If NHTSA determines that the application does not contain ''adequate justification,'' the Administrator denies it and notifies the applicant in writing, pointing out the areas of insufficiency.[15] It is not the public's duty to perform research to determine areas of insufficiency. The Administrator also publishes in the **Federal Register** a notification of the denial and the reasons for it, which is available to the public. Further, if a member of the public believes the agency's explanation for granting an application lacks sufficient supporting arguments and facts, he or she may seek to have the agency reconsider the grant.

D. NHTSA Provided a Reasoned Justification for the Amendment

NHTSA articulated the purpose behind changing this procedural rule in the preamble to the rule. Specifically, NHTSA changed its procedure ''to expedite the publishing of documents soliciting public comment on exemption petitions.'' [16] Petitioners' argument that ''NHTSA has put forth no data or evidence in the Final Rule that the current requirement of waiting until the application is complete before publishing it in the **Federal Register** has caused undue delay or hardship on any applicant, the agency, or the public'' lacks merit. NHTSA provided a reasoned explanation of its change in procedure. *See F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). NHTSA explained how the prior procedure led to delays.[17] The agency also explained that the prior procedure was unnecessary under the statute, particularly in light of the substantive determination it will continue to make regarding whether a petition contains an adequate justification.[18] Petitioners' assertions regarding the public interest have not convinced the agency that it should return to its prior procedure, which would reduce transparency and delay the ability of the public to obtain and comment on exemption applications.

III. Conclusion

For the reasons discussed above, the agency is denying the Petitioners' petition for reconsideration of the December 26, 2018 final rule (83 FR 66158).

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.4.

James Clayton Owens,

Acting Administrator.

[FR Doc. 2020–06403 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–59–P

[15] 49 CFR 555.7(d).

[16] 83 FR 66158, 66159.

[17] *Id.*

[18] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029; RTID 0648–XS030]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2020 Red Snapper Private Angling Component Closures in Federal Waters off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces closures for the 2020 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas closes on April 1, 2020 until 12:01 a.m., local time, on June 1, 2020, and will close again at 12:01 a.m., local time, on August 3, 2020 until 12:01 a.m., local time, on January 1, 2021. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective on April 1, 2020 until 12:01 a.m., local time, on June 1, 2020, then closes again at 12:01 a.m., local time, on August 3, 2020 until 12:01 a.m., local time, on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the

harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notification in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, ''off Texas'' is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N lat., 93°47.7′ W long. to 26°11.4′ N lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On March 27, 2020, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component during the 2020 fishing year. Texas requested that the closure be effective as soon as practicable through May 31, 2020, and then from August 3, 2020, through the end of the fishing year. NMFS has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all federal waters off Texas when a portion of the Texas quota has been landed and is consistent with the Reef Fish FMP. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters during which the remaining part of Texas' ACL could be caught. This Federal waters closure will result in a 63-day red snapper private angling component season in the EEZ off Texas.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close on April 1, 2020 until 12:01 a.m., local time, on June 1, 2020, and will close again at 12:01 a.m., local time, on August 3, 2020, until 12:01 a.m., local time, on January 1, 2021. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land.

On and after the effective dates of these closures in the EEZ off Texas, the harvest and possession red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.23(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to close the Federal private angling component of the red snapper recreational sector in the EEZ off Texas constitute good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the area closure authority and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement the closure immediately may result an overage of the Texas ACL and less access to red snapper in state waters.

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

Dated: April 1, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–07177 Filed 4–1–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066;RTID 0648–XY094]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2020 total allowable catch (TAC) of northern rockfish in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 2, 2020, through 2400 hours, A.l.t., December 31, 2020. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 17, 2020.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2019–0089, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to: *https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0074,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2020 and 2021 harvest specifications for groundfish in

the BSAI (85 FR 13553, March 9, 2020), NMFS closed directed fishing for northern rockfish under § 679.20(d)(1)(iii).

As of April 1, 2020, NMFS has determined that approximately 8,000 metric tons of northern rockfish initial TAC remains unharvested in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2020 TAC of northern rockfish in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of northern rockfish in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of northern rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 1, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for northern rockfish in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 17, 2020.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 2, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–07306 Filed 4–2–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 67
Tuesday, April 7, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0320; Product Identifier 2019–CE–011–AD]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Governors

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 model McCauley Propeller Systems (McCauley) governors installed on airplanes. This proposed AD was prompted by reports of an unapproved variant McCauley idler gear bearing, part number (P/N) A–20028, that could be installed in the affected governors. This proposed AD would require replacing the governor with a governor that is eligible for installation. 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 May 22, 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 McCauley Propeller Systems, One Cessna Boulevard, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 621–7767 or (316) 831–4021; email: *productsupport@txtav.com;* internet: *https://mccauley.txtav.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2020–0320 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: Thomas Teplik, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4196; fax: (316) 946–4107; email: *thomas.teplik@faa.gov* or *Wichita-COS@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–2020–0320; Product Identifier 2019–CE–011–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 because of 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 NPRM.

Discussion

The FAA has received reports from McCauley that an unapproved variant idler gear bearing, part number (P/N) A–20028, was installed on certain governors during production between January 31, 2017, and September 27, 2018, and may have been installed on governors in service after January 31, 2017. The unapproved variant of the idler gear bearing does not conform to McCauley drawing requirements.

All models of McCauley governors have an idler gear bearing with P/N A–20028 installed; however, the unapproved variant of the bearing can be identified by part marking ''BA–59.'' The non-conforming idler gear bearing could have also been included in the idler gear assembly (idler gear and bearing), P/N A–20107, or the governor overhaul kit, P/N PL–20233 or PL–20234.

The non-conformity of the bearing may cause premature failure of the idler gear bearing. Early symptoms that the idler gear bearing may fail include inability of the governor to hold the selected RPM, hunting, surging, etc. An investigation identified 23 occurrences of airplane operation problems related to erratic governor behavior that may have resulted from the unapproved idler gear bearing.

This condition, if not addressed, could cause the idler gear bearing to fail. This failure could result in failure of the governor, loss of propeller pitch control, engine and propeller over speed, engine oil contamination, and loss of control.

Related Service Information Under 1 CFR Part 51

The FAA reviewed McCauley Alert Service Bulletin ASB273C, dated January 30, 2019. The service bulletin contains model and serial number information to identify the affected governors. The service bulletin also contains procedures for removing the governor from the engine, inspecting the governor for the unapproved variant idler gear bearing, replacing the idler gear bearing or idler gear assembly if necessary, overhauling the governor if necessary, and installing a governor on the engine. 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

The FAA is proposing this AD because it evaluated all 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 replacing an affected governor with a governor eligible for installation.

Differences Between This Proposed AD and the Service Information

The service bulletin contains maintenance procedures for inspecting an affected governor and any subsequent corrective actions required to ensure the governor is eligible for continued service and installation. The service bulletin also references other McCauley service documents for additional maintenance actions to include overhaul of the governor. However, this NPRM only proposes replacing the affected governor with a governor eligible for installation.

Costs of Compliance

The FAA estimates that this proposed AD affects 2,500 governors as installed in 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
Remove affected governor	1 work-hour × $85 per hour = $85	Not Applicable	$85	$212,500
Install an governor	1 work-hour × $85 per hour = $85	See table below	Variable	Unknown

An operator has the option to pay a service center to inspect their existing governor and replace the idler gear bearing if necessary or pay to have their existing governor overhauled. An operator has the option to purchase a factory new governor or an overhauled governor, a feathering/syncing governor or a non-feathering/syncing governor. The FAA has no way of knowing what option an operator may take to obtain a governor eligible for installation. Therefore, the FAA has no way of determining the parts cost on U.S. operators. The following represents the estimated parts cost associated with obtaining a governor.

COST FOR AN ELIGIBLE GOVERNOR

Type of governor	Cost of governor
Factory new non-feathering/non-syncing governor	$2,000
Factory new feathering/syncing governor	9,000
Overhaul of existing non-feathering/non-syncing governor	1,000
Overhaul of existing feathering/syncing governor	3,000

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

Authority for This Rulemaking

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

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):

McCauley Propeller Systems: Docket No. FAA–2020–0320; Product Identifier 2019–CE–011–AD.

(a) Comments Due Date

The FAA must receive comments by May 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the McCauley Propeller Systems (McCauley) governors specified in paragraphs (c)(1) or (2) of this AD and

installed on airplanes, certificated in any category.

(1) Models listed in table 2 of McCauley Alert Service Bulletin No. ASB273C, dated January 30, 2019 (McCauley ASB273C) with a serial number from 170061 through 180501, excluding the serial numbers listed in table 1 of McCauley ASB273C.

(2) Models listed in table 2 of McCauley ASB273C, with any serial number, that have an installation date after January 31, 2017, or an installation date that cannot be determined.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 61, Propellers.

(e) Unsafe Condition

This AD was prompted by reports of an unapproved variant idler gear bearing, McCauley part number (P/N) A–20028, installed on governors. All models of McCauley governors have a bearing with P/N A–20028 installed; however, the unapproved variant can be identified with the part marking ''BA–59.'' The FAA is issuing this AD to prevent failure of the idler gear bearing. This failure could result in failure of the governor, loss of propeller pitch control, engine and propeller over speed, engine oil contamination, and loss of control of the airplane.

(f) Compliance

Unless already done, within 50 hours time-in-service after the effective date of this AD or within 24 months after the effective date of this AD, whichever occurs first, replace the governor with a governor eligible for installation.

Note 1 to paragraph (f) of this AD: Any model McCauley governor that is stamped with the letter B, as specified in the Accomplishment Instructions in McCauley ASB273C, has already complied with the requirements of this AD.

(g) Definition

For the purposes of this AD, a governor eligible for installation is defined as a governor that does not have an idler gear bearing with a part marking ''BA–59'' installed.

(h) Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane a McCauley governor unless it is a governor eligible for installation.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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 (l)(1) of this AD.

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

(j) Related Information

(1) For more information about this AD, contact Thomas Teplik, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4196; fax: (316) 946–4107; email: *thomas.teplik@faa.gov* or *Wichita-COS@faa.gov.*

(2) For service information identified in this AD, contact McCauley Propeller Systems, One Cessna Boulevard, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 621–7767 or (316) 831–4021; email: *productsupport@txtav.com;* internet: *https://mccauley.txtav.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on April 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07168 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–498]

Schedules of Controlled Substances: Placement of 4,4′-DMAR in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing the substance 4,4′-DMAR (Chemical name: 4,4′-dimethylaminorex), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle 4,4′-DMAR.

DATES: Comments must be submitted electronically or postmarked on or before June 8, 2020.

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before May 7, 2020.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–498'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and

Policy Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified, as directed above, will generally be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c). All requests for hearing and waivers of participation must be sent to DEA using the address information provided above.

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (''1971 Convention''), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention that a drug or other substance has been added or transferred to a schedule specified in the notification, the Secretary of the Department Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act (FDCA) meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). If such requirements are not met by such existing controls and the Secretary of HHS concurs in the scheduling decision, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to 21 U.S.C. 811(a) and (b). 21 U.S.C. 811(d)(3)(B). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of DEA (Administrator). 28 CFR 0.100.

Background

4,4′-dimethylaminorex (4,4′-DMAR) is a synthetic stimulant drug that is structurally related to 4-methylaminorex (4–MAR), a schedule I substance in the United States and listed as a schedule I substance in the 1971 Convention. 4,4′-DMAR first emerged on the illicit drug market in December 2012 in the Netherlands. 4,4′-DMAR can be purchased through websites selling ''research chemicals'' and is typically sold as a powder or tablet. Based on drug user forum information presented in the scientific literature and through the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and World Health Organization (WHO) reviews, it appears that the most common routes of administration for 4,4′-DMAR are via nasal insufflation and oral ingestion. There is limited information with respect to the pharmacological properties of 4,4′-DMAR. *In vitro* studies have reported that exposure to 4,4′-DMAR results in dopamine, norepinephrine, and serotonin release at dopamine, norepinephrine, and serotonin transporters, respectively, and the dose levels are comparable to other known stimulant drugs. There are no animal or human studies that have examined dependence potential associated with 4,4′-DMAR. Due to the large number of known fatalities (46 known fatalities in several European countries since 2013) associated with 4,4′-DMAR, the United Kingdom's Advisory Council on the Misuse of Drugs (ACMD), EMCDDA, and the WHO stated that 4,4′-DMAR carries a substantial risk to the public health. Adverse symptoms such as agitation, increased body temperature, respiratory distress, and cardiac arrest have been reported in 4,4′-DMAR-related drug overdoses and deaths. In most of these deaths and overdoses, other drugs were also detected.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substances Act, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

In November 2015, the Director-General of the WHO recommended to the Secretary-General of the United Nations that 4,4′-DMAR be placed in schedule II of the 1971 Convention, as 4,4′-DMAR produces a spectrum of pharmacological effects similar to that of psychomotor stimulants in schedule II of the 1971 Convention, and has dependence and abuse potential. On May 17, 2016, the Secretary-General of the United Nations advised the Secretary of State of the United States that during its 59th Session on March 2016, the Commission on Narcotic Drugs (CND) voted to place 4,4′-dimethylaminorex (4,4′-DMAR) in schedule II of the 1971 Convention on Psychotropic Substances (CND Dec/59/5).

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of 4,4′-DMAR. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. In addition, the United States must adhere to specific export and import provisions that are provided in the 1971 Convention. This requirement is accomplished by the CSA's export and import provisions established in 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2, of the 1971 Convention, a party to the 1971 Convention may notify another party, through the Secretary-General of the United Nations, that it prohibits the importation of a substance in schedule II, III, or IV of the Convention. If such notice is presented to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) In regard to each substance in schedule I and II of the 1971 Convention, quantities manufactured, exported to and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in schedule III and IV of the 1971 Convention, quantities manufactured, as well as quantities exported and imported; (3) in regard to each substance in schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (4) in regard to each substance in schedule II–IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. The United States complies with this provision as persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action.

Proposed Determination to Schedule 4,4′-DMAR

Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data on 4,4′-DMAR and on March 21, 2017, submitted it to the Assistant Secretary for Health of HHS with a request for a scientific and medical evaluation of available information and a scheduling recommendation for 4,4′-DMAR. On October 12, 2018, HHS provided to DEA a scientific and medical evaluation entitled ''Basis for the Recommendation to Place 4,4′-Dimethylaminorex (4,4′-DMAR) and its salts in schedule I of the Controlled Substances Act'' and a scheduling recommendation. Following consideration of the eight-factors and findings related to the substance's abuse potential, legitimate medical use, and dependence liability, HHS recommended that 4,4′-DMAR be controlled in schedule I of the CSA under 21 U.S.C. 812(b). In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS and all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA in their respective eight-factor analyses, and as considered by DEA in this proposed scheduling determination. Please note that both DEA and HHS analyses are available in their entirety under ''Supporting Documents'' of the public docket for this proposed rule at *http://www.regulations.gov* under docket number ''DEA–498.''

1. *The Drug's Actual or Relative Potential for Abuse:*

In addition to considering the information HHS provided in its scientific and medical evaluation document for 4,4′-DMAR, DEA also considered all other relevant data regarding 4,4′-DMAR's actual or relative potential for abuse. The term ''abuse'' is not defined in the CSA, however, the legislative history of the CSA suggests the following be considered when determining whether a particular drug or substance has a potential for abuse:[2]

a. Individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

b. There is a significant diversion of the drug or other substance from legitimate drug channels; or

c. Individuals are taking the drug or other substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or

d. The drug is so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

DEA reviewed the scientific and medical evaluation provided by HHS and all other data relevant to the abuse potential of 4,4′-DMAR. These data as presented below demonstrate that 4,4′-DMAR has a high potential for abuse.

a. Individuals are taking the substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community.

4,4′-DMAR is not currently approved for medical use in the United States. There are currently no data regarding 4,4′-DMAR abuse in the United States. Since 2013, 46 fatalities in which 4,4′-DMAR was detected were reported in several European countries including Hungary, Poland, and the United Kingdom (UK). As noted by HHS, all but one of these fatalities involved the concomitant use of other drugs, typically stimulants. Regardless, 4,4′-DMAR was still determined to be a contributing factor to their deaths (Factor 6).

DEA further gathered and evaluated available information from its forensic laboratory databases such as

[2] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., 2nd Sess. (1970) reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

STARLiMS,[3] System to Retrieve Information from Drug Evidence (STRIDE),[4] and the National Forensic Laboratory Information System (NFLIS).[5] According to these databases, there are no known reports of 4,4′-DMAR related drug seizures in the United States.

Although 4,4′-DMAR has not been seized in the United States, there have been numerous reports of seizures of the substance in Europe. 4,4′-DMAR was first encountered in a customs seizure in the Netherlands in December 2012. The EMCDDA reported in 2014 that there was one internet site that offered 4,4′-DMAR for sale. Since the initial report of the 4,4′-DMAR seizure in the Netherlands, there have been reports of seizures in other European nations including Denmark, Finland, Hungary, the Netherlands, Romania, Sweden, and the UK in 2014. Furthermore, it was reported that organized crime groups in Hungary are involved in the trafficking and distribution of 4,4′-DMAR.

b. There is a significant diversion of the substance from legitimate drug channels.

According to HHS, 4,4′-DMAR is not an FDA-approved drug product for treatment in the United States and there appear to be no legitimate sources for 4,4′-DMAR as a marketed drug.

The NFLIS, STRIDE, and STARLiMS databases did not contain any reports of 4,4′-DMAR when queried in March 2019. This suggests that 4,4′-DMAR is not trafficked in the United States. Because 4,4′-DMAR is not approved as a drug for medical use in the United States, there appear to be no legitimate drug channels from which 4,4′-DMAR can be diverted.

According to HHS, 4,4′-DMAR can be purchased from several internet sources as a research chemical. Although it is likely that some individuals with abuse-related disorders obtained 4,4′-DMAR from these internet sources, findings have indicated that the majority of the fatalities associated with 4,4′-DMAR were the result of the user being sold what they thought was 3, 4-methylenedioxy-methamphetamine (MDMA) from their illicit source as opposed to users obtaining 4,4′-DMAR directly from these websites.

c. Individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs.

4,4′-DMAR is not approved for medical use in the United States and is not formulated or available for clinical use. As noted by HHS, law enforcement seizures and anecdotal internet user experience posts (*drugs-forum.com* and *bluelight.org*) indicate that individuals are taking 4,4′-DMAR without medical advice from a licensed practitioner.

d. The substance is so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

As stated by HHS, 4,4′-DMAR is a derivative of substances that are in schedule I of the 1971 Convention and substances that are in schedule I of the CSA. HHS further states that the substances in schedule I of the 1971 Convention and of the CSA are known to have high potential for abuse. 4,4′-DMAR is similar in both its mechanism of action and its high potential for abuse to other scheduled compounds including 4-MAR (schedule I of the 1971 Convention and schedule I of the CSA) and aminorex (schedule I of the CSA). 4,4′-DMAR, 4–MAR, and aminorex have all been shown to increase neurotransmitter levels within the central nervous system resulting in a stimulant effect. Although there are no clinical studies on 4,4′-DMAR, extrapolated animal studies indicate its abuse and dependence potential. HHS concluded that 4,4′-DMAR has a similar potential for abuse as substances already controlled internationally and federally in the United States.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:*

There are few pharmacological studies conducted on 4,4′-DMAR and no abuse related or clinical studies in human subjects have been conducted on this substance. 4,4′-DMAR is structurally similar to aminorex and both share a similar mechanism of pharmacological action. The abuse potential of aminorex was evaluated in monkeys using drug self-administration or drug discrimination assays. The results showed that monkeys self-administered aminorex more than saline and similar to methohexital, a positive control agent. In drug discrimination assays in animals trained to distinguish *d*-amphetamine or pentobarbital from saline, aminorex fully substituted for the discriminative stimulus effects of *d*amphetamine but produced little pentobarbital appropriate responding. Furthermore, aminorex can stimulate locomotor activity and increased the physiological dependence of rats taking pentobarbital. These data suggest that aminorex has dependence liability similar to that of amphetamine. 4-MAR with structural similarity to aminorex and 4,4′-DMAR has also been reported to be self-administered by monkeys. The structural and pharmacological similarities of 4,4′-DMAR with substances known to have high abuse potential suggest that 4,4′-DMAR itself has high abuse potential.

As described by HHS, in vitro studies showed that 4,4′-DMAR, similar to other controlled substances such as amphetamine, aminorex and MDMA, affects the functions of monoamine transporters. An *in vitro* study in isolated brain synaptosomes from Sprague-Dawley rats evaluated the functional activity of 4,4′-DMAR and several other stimulant drugs including *d*-amphetamine, aminorex, *(±)-cis*-4-MAR, and (±)-*cis*-4,4′-DMAR. All tested drugs evoked release of monoamines through the three monoamine transporters, namely dopamine transporter (DAT), norepinephrine transporter (NET), and serotonin transporter (SERT). They are also potent at DAT and NET, indicating their potential to release dopamine and norepinephrine in the central nervous system (CNS). But, their potencies at the SERT transport are different and varied by more than 100-fold. (±)-*cis*-4,4′-DMAR was the most potent drug at SERT, with an EC_{50} value of 18.5 nM, similar to its potencies at DAT (8.6 nM) and NET (26.9 nM). The data from these studies revealed that (±)-*cis*-4,4′-DMAR is a non-selective releaser of dopamine, norepinephrine, and serotonin and that it is more potent in releasing serotonin than amphetamine. Another *in vitro* study compared the potencies of *cis* and *trans* isomers of 4,4′-DMAR against 3,4-methylenedioxymethamphetamine (MDMA or ecstasy) in releasing monoamines in rat brain synaptosomal preparations. It showed that *cis*-4,4′-DMAR is 2- to 3-fold more potent than *trans*-4,4′-DMAR in releasing dopamine or norepinephrine. The study also revealed that both isomers of 4,4′-DMAR are about 4- to 10-fold more potent than

[3] STARLiMS is a laboratory information management system that systematically collects results from drug chemistry analyses conducted by DEA laboratories. On October 1, 2014, STARLiMS replaced System to Retrieve Information from Drug Evidence (STRIDE) as the DEA laboratory drug evidence data system of record.

[4] STRIDE is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from DEA, other federal agencies, and some local law enforcement agencies.

[5] The National Forensic Laboratory Information System (NFLIS) is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories in the United States.

(+)-MDMA in releasing dopamine, norepinephrine, or serotonin.

Based on the review of both DEA and HHS, no clinical studies have been performed to evaluate the effects of 4,4′-DMAR in human subjects. Anecdotal reports of 4,4′-DMAR use reveal that insufflation and oral consumption of tablets are the major methods of administration. Reports of injection were also noted. According to the user reports from websites (*e.g., bluelight.org* and *drug-forum.com*), oral and insufflation doses range from 10 to 200 mg and from 10 to 65 mg, respectively. Euphoria, stimulation, happiness, and increased sociability were reported to be the desired effects of 4,4′-DMAR. Drug use discussion forums report the desired effects begin within 8–60 minutes and the peak was in approximately 3 hours. 4,4′-DMAR at higher doses produced adverse effects including nausea, dysphoria, agitation, psychosis, tachycardia, hypertension, breathing problems, convulsions, and cardiac arrest. Although there are indications of 4,4′-DMAR's potential to cause serotonin syndrome, poly-drug use with substances that produce serotonergic effects confound these reports.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:*

Chemistry

The molecular formula of 4,4′-DMAR is $C_{11}H_{14}N_2O$ and it has a molecular weight of 190.24 g/mol. 4,4′-DMAR is a synthetic substituted oxazoline derivative. The oxazoline structure consists of a five-membered ring containing an oxygen (O) atom at the 1-position and a nitrogen (N) atom at the 3-position. The structure of 4,4′-DMAR has two chiral centers, C4 and *C5,* in the oxazoline ring. Therefore, it may exist as four stereoisomers known as (4*S,*5S), (4*S,*5*R*), (4*R,*5*S*), and (4*R,* 5*R*). 4,4′-DMAR is structurally related to *cis* 4-methylaminorex (*cis* 4-MAR) which is a psychostimulant. 4-MAR is currently a schedule I substance in the United States and is listed as a schedule I substance under the 1971 Convention.

The synthesis of 4,4′-DMAR is a complex process requiring many steps. Both (±)-*cis* 4,4′-DMAR and (±)-*trans* 4,4′-DMAR are synthesized by the cyclization of 2-amino-1-(4-methylphenyl) propan-1-ol (also known as 4′-methylnorepinephrine). The agent used for cyclization determines the synthesis of one isomer over the other. The synthetic process of the (±)-*cis*-4,4′-DMAR isomers requires the use of anhydrous sodium acetate, methanol, and sodium carbonate in the final step, whereas the synthesis of the (±)-*trans*-4,4′-DMAR isomers requires 2-amino-1-(4-methylphenyl)propan-1-ol, potassium cyanate, water, hydrochloric acid, sodium carbonate, dichloromethane, and methanol. These substances are available for purchase through internet sources; however, the equipment and knowledge required make it difficult for an average individual to synthesize this substance.

Toxicology and Pharmacokinetics

Based on the evaluation of both DEA and HHS, there have been no non-clinical or clinical studies to directly evaluate the toxicology of 4,4′DMAR. The toxicological data are from anecdotal reports or from fatalities in which 4,4′-DMAR was implicated as a contributory factor. Emergency Room visits and death reports revealed that 4,4′-DMAR consumption produces adverse health effects including agitation, tachycardia, hypertension, breathing problems, convulsions, and cardiac arrest. 4,4′-DMAR is believed to be a contributing factor in several deaths in Europe. Since 2013, at least 46 known fatalities have been associated with the use of 4,4′-DMAR in several European nations including Hungary, Poland, and the UK. The reported mean blood concentration of 4,4′-DMAR in 27 fatalities was 2.04 mg/L, while the range of urine concentrations in three of the fatalities ranged from 5.93 to 43.49 mg/L.

As mentioned by HHS, there are no human pharmacokinetic data for 4,4′-DMAR. A preliminary study in rats showed that *cis*-4,4′-DMAR administered intravenously (1 mg/kg) rapidly enters the brain after 5 minutes.

4. *Its History and Current Pattern of Abuse:*

HHS and DEA's review indicates that several European countries have reported drug seizures in which 4,4′-DMAR was detected in either powder or tablet form. As mentioned in the HHS review, customs authorities first detected 4,4′-DMAR in the Netherlands in 2012, in a seized drug powder that came from India. In 2013, Hungarian authorities reported at least 78 seizures of 4,4′-DMAR alone or mixed with other stimulants (mainly cathinones), both in powder and tablet form, which originated from China. Romania, Sweden, Denmark, and Finland also reported multiple drug seizures containing various amounts of 4,4′-DMAR since 2013. According to HHS, two published studies in 2015 examined the availability of 4,4′-DMAR using internet search engines and reported that there was one internet site that sold 4,4′-DMAR, which is currently still available.

There have been no published studies addressing the prevalence and pattern of abuse of 4,4′DMAR. 4,4′-DMAR is a fine white powder that can be pressed into tablets. The most common routes of administration for 4,4′-DMAR are oral ingestion and nasal insufflation. According to user reports, doses of 4,4′-DMAR range from 10 to 200 mg and 10 to 65 mg for oral administration and insufflation, respectively.

5. *The Scope, Duration, and Significance of Abuse:*

There are no studies directly monitoring the scope and duration of use or abuse of 4,4′-DMAR. However, some internet websites contain anecdotal reports indicating that users can purchase 4,4′-DMAR from online sources as a research chemical. Fatalities reports reveal that most users believed they used another drug, such as MDMA, which is typically obtained illicitly from drug dealers. A published paper in 2015 reported at least one online retailer selling 4,4′-DMAR at a minimum amount of 500 mg for €36.08/g. The EMCDDA report also identified two internet sources for 4,4′-DMAR.

HHS stated that no specific epidemiological reports regarding the significance of abuse of 4,4′-DMAR are available. The reported cases of 4,4′-DMAR-associated deaths suggest that many of these drug users assumed that they were using MDMA. Thus, the majority of instances of abuse appear to be unintentional (see Factor 6).

Additionally, based on DEA's review, there is no evidence of 4,4′-DMAR abuse in the United States. DEA's STRIDE/STARLiMS and the NFLIS databases as queried in March 2019 had no reports of 4,4′-DMAR, suggesting that it is not trafficked in the United States. The first seizure of 4,4′-DMAR (500 grams of white powder) occurred in the Netherlands in 2012; subsequently a small seizure was made in Finland in 2013. Hungary reported 41 seizures totaling 1,852 tablets and 37 seizures totaling 377 grams of powder between June and October of 2013. In twenty percent of these seizures (both powder and tablets), 4,4′-DMAR was mixed with other illicit substances such as synthetic cathinones and synthetic cannabinoids. In the subsequent years, 4,4′-DMAR was reported in Denmark, Finland, France, Hungary, the Netherlands, Poland, Romania, Sweden, and the UK. These seizures in Europe have been small in size. Because synthetic cathinones and synthetic cannabinoids are being widely abused in the United States, it is possible that the abuse of 4,4′-DMAR mixed with these substances may occur domestically if 4,4′-DMAR were to be

trafficked and abused in the United States.

6. *What, If Any, Risk There Is to the Public Health:*

Based on the review of both HHS and DEA, use of 4,4′-DMAR has been associated with at least 31 serious adverse events and 46 fatalities throughout Europe since 2013. These serious adverse events and fatalities are the result of unintentional consumption of 4,4′-DMAR. These individuals bought what they thought to be another substance such as MDMA, cocaine, or mephedrone from websites. According to HHS, the so called ''psychonauts'' who purchase substances for exploratory purposes appear to be buying 4,4′-DMAR from research chemical websites.

According to the medical examiner reports mentioned in 2014 EMCDDA Risk Assessment, of the 23 fatalities, one was the result of 4,4′DMAR alone; in two fatalities, 4,4′-DMAR had a major role, and in the remaining 20 cases, 4,4′-DMAR mixed with other drugs likely contributed to deaths. Prior to their deaths, many of these individuals showed symptoms similar to sympathomimetic toxicity, which included agitation, aggression, seizures, and hyperthermia. Another study further analyzed the EMCDDA and ACMD's epidemiological data and revealed that in 31 fatalities associated with 4,4′-DMAR, 22 were male, 8 were female, and 1 was unknown. Many of these individuals also had ingested multiple drugs. Combining 4,4′-DMAR with other drugs may contribute to fatal overdoses and pose a risk to the public health.

7. *Its Psychic or Physiological Dependence Liability:*

There are no non-clinical or clinical studies examining the psychic or physiological dependence liability of 4,4′-DMAR. Drug abuse-associated internet forums or drug treatment facilities had no mentions of dependence liability associated with 4,4′-DMAR. Although direct evidence regarding the psychic and physiologic dependence liability of 4,4′-DMAR is lacking, information on substances that have a pharmacological mechanism of action similar to that of 4,4′-DMAR can be used to infer the dependence potential of this substance. As stated in Factor 2, 4,4′-DMAR shares a mechanism of action with aminorex, a structurally related substance. Aminorex increases locomotor activity and the physiological dependence of rats taking pentobarbital. Aminorex has dependence liability similar to the stimulant amphetamine. Because of similarities in structure and pharmacology between aminorex and 4,4′-DMAR, it can be inferred that 4,4′-DMAR will have high psychic and physiological dependence liability similar to that of *d*-amphetamine.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:*

DEA and HHS find that 4,4′-DMAR is not an immediate precursor of a substance already controlled under the CSA.

Conclusion

Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of 4,4′-DMAR. As such, DEA hereby proposes to schedule 4,4′-DMAR as a schedule I controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedule I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Acting Administrator of DEA (Acting Administrator), pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) 4,4′-DMAR has a high potential for abuse. There are no non-clinical or clinical studies directly evaluating the abuse potential of 4,4′-DMAR. However, 4,4′-DMAR is chemically similar to aminorex (schedule I) and *in vitro* activity assays using brain synaptosomes indicate that 4,4′-DMAR has similar pharmacological activity to *d*-amphetamine (schedule II), aminorex (schedule I), and MDMA (schedule I). More specifically, 4,4′-DMAR acts as a more potent releaser of dopamine, norepinephrine, and serotonin than substances that are listed in schedules I and II of the CSA. 4,4′-DMAR has been detected in several drug seizures in several European countries. These reports correlate with 46 deaths in which 4,4′-DMAR played a contributory role. The data provides supportive evidence that 4,4′-DMAR has a high potential for abuse that is similar to substances in schedule I or II of the CSA

(2) 4,4′-DMAR has no currently accepted medical use in treatment in the United States. There are no approved New Drug Applications for 4,4′-DMAR and no known therapeutic applications for 4,4′-DMAR in the United States. Therefore, 4,4′-DMAR has no currently accepted medical use in treatment in the United States.[6]

(3) There is a lack of accepted safety for use of 4,4′-DMAR under medical supervision. Because 4,4′-DMAR has no approved medical use and has not been investigated as a new drug, its safety for use under medical supervision has not been determined. Therefore, there is a lack of accepted safety for use of 4,4′-DMAR under medical supervision.

Based on these findings, the Acting Administrator concludes that 4,4′-DMAR warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because of its stimulant effects, and because it may produce stimulant-like tolerance and dependence in humans, DEA is proposing to place 4,4′-DMAR in 21 CFR 1308.11(f) (the stimulants category of schedule I). As such, the proposed control of 4,4′-DMAR includes the substance as well as its salts, isomers, and salts of isomers.

Requirements for Handling 4,4′-DMAR

If this rule is finalized as proposed, 4,4′-DMAR would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) 4,4′-DMAR, or who desires to handle 4,4′-DMAR, would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and

[6] Although there is no evidence suggesting that 4,4′-DMAR has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated:

i. The drug's chemistry must be known and reproducible;

ii. there must be adequate safety studies;

iii. there must be adequate and well-controlled studies proving efficacy;

iv. the drug must be accepted by qualified experts; and

v. the scientific evidence must be widely available.

57 FR 10499 (1992).

1312 as of the effective date of a final scheduling action. Any person who currently handles 4,4′-DMAR, and is not registered with DEA, would need to submit an application for registration and may not continue to handle 4,4′-DMAR after the effective date of a final scheduling action unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held 4,4′-DMAR, or transfer all quantities of currently held 4,4′-DMAR to a person registered with DEA before the effective date of a final scheduling action, in accordance with all applicable federal, state, local, and tribal laws. As of the effective date of a final scheduling action, 4,4′-DMAR would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* 4,4′-DMAR would be subject to schedule I security requirements and would need to be handled and stored in accordance with 21 CFR 1301.71–1301.93 as of the effective date of a final scheduling action.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 4,4′-DMAR would need to be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302, as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture 4,4′-DMAR in accordance with a quota assigned, pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303, as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of 4,4′-DMAR on the effective date of a final scheduling action would be required to take an inventory of 4,4′-DMAR on hand at that time, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA on or after the effective date of the final scheduling action would be required to take an initial inventory of all stocks of controlled substances (including 4,4′-DMAR) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant would be required to take an inventory of all controlled substances (including 4,4′-DMAR) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, and 1317, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding 4,4′-DMAR to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes 4,4′-DMAR would be required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of 4,4′-DMAR would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312, as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving 4,4′-DMAR not authorized by, or in violation of, the CSA or its implementing regulations, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This rulemaking is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance 4,4′-DMAR (Chemical name: 4-methyl-5-(4-methylphenyl)-4,5-dihydro-l,3-oxazol-2-amine), including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical

analysis with, or possess), or propose to handle 4,4′-DMAR.

According to HHS, 4,4′-DMAR has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no commercial market for 4,4′-DMAR in the United States. Additionally, queries of DEA's STRIDE/STARLiMS and the NFLIS databases in February, 2020, did not generate any reports of 4,4′-DMAR, suggesting that it is not trafficked in the United States. Therefore, DEA estimates that no U.S. entity currently handles 4,4′-DMAR and does not expect any U.S. entity to handle 4,4′-DMAR in the foreseeable future. DEA concludes that no U.S. entity would be affected by this rule if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

Duplicative, Overlapping, and Conflicting Rules

DEA is the only agency with authority to schedule drugs under the CSA. DEA has not identified any duplicative, overlapping, or conflicting rules with the proposed rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act

This action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, redesignate paragraphs (f)(4) through (f)(8) as paragraphs (f)(5) through (f)(9) and add a new paragraph (f)(4) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(4) 4,4′-Dimethylaminorex (4,4′-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine). 1595

* * * * *

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–07095 Filed 4–6–20; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0151; FRL–10007–67–Region 9]

Finding of Failure To Attain the 1987 24-Hour PM_{10} Standard; Reclassification as Serious Nonattainment; Pinal County, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the West Pinal County, Arizona nonattainment area did not attain the 1987 24-hour national ambient air quality standards (NAAQS or ''standard'') for particulate matter with a diameter of ten micrometers or smaller (PM_{10}) by December 31, 2018, the statutory attainment date for the nonattainment area. This proposal is based on the EPA's calculation of the PM_{10} design value for the nonattainment area over the 2016–2018 period, using complete, quality-assured, and certified PM_{10} monitoring data. If the EPA makes a final determination that West Pinal County has failed to attain the PM_{10} NAAQS by its attainment date, then Clean Air Act (CAA) section 188(b)(2) requires that the nonattainment area be reclassified to Serious by operation of law. Within 18 months from the effective date of a reclassification to Serious, the State must submit State Implementation Plan (SIP) revisions that comply with the statutory and regulatory requirements for Serious PM_{10} nonattainment areas.

DATES: Written comments must be received on or before May 7, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0151 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. Background and Regulatory Context

The EPA sets the NAAQS for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (microns), or PM_{10}, is one of the ambient air pollutants for which the EPA has established health-based standards, and we have promulgated and revised the PM_{10} NAAQS several times.

The EPA revised the NAAQS for particulate matter on July 1, 1987, replacing standards for total suspended particulates (TSP, particulate less than 30 microns in diameter) with new standards applying only to particulate matter up to 10 microns in diameter.[1] In 1987, the EPA established two PM_{10} NAAQS, an annual standard and a 24-hour standard. An area attains the 24-hour PM_{10} standard of 150 micrograms per cubic meter (μg/m^3) when the expected number of days per calendar year with a 24-hour concentration exceeding the standard (referred to as an ''exceedance'') over a three-year period, is equal to or less than one.[2] The annual PM_{10} standard was revoked on October 17, 2006.[3]

On May 31, 2012, the EPA designated a portion of state lands in Pinal County, Arizona (''West Pinal County'') as nonattainment for the 1987 p.m.$_{10}$ NAAQS based on 2006–2008 data.[4] As a result of the nonattainment designation, West Pinal County was classified as a ''Moderate'' PM_{10} nonattainment area.

For a PM_{10} nonattainment area classified as Moderate under the CAA, section 188(c) of the CAA states that the Moderate area attainment date is ''as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' Consequently, the applicable attainment date for West Pinal County, designated nonattainment in 2012, was December 31, 2018. CAA section 188(b)(2) requires the EPA to determine whether any PM_{10} nonattainment area classified as Moderate attained the 24-hour PM_{10} NAAQS by the area's attainment date and requires the EPA to make such a determination within six months after that date. If the EPA determines that a Moderate area has not attained the NAAQS by the relevant attainment date, then the area shall be reclassified as a Serious area by operation of law. As discussed previously, the 1987 24-hour PM_{10} NAAQS is met when the expected number of exceedances averaged over a three-year period is equal to or less than one at each monitoring site within the nonattainment area.

II. Criteria for Determining That an Area Has Attained the 1987 24-Hour PM_{10} NAAQS

Generally, the EPA's determination of whether an area's air quality meets the 1987 24-hour PM_{10} NAAQS is based on three years of complete, quality-assured data that has been gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database.[5] Data from ambient air monitors operated by state or local agencies in compliance with the EPA monitoring requirements must be submitted to AQS. Monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of nonattainment areas.

Ambient air quality data must generally meet data completeness requirements for each year under consideration. The completeness requirements are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.[6] The data requirements for showing that a monitor has failed an attainment test, and thus recorded a violation of the PM_{10} standard, are less stringent and the 75 percent data capture requirement does not apply provided there is sufficient data to unambiguously establish nonattainment of the standard.[7]

III. The EPA's Proposed Action and Associated Rationale

This proposed action is pursuant to the EPA's statutory obligation, under CAA section 188(b)(2), to determine whether the West Pinal County nonattainment area has attained the 1987 24-hour PM_{10} NAAQS by its December 31, 2018 attainment date. As discussed in Section II, a nonattainment area's ambient data must meet several criteria if the EPA is to determine that the nonattainment area has met the 24-hour PM_{10} NAAQS. These criteria include complete, quality-assured and certified data collected from a valid ambient air quality monitoring network and a design value calculated from the ambient data to be less than the applicable NAAQS.

A. Data Completeness, Network Review, and Certification of Data

In accordance with 40 CFR part 50, Appendices J and K, a finding of attainment of the 1987 24-hour PM_{10} NAAQS must generally be based upon complete, quality-assured data gathered at monitoring sites in the nonattainment area and entered in the AQS. For the 24-hour PM_{10} standard, Appendix K provides that all data produced by SLAMS and other sites submitted to the EPA in accordance with the part 58 requirements be used for evaluating attainment.[8]

The PM_{10} ambient air quality monitoring data collected within the West Pinal County nonattainment area for the 2016–2018 three-year period must meet data completeness criteria, or otherwise unambiguously establish nonattainment according to 40 CFR part 50, Appendix K, section 2.3. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year over a three-year period are at least 75 percent. For the purposes of this proposal, we reviewed the data for the 2016–2018 period for completeness and determined that the PM_{10} data met the completeness criterion for all 12 quarters at PM_{10} monitoring sites in the West Pinal County nonattainment area.[9]

[1] 52 FR 24634 (July 1, 1987).

[2] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m^3, after rounding to the nearest 10 μg/m^3 (*i.e.,* values ending in five or greater are to be rounded up). Consequently, a recorded value of 154 μg/m^3 would not be an exceedance because it would be rounded to 150 μg/m^3; whereas, a recorded value of 155 μg/m^3 would be an exceedance because it would be rounded to 160 μg/m^3. See 40 CFR part 50.6 and 40 CFR 50 Appendix K, section 1.0.

[3] 71 FR 61144 (October 17, 2006).

[4] 77 FR 32024 (May 31, 2012). The boundaries for the West Pinal County nonattainment area are described in 40 CFR 81.303.

[5] AQS is the EPA's national repository of ambient air quality data.

[6] 40 CFR part 50, Appendix K, section 2.3.

[7] 40 CFR part 50, Appendix K, section 2.3(a).

[8] 40 CFR part 50, Appendix K, section 2.3(a).

[9] AQS Design Value Report, dated March 5, 2020, included within our docket. Also, refer to Table 1

Continued

The EPA's determination as to whether an area has attained the PM_{10} NAAQS pursuant to CAA section 188(b)(2) is based on monitored ambient air quality data. The validity of this determination of attainment depends in part on whether the monitoring network adequately measures ambient PM_{10} levels in the nonattainment area. The Pinal County Air Quality Control District (''Pinal County'') is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for the West Pinal County nonattainment area. Pinal County submits annual monitoring network plans to the EPA. These plans discuss the status of the ambient air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to PM_{10}, the EPA has found that the annual network plans submitted by Pinal County meet the applicable requirements under 40 CFR part 58.[10] Furthermore, we concluded from our 2019 Technical Systems Audit of Pinal County's ambient air quality monitoring program that the ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for PM_{10} in the West Pinal County nonattainment area.[11] Pinal County certifies annually that the data it submits to AQS are quality-assured and has done so for each year relevant to our determination of attainment, 2016–2018.[12]

B. Finding of Failure To Attain the PM_{10} NAAQS

As discussed previously, the EPA's evaluation of whether the West Pinal County nonattainment area has met the 1987 24-hour PM_{10} NAAQS is based on our review of the monitoring data, the adequacy of the PM_{10} monitoring network in the nonattainment area, and the reliability of the data collected by the network. The PM_{10} standard is attained when the expected number of exceedances, averaged over a three-year period, is less than or equal to one. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM_{10} design value for that site. The PM_{10} design value for the nonattainment area is the highest design value from a monitor within that area. Three consecutive years of air quality data are required to show attainment of the PM_{10} standard.

Table 1 provides the 2018 PM_{10} design values for all regulatory monitoring sites measuring PM_{10} within the West Pinal County nonattainment area, expressed as a single value representing the average expected exceedances over the three-year period, 2016–2018.[13] The PM_{10} data show that the design values at multiple monitoring sites are greater than 1.0 estimated annual average exceedances of the 1987 24-hour PM_{10} NAAQS. Consequently, the EPA proposes to determine, based upon three years of complete, quality-assured and certified data from 2016–2018, that the West Pinal County nonattainment area did not attain the 1987 24-hour PM_{10} NAAQS by the applicable attainment date of December 31, 2018.

TABLE 1—2018 DESIGN VALUES FOR THE 1987 24-HOUR PM_{10} NAAQS AT AIR QUALITY MONITORING SITES IN THE WEST PINAL COUNTY NONATTAINMENT AREA, BASED ON 2016–2018 DATA

Monitoring site	AQS identification number	Design value
Casa Grande Downtown	04–021–0001–3	4.1
Coolidge [a]	04–021–3004–1	2.0
Stanfield	04–021–3008–3	14.3
Combs	04–021–3009–3	2.0
Pinal County Housing	04–021–3011–3	7.4
Eloy [b]	04–021–3014–3/04–021–3014–1	6.0
Hidden Valley	04–021–3015–3	32.8
Maricopa 1405/Maricopa [c]	04–021–3016–3/04–021–3010–3	3.4

Source: EPA AQS Design Value Report, dated March 5, 2020. Table 1 includes only data from monitoring sites in the nonattainment area. Additional information can be found in the EPA AQS Violation Day Count Report, dated March 18, 2020, and included in our docket.

[a] The AQS Design Value Report contains design values for two monitors at the Coolidge monitoring site. The second monitor (04–021–3004–2) is a collocated quality assurance monitor and is not used for comparison to the NAAQS.

[b] The EPA manually calculated the design value for the Eloy monitoring site by combining data from a manual monitor (04–021–3014–1) with data from a continuous monitor (04–021–3014–3) that replaced the manual monitor in early 2016. The monitors are reflected separately in the AQS Design Value Report. We have provided this combined design value in the EPA 2018 PM_{10} Design Value Report, available from the EPA Air Trends website at *https://www.epa.gov/air-trends/air-quality-design-values* and in our docket via an Excel spreadsheet.

[c] Pinal County relocated the Maricopa site (04–021–3010) to the Maricopa 1405 site (04–021–2016) in January 2017. The EPA approved this relocation; consequently, the data from both sites are combined to form one continuous record for calculating a design value. See correspondence from Gwen Yoshimura, Acting Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District, dated December 15, 2016. The monitors are reflected separately, however, in the AQS Design Value Report. We have provided this combined design value in the EPA 2018 PM_{10} Design Value Report, available from the EPA Air Trends website at *https://www.epa.gov/air-trends/air-quality-design-values* and in our docket via an Excel spreadsheet.

If the EPA determines that a Moderate nonattainment area has failed to attain the PM_{10} NAAQS by its applicable attainment date, then CAA section 188(b)(2) provides that the area shall be reclassified as a Serious area by

below and its endnotes for additional information concerning the Eloy and Maricopa monitoring sites.

[10] We have included in our docket the correspondence transmitting our annual network reviews, *e.g.,* correspondence dated October 30, 2018, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

[11] We have included in our docket the correspondence concerning the most recent audit; see correspondence dated September 24, 2019, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

[12] We have included in our docket Pinal County's annual data certifications for 2016, 2017 and 2018, *e.g.,* correspondence dated April 25, 2019, from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX. Annual data certification requirements can be found at 40 CFR 58.15.

[13] A design value is calculated using a specific methodology from monitored air quality data and is used to compare an area's air quality to a NAAQS. The methodologies for calculating expected exceedances for the 24-hour PM_{10} NAAQS are found in 40 CFR part 50, Appendix K, Section 2.1(a).

operation of law. Accordingly, if the EPA takes final action on our proposed determination that the West Pinal County Moderate area failed to attain the 1987 24-hour PM_{10} NAAQS by December 31, 2018, the area will be reclassified to Serious. The EPA is taking comment on this proposed finding of failure to attain and reclassification of the West Pinal County PM_{10} nonattainment area from Moderate to Serious.

IV. Summary of Our Proposed Action

In accordance with section 188(b)(2) of the CAA, the EPA is proposing to determine that the West Pinal County Moderate nonattainment area did not attain the 1987 24-hour PM_{10} NAAQS by its applicable attainment date of December 31, 2018. Our proposed determination that West Pinal County failed to attain the PM_{10} NAAQS is based on complete, quality-assured, and certified PM_{10} monitoring data for the appropriate three-year period, 2016–2018. We are soliciting comment on this proposed finding that the West Pinal County Moderate nonattainment area failed to attain the 24-hour PM_{10} NAAQS.

If we finalize our action as proposed, West Pinal County will be reclassified as a Serious PM_{10} nonattainment area by operation of law and will be subject to all applicable Serious area attainment planning and nonattainment New Source Review requirements. This includes the requirement to submit a Serious area air quality plan within 18 months of the effective date of our final rule, per section 189(b)(2) of the CAA. This Serious area air quality plan must demonstrate attainment of the 24-hour PM_{10} NAAQS by December 31, 2022, ten years after the area's designation to nonattainment, per section 188(c)(2) of the CAA.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), and therefore was not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not an Executive Order 13771 regulatory action because it is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521) because it does not contain any information collection activities.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This action will not impose any requirements on small entities. This proposed action, if finalized, would require the state to adopt and submit SIP revisions to satisfy the statutory requirements that apply to Serious areas and would not itself directly regulate any small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate of $100 million or more and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538). This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that the West Pinal County nonattainment area failed to attain the 1987 24-hour PM_{10} NAAQS by its applicable attainment date, which would trigger reclassification as a Serious nonattainment area and existing statutory timeframes for the state to submit SIP revisions. Such a reclassification in and of itself does not impose any federal intergovernmental mandate.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). The requirement to submit SIP revisions to meet the 1987 24-hour PM_{10} NAAQS is imposed by the CAA. This proposed rule does not alter the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175. No areas of Indian country are located within the West Pinal County PM_{10} nonattainment area. Therefore, no tribal areas are implicated in the area that the EPA is proposing to find failed to attain the 1987 24-hour PM_{10} NAAQS by the applicable attainment date. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to reclassify the West Pinal County nonattainment area as Serious nonattainment for the 1987 24-hour PM_{10} NAAQS, which would trigger additional Serious area planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The effect of this proposed action, if finalized, would be to reclassify the West Pinal County nonattainment area as Serious nonattainment for the 1987 24-hour PM_{10} NAAQS, which would trigger additional Serious area planning requirements under the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 30, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–07005 Filed 4–6–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0016; FRL–10007–29–OAR]

RIN 2060–AU25

National Emission Standards for Hazardous Air Pollutants: Phosphoric Acid Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Phosphoric Acid Manufacturing source category. The proposed amendment is in response to a petition for rulemaking by an industry stakeholder on the mercury emission limit based on the maximum achievable control technology (MACT) floor for existing sources set in a rule that was finalized on August 19, 2015 (''2015 Rule''). All six of the existing calciners used to set this MACT floor were located at the PCS Phosphate Company, Inc. (''PCS Phosphate'') facility in Aurora, North Carolina (''PCS Aurora''). PCS Phosphate asserted that data received since the rule's promulgation indicate that the MACT floor did not accurately characterize the average emission limitation achieved by the units used to set the standard. Based on these new data, the U.S. Environmental Protection Agency (EPA) proposes to revise the mercury MACT floor for existing calciners.

DATES:

Comments. Comments must be received on or before May 22, 2020.

Public hearing. If anyone contacts us requesting a public hearing on or before April 13, 2020, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0016 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2020–0016 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2020–0016.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2020–0016, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. John Feather, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3052; fax number: (919) 541–4991 and email address: *feather.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Nancy Perry at (919) 541–5628 or by email at *perry.nancy@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2020–0016. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding

legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2020–0016. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2020–0016.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACI activated carbon injection
BTF beyond-the-floor
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
GMCS Gore Mercury Control System
HAP hazardous air pollutant(s)
ICR information collection request
lb/yr pounds per year
MACT maximum achievable control technology
mg/dscm milligram per dry standard cubic meter
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
ppm parts per million
SBA Small Business Administration
tph tons per hour
tpy tons per year
UPL upper prediction limit

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources.

Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (*see* 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Phosphoric Acid Manufacturing source category includes any facility engaged in the production of phosphoric acid. The category includes, but is not limited to, production of wet-process phosphoric acid and superphosphoric acid.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS code [1]
Phosphoric Acid Manufacturing	325312

[1] North American Industry Classification System.

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

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A redline version of the regulatory language that incorporates the proposed changes is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0016).

C. What is the source of the Agency's authority for taking this action?

The statutory authority for this action is provided by section 112 of the Clean Air Act (CAA) (42 U.S.C. 7412). A technology-based NESHAP has been developed for major sources in the Phosphoric Acid Manufacturing source category. ''Major sources'' are those that emit, or have the potential to emit, any single hazardous air pollutant (HAP) at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, MACT standards reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above. In setting MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as ''MACT floor'' requirements, and which may not be based on cost considerations. See CAA section 112(d)(3) for more information. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options we call ''beyond-the-floor'' (BTF) that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. The EPA may amend MACT floor determinations if they were improperly set (*Medical Waste Institute and Energy Recovery Council* v. *EPA,* 645 F. 3d 420, 425–27 (D.C. Cir. 2011)). In the Phosphoric Acid Manufacturing source category, the calciners' mercury emissions are effectively uncontrolled, so their actual emissions are considered to be the average emission limitation achieved by the best-performing sources.

D. What action is the Agency taking?

The EPA is proposing to amend 40 CFR part 63, subpart AA. This amendment is in response to a petition for a rulemaking to amend the 2015 Rule's calciner mercury MACT floor emission limit, submitted by PCS Phosphate to the Agency on September 6, 2016. The petition is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0016). The EPA proposes to raise the mercury MACT floor-based limit for existing calciners from 0.14 milligrams per dry standard cubic meter (mg/dscm) at 3-percent oxygen (O_2) to 0.23 mg/dscm at 3-percent O_2. Table 1 to Subpart AA of Part 63—Existing Source Emission Limits is reproduced in its entirety at the end of this preamble for the sake of clarity. However, the EPA is proposing to amend only the existing source mercury limit for phosphate rock calciners, along with its footnote indicating the applicable compliance date. This proposed amendment would not impact any other aspect of the table or regulatory text.

II. Background

A. Why is the EPA issuing this proposed review?

In August 2015, we published final amendments to the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production NESHAP (80 FR 50386, August 19, 2015). As part of that action, we established MACT-based mercury emissions limits for new and existing calciners within the Phosphoric Acid Manufacturing source category. These limits were based on emissions data from the six identical calciners at the PCS Aurora facility. Because these six sources are of identical design and use the same fuel and feed, we determined that they should be treated as a single source for purposes of MACT floor development. As a result, we combined the emission test results for the different calciners into a single database that we used as the basis to set MACT floor emissions limits for both new and existing sources. We also evaluated a BTF option for MACT for existing calciners but did not select the BTF option as MACT because we determined that the economic impacts to the facility would not be reasonable. We did set a BTF limit for new calciners.

Following promulgation of the 2015 Rule, PCS Phosphate petitioned for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, on October 16, 2015. The EPA granted the petition for reconsideration of the issues presented at the time relating to the compliance schedule for oxidation reactor emissions and absorber liquid-to-gas ratios. This reconsideration was finalized on September 13, 2017. However, subsequent to this petition for reconsideration, compliance testing of the calciners for mercury emissions in

2016 showed that three calciners at the Aurora facility exceeded the MACT limit, with the three other calciners near the limit. For reference, the mean calciner compliance emissions in 2016 were 0.143 mg/dscm at 3-percent O_2, higher than the MACT limit of 0.14 mg/dscm at 3-percent O_2. The mean of these emissions was 44 percent higher than the mean of the data from the 2010 and 2014 information collection request (ICR) that was used to develop the 2015 Rule's emission limit. On May 10, 2016, PCS Phosphate submitted a letter to the EPA requesting a revision to the calciner mercury MACT floor standard. On September 6, 2016, PCS Phosphate added the calciner mercury limit to its earlier petition for reconsideration. This additional request was not raised with reasonable specificity or within 60 days of the publication of the 2015 Rule, so the mercury MACT floor issue was not included in the reconsideration. However, on the basis of the test data presented, the EPA was convinced there was justification to review the mercury calciner limit and include new emissions data in that analysis. Because of that evaluation, as explained below, the EPA is now proposing a revised mercury emissions standard for existing calciners.

B. What are the issues raised by the petitioner?

PCS Phosphate raised concerns about whether the mercury MACT limit accurately represents the average emission limitation achieved by the calciners at their facility in Aurora, North Carolina. These calciners, on which the MACT floor was based, consistently showed emissions above the calculated floor level. This was believed to be due to two factors:

- The 2010 and 2014 emission test data used in calculating the MACT floor were obtained while the calciners were operating at throughput rates that averaged 52 wet tons per hour (tph), due in part to mining limitations. Based on industry statements and values from state-mandated test reports, these calciners typically operate at a feed throughput rate of greater than 65 wet tph. This low throughput during initial tests biased the emissions data low.
- The mercury content of the feed material varies significantly. The limited data available from the 2010 and 2014 tests did not fully capture this variability or the range of mercury content that may be expected to be present in the phosphate rock. Changes in feed mercury content directly affect mercury emissions.

III. Analytical Procedures and Decision-Making

A. What mercury emissions and phosphate rock composition data were collected?

To develop our 2015 Rule, we obtained initial ICR data from PCS Aurora in 2010 that consisted of three test runs performed during one stack test of a single calciner (three test runs during each stack test). These data were collected using EPA Method 30B, the same method used for compliance testing. Speciated mercury data, differentiating elemental mercury from total mercury, was also obtained by the ASTM D6784–02 (Ontario-Hydro) method. Due to concerns about basing a MACT floor on such a limited dataset, in 2014 an additional nine test runs were performed during three stack tests of a different calciner. Based on data from these 12 test runs, we calculated a MACT floor using the 99-percent upper prediction limit (UPL). The 2015 UPL data and analysis are included in this docket (Docket ID No. EPA–HQ–OAR–2020–0016).

Each year from 2016 to 2019, PCS Aurora measured mercury emissions from each of the six calciners with three-run stack tests. In addition, the facility performed a study varying feed throughput rates and stack test sampling times. During every test run from 2016 and on, PCS Aurora measured the feed ore mercury concentration. PCS Aurora also analyzed the mercury content of an additional 48 samples of ore (rock) collected from core samples to better characterize the expected mercury in feed ore in future years. In total, our dataset for this MACT floor analysis includes 104 stack test runs under normal operating rates. These new data provide more information that better characterize average calciner mercury emissions. This rule's data and analysis are also available in the MACT floor memorandum in the docket (Docket ID No. EPA–HQ–OAR–2020–0016).

On the basis of the new data provided, we do not believe now that the testing used to set the MACT limit in the 2015 Rule represented the emissions that calciners achieve during normal operations. We agree that the measured levels could not be achieved were the sources operating under normal loads. Compliance testing data from 2016 through 2019 has consistently shown emissions exceeding the MACT floor limit when operating at normal loads. Each year the average emissions tested under normal loads exceeded the MACT floor. Every test run in 2018 and 2019 exceeded the MACT limit, as did the three tests in 2017 operating under normal loads and most of the other non-compliance test runs. The average emissions indicated from the new data are significantly higher than those from the data used to set the MACT limit in the 2015 Rule. Furthermore, composition testing shows that the 2010 and 2014 ICR tests did not represent the full range of the on-site phosphate rock's mercury content. The mercury composition average in feed phosphate rock has increased since the ICR tests, and from 2016 to 2019. Testing has also shown an unanticipated degree of variation of mercury content in phosphate rock, both in the short-term feed and in on-site ore that would be used as feed in the future. Mercury emissions are a function of both the rate of input feed and the concentration of mercury in the feed. Additional mercury entering the calciner, whether by more feed entering the calciner or a higher concentration of mercury in the feed, leads to an increased magnitude of mercury emissions. Calciner airflow rates are insensitive to the throughput rate, keeping fairly constant without regard for how much feed is being processed. The increased concentrations of mercury emissions that these new data show are due to the increased amount of mercury entering into the calciners through the feed, not because of process inefficiencies or problems with operating conditions. Therefore, for purposes of calculating the MACT floor, we have used emissions data from 2016 through 2019, as well as studies of the variance in the mercury in ore at the Aurora site.

B. How did we calculate the MACT floor limit?

In general, MACT floor analyses involve an assessment of the emissions from the best-performing sources in a source category using the available emissions information. For each source category, the assessment involves a review of emissions data with an appropriate accounting for emissions variability. Various methods of estimating emissions can be used if the methods can be shown to provide reasonable estimates of the actual emissions from a source or sources.

To determine the MACT floors for phosphate rock calciners, we used the arithmetic average of all the available emissions data from 2016 through 2019 and accounted for emissions variability. We accounted for emissions variability in setting floors not only because variability is an aspect of performance, but because it is reasonable to assess performance over time and to account for test method variability. The United

States Court of Appeals for the District of Columbia Circuit has recognized that the EPA may consider variability in estimating the degree of emission reduction achieved by best-performing sources and in setting MACT floors (*Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (D.C. Cir. 2004)). For more detailed information about the EPA's analytical process in using the UPL to calculate MACT floors, see the 2015 Rule's UPL memorandum, included in this docket (Docket ID No. EPA–HQ–OAR–2020–0016).

The dataset for this analysis used the 104 stack test runs that were taken under normal operating conditions. Because the calciners typically operate at 65 tph of feed or more, we excluded from the analysis any test runs that were conducted when feed rates were below 65 tph. These lower feed rates do not represent normal operation and would bias the result low. This excluded the 12 runs from the 2010 and 2014 ICR tests, along with 13 runs from tests in 2016 and 2017 that specifically sought to vary parameters to better understand the emission results.

The 2015 Rule MACT floor analysis used the stack test data to calculate the average emissions and the 99-percent UPL to account for variability in the testing and calciner operations. Our revised analysis in this proposal relies on the statistical analysis of the new data set that represent emissions from normal operations. In addition, we are now using data on the mercury concentrations in phosphate ore areas yet to be mined to account for variability that would occur in the future. We determined the variance of the ore mercury concentration data and added that to the variance of the emissions test data. The relative standard deviation of mercury content in the future feed is slightly greater than that of mercury emissions and varies independently. We used this 99-percent lognormal UPL with independent future feed variance to calculate the MACT floor limit for existing rock calciners of 0.23 mg/dscm on a 3-percent O_2 basis. Table 2 of this preamble lists the proposed mercury emission limit for phosphate rock calciners. For more information, see the MACT floor memorandum in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2020–0016).

TABLE 2—PROPOSED EMISSON LIMIT FOR MERCURY FROM PHOSPHATE ROCK CALCINERS AT PHOSPHORIC ACID FACILITIES

Pollutant	Limit	Units
Existing sources: Mercury	0.23	mg/dscm @3% O2

C. What is our BTF analysis?

The 2015 Rule evaluated possible BTF control options. That analysis focused on the activated carbon injection (ACI) system and Gore Mercury Control System (GMCS), largely based on site-specific quotes provided by the PCS Aurora facility. These technologies both employ adsorption to capture mercury emissions from the calciners with feasible mercury reductions of 90 percent. An ACI system injects halogenated powdered activated carbon into the airflow, oxidizing elemental mercury which adsorbs to the activated carbon. The GMCS consists of a series of modules containing catalysts and sorbents which capture all forms of mercury passing through. The GMCS requires a higher capital cost than the ACI system, with an associated higher annualized cost based on conditions at the time, so the 2015 Rule based its evaluations on the lower cost of the ACI system. The analysis showed a cost effectiveness of $29,800 to $36,400 per pound of mercury reduced and an economic impact to the purified acid process of approximately 0.9 percent to 5.3 percent. This was determined to be cost effective, but the significant economic impact to the facility led to the EPA's previous decision to not pursue the BTF option.

This current review also used the 2015 Rule's control costs for evaluations of BTF mercury removal cost effectiveness and its related economic impact. Based on the mercury emissions data available for this proposal, mercury emissions are estimated to be 264 pounds per year (lb/yr), compared to the earlier estimate of 169 lb/yr during the 2015 Rule. Due to this, the ACI sorbent rate and associated cost were adjusted to account for the higher mercury removal. Otherwise, the ACI system parameters are unchanged from the 2015 Rule's cost analysis. The GMCS capacity was sufficient to achieve this higher mercury removal without modifications or increased cost. Based on these adjustments, we estimate that the total capital cost of the ACI system is $20.1 million and the total annualized cost is $5.69 million per year. This results in a cost per pound for mercury removal of $23,900. The GMCS total capital cost is $36.4 million and the total annualized cost is $4.99 million per year, with a cost per pound for mercury removal of $21,000. We still consider these controls to be cost effective.

PCS merged with Agrium to form Nutrien in 2018, after the 2015 Rule was promulgated. As was the case during the 2015 Rule's analysis, annualized control technology costs represent less than 1 percent of the revenue for the Aurora facility's parent company, which is now Nutrien. Parent company revenue is significantly higher due to the merger, so control costs now comprise a smaller proportion of the company revenue than before. However, operations at the PCS Aurora facility have not substantively changed since our 2015 Rule's analysis. The total costs of the ACI system are also higher due to the fact that the amount of mercury removed increases correspondingly with the increased estimates of mercury emissions. In our economic analysis in the 2015 Rule, we determined that the economic impacts on the specific process line being controlled were unreasonable and did not impose a BTF option. In our new analysis, control costs have increased. These control costs represent more than 1 percent of the purified acid process revenue associated with the calciners. We find the costs for the ACI system are too high to justify pursuing the BTF option. For more detail, see the BTF memorandum in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2020–0016).

IV. Summary of Cost, Environmental, and Economic Impacts

Only the PCS Aurora facility and its six calciners would be affected by the change to the existing calciner MACT floor proposed in this action. We are proposing to raise the MACT floor based on new data from the existing calciners. Since neither this amendment nor the 2015 Rule requires controls, we do not anticipate a change in actual mercury emissions as a result of this proposed rule. More mercury emissions will be allowable due to raising the MACT floor. However, currently we estimate total actual emissions of mercury from all six calciners to be 264 lb/yr, less than the 352 lb/yr conservatively estimated in the 2015 Rule, so we continue to anticipate no adverse environmental impact.

The 2015 Rule set a mercury limit of 0.14 mg/dscm at 3 percent that current operations cannot achieve under normal operations. Without this amendment, additional controls such as the ACI system would be necessary to comply with that standard. If this amendment is

finalized, the value of those controls would represent a cost-savings for the facility, since those expenditures would be expected to no longer be necessary. The costs of installing new ACI control equipment to meet the 2015 Rule's calciner mercury standard were estimated to comprise a present value cost of approximately $26 million (2017 dollars) discounted at 7 percent to 2019 over a 5-year analytical period. Therefore, this action will result in a total cost savings of $26 million. For more detail, see the economic impact analysis memorandum in the docket (Docket ID No. EPA–HQ–OAR–2020–0016).

V. Request for Comments

The EPA seeks public comments on the issues addressed in this proposed rule, as described in this document. We are soliciting comments on the proposed revised standards, particularly the method of determining the average emission limitation achieved by the calciners for mercury emissions and costs of mercury control.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/lawsregulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0361. With this action, the EPA is seeking comments on proposed amendments to the 40 CFR part 63, subpart AA existing rule language narrowly concerning the calciner mercury MACT floor. Therefore, the EPA believes that there are no changes to the information collection requirements of the 2015 Rule, so the information collection estimate of projected cost and hour burden from the 2015 Rule remains unchanged.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The single facility currently subject to the calciner mercury MACT floor requirements of 40 CFR 63, subpart AA is not a small entity.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

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

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any new technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The environmental justice finding in the 2015 Rule remains relevant in this action, which seeks comments on proposed amendments to the 40 CFR part 63, subpart AA existing rule language narrowly concerning the calciner mercury MACT floor.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart AA—National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing Plants

■ 2. Table 1 to Subpart AA of Part 63—Existing Source Emission Limits is amended to read as follows:

TABLE 1 TO SUBPART AA OF PART 63—EXISTING SOURCE EMISSION LIMITS [a] [b]

For the following existing sources . . .	You must meet the emission limits for the specified pollutant . . .		
	Total fluorides	Total particulate	Mercury
Wet-Process Phosphoric Acid Line	0.020 lb/ton of equivalent P_2O_5 feed.		
Superphosphoric Acid Process Line [c]	0.010 lb/ton of equivalent P_2O_5 feed.		
Superphosphoric Acid Submerged	0.020 lb/ton of equivalent P_2O_5 feed.		
Line with a Submerged Combustion Process		2,150 lb/ton of phosphate rock feed.	
Phosphate Rock Dryer		0.181 g/dscm.	
Phosphate Rock Calciner	9.0E–04 lb/ton of rock feed [d]		0.23 mg/dscm corrected to 3 percent oxygen.[e]

[a] The existing source compliance data is June 10, 2002, except as noted.
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.602(f).
[c] Beginning on August 19, 2018, you must include oxidation reactors in superphosphoric acid process lines when determining compliance with the total fluorides limit.
[d] Compliance date is August 19, 2015.
[e] Compliance date is [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

[FR Doc. 2020–06930 Filed 4–6–20; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 27

[Docket No. FWS–HQ–NWRS–2019–0109; FXRS12630900000–201–FF09R81000]

RIN 1018–BE68

National Wildlife Refuge System; Use of Electric Bicycles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, have adopted a policy, and we propose to adopt consistent regulations, pertaining to the use of electric bicycles (otherwise known as ''e-bikes''). These proposed changes are intended to increase recreational opportunities for all Americans, especially for people with physical limitations. We solicit comments on proposed regulations that will provide guidance and controls for the use of e-bikes on the National Wildlife Refuge System.

DATES: Written comments will be accepted through June 8, 2020.

ADDRESSES: You may submit comments, identified by Docket No. FWS–HQ–NWRS–2019–0109 by any one of the following methods:

- *Federal e-rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–NWRS–2019–0109.
- *Mail:* Address comment to Public Comments Processing, Attn: Docket No. FWS–HQ–NWRS–2019–0109; U.S. Fish and Wildlife Service; MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041.
- *Hand-deliver:* U.S. Fish and Wildlife Service; MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Maggie O'Connell, National Wildlife Refuge System—Branch Chief for Visitor Services, 703–358–1883, *maggie_oconnell@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), governs the administration and public use of refuges, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) governs the administration and public use of refuges and hatcheries. The National Wildlife Refuge System Administration Act closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use upon a determination that the use is compatible with the purposes of the refuge and the National Wildlife Refuge System mission. The action also must be in accordance with the provisions of all laws applicable, consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest.

These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans. The Refuge System is an unparalleled network of 568 national wildlife refuges and 38 wetland management districts. More than 59 million Americans visit refuges every year. You can find at least one refuge in every State and every U.S. territory, and within a 1-hour drive of most major cities.

The U.S. Fish and Wildlife Service (FWS) administers the Refuge System via regulations contained in title 50 of the Code of Federal Regulations (CFR). These regulations help to protect the natural and cultural resources of refuges, and to protect visitors and property within those lands. In their current form, these regulations generally prohibit visitors from utilizing motorized vehicles on refuges other than on designated routes.

Electric Bicycles

Secretary's Order 3376 directs Department of the Interior (DOI) bureaus to begin the process of obtaining public input on proposed new regulations that will clarify that operators of low-speed electric bicycles (e-bikes) should enjoy the same access as conventional bicycles, consistent with other Federal and State laws. Refuge managers will have the ability in the short term to utilize the flexibility they have under current regulations to accommodate this new technology, that assists riders as they pedal, in a way that allows them to enjoy the bicycling experience.

DOI's guidance will enable visitors to use these bicycles with a small electric motor (not more than 1 horsepower) power assist in the same manner as traditional bicycles. The operator of an e-bike may use the small electric motor

only to assist pedal propulsion. The motor may not be used to propel an e-bike without the rider also pedaling.

A majority of States have adopted e-bike policies, most following model legislation that allows for the three classes of e-bikes to have access to bicycle trails. The DOI e-bike guidance seeks to provide consistency with the State and local rules where possible.

In 2019, approximately 1.4 million people bicycled at 197 national wildlife refuges. The Refuge System's new e-bike guidance provides expanded options for visitors who wish to ride a bicycle and who may be limited by fitness level or ability.

Similar to traditional bicycles, e-bikes are not allowed in designated wilderness areas and may not be appropriate for back-country trails. The focus of the DOI guidance is on expanding the traditional bicycling experience to those who enjoy the reduction of effort provided by this new e-bike technology. Local refuge and land managers will limit, restrict, or impose conditions on bicycle use and e-bike use where necessary to manage visitor use conflicts and ensure visitor safety and resource protection.

E-bikes make bicycle travel easier and more efficient, because they allow bicyclists to travel farther with less effort. When used as an alternative to gasoline- or diesel-powered modes of transportation, e-bikes can reduce greenhouse gas emissions and fossil fuel consumption, improve air quality, and support active modes of transportation for visitors. Similar to traditional bicycles, e-bikes can decrease traffic congestion, reduce the demand for vehicle parking spaces, and increase the number and visibility of cyclists on the road.

This Proposed Rule

The regulations in 50 CFR part 27 pertain to prohibited acts on refuge lands. The current regulations in § 27.31 generally prohibit use of any motorized or other vehicles, including those used on air, water, ice, or snow, on national wildlife refuges except on designated routes of travel, as indicated by the appropriate traffic control signs or signals and in designated areas posted or delineated on maps by the refuge manager.

Under the proposed amendment, which is set forth at the end of this document, e-bikes would be allowed where other types of bicycles are allowed, and e-bikes would not be allowed where other types of bicycles are prohibited. DOI proposes to adopt a definition of ''e-bike'' that is informed by the definition of ''low-speed electric bicycle'' found at 15 U.S.C. 2085 and that meets the requirements of one of three classes of e-bikes.

Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked by the date specified in **DATES**.

We will post your entire comment on *http://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Compliance With Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In 2019, there were approximately 1.4 million bicycle visits on 197 refuges (34.6 percent of all refuges). Of these 197 refuges, 136 refuges had fewer than 1,000 bicycle visits. These visits comprised approximately 2 percent (=2.34%) of total recreational visits for the Refuge System.

Under the proposed rule, recreational activities on refuges could be expanded by allowing e-bikes where determined by the appropriate refuge manager. As a result, recreational visitation at these stations may change. The extent of any increase would likely be dependent upon factors such as whether current bicyclists change from using traditional bicycles to e-bikes, whether walking/hiking visits change to e-bike visits, or whether other recreational visitors decrease visits due to increased conflicts. The impact of these potential factors is uncertain. However, we estimate that increasing opportunities for e-bikes would correspond with less than 2 percent of the average recreational visits due to the small percentage of current bicycling visits.

Small businesses within the retail trade industry (such as hotels, gas

stations, sporting equipment stores, and similar businesses) may be affected by some increased or decreased station visitation due to the proposed rule. A large percentage of these retail trade establishments in the local communities near national wildlife refuges and national fish hatcheries qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in any region or nationally.

Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This rule would affect only visitors at national wildlife refuges.

Federalism (Executive Order 13132)

In accordance with E.O. 13132, this proposed rule does not require the preparation of a federalism assessment.

Civil Justice Reform (Executive Order 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We have determined that the proposed rule falls under the class of actions covered by the following Department of the Interior categorical exclusion: ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' (43 CFR 46.210(i)). Under the proposed rule, a refuge manager must first make a determination that e-bike use is a compatible use before allowing e-bike use on a national wildlife refuge. This determination must be made on a case-by-case basis. Therefore, the environmental impacts of the proposed rule are too speculative to lead to meaningful analysis at this time. The Service will assess the environmental impacts of e-bike use in compliance with NEPA at the time a refuge manager determines whether e-bike use is compatible.

Government-to-Government Relationship With Tribes

In accordance with E.O. 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22961), and 512 DM 2, we will consult with federally recognized tribal governments to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 27

Wildlife refuges.

Proposed Regulation Promulgation

In consideration of the foregoing, we propose to amend part 27, subchapter C of chapter I, title 50 of the Code of Federal Regulations as follows:

PART 27—PROHIBITED ACTS

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 460*l*–6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

Subpart C—Disturbing Violations: With Vehicles

■ 2. Amend § 27.31 by redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m) to read as follows:

§ 27.31 General provisions regarding vehicles.

* * * * *

(m) If the refuge manager determines that electric bicycle (also known as an e-bike) use is a compatible use on roads or trails, any person using the motorized features of an e-bike as an assist to human propulsion shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of non-motorized bicycles on roads and trails. An e-bike is a two- or three-wheeled electric bicycle with fully

operable pedals and an electric motor of not more than 750 watts (1 h.p.) that meets the requirements of one of the following three classes:

(1) Class 1 e-bike shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

(2) Class 2 e-bike shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

(3) Class 3 e-bike shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

* * * * *

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–07167 Filed 4–6–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 85, No. 67
Tuesday, April 7, 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

Notice of Request for Approval of an Information Collection

AGENCY: Office of Communications, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This notice announces Office of Communications' to request a revision and extension of a currently approved information collection, Event Appearance for the Secretary or Members of his Staff, OMB Control number 0506–0005.

DATES: Comments on this notice must be received by June 8, 2020 to be assured of consideration.

ADDRESSES: Office of Communications invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Office of Communications, Docket Clerk, 1400 Independence Ave. SW, Mailstop 402A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Ave. Room 402A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name, Office of Communications. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the Office of Communications Docket Room at 1400 Independence Ave. SW, Room 402A, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Brian Mabry, Office of Communications, U.S. Department of Agriculture, 1400 Independence Ave. SW, 402A, Washington, DC 20250, 202–720–5831.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of Office of Communications to request revision and extension an approved information collection.

Title: Event Appearance Requests for the Secretary or members of his staff.

OMB Number: 0506–0005.

Expiration Date of Approval: July 31, 2020.

Type of Request: Revision and extension of a currently approved information collection.

Abstract: A web form collects information on events that the public would like the Secretary to participate in, or those in which the incoming Secretary may want to use to reach back out to interested parties to invite them to events. Information that will be collected is a follows: Organization, Address, Phone/Cell Number, First and last name of point of contact, Email Address, Type of event, Date of event, Event location, Secretary's role, Number of attendees, Press open or closed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 min per response. There may be one or more responses per respondent.

Respondents: Individual, Businesses, Not-for-profit; State, Local or Tribal governments.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,500.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brian Mabry, Office of Communications U.S. Department of Agriculture. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Meghan Rodgers,
Director (Acting), Office of Communications.

[FR Doc. 2020–07215 Filed 4–6–20; 8:45 am]
BILLING CODE 3410–13–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 1, 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.

Comments regarding these information collections are best assured of having their full effect if received by

May 7, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Agricultural Resource Management and Chemical Use Surveys—Substantive Change.

OMB Control Number: 0535–0218.

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.

Using the Agricultural Resource Management Survey (ARMS) and the Vegetable Chemical Use Survey, NASS collects environmental data which includes cropping practices, fertilizer applications, pesticide usage for weeds, insects, fungus, mold, etc., and the use of various pest management practices. Through cooperative agreements with the Economic Research Service and the Office of Pest Management Policy NASS collects additional data to aid in there research. The additional questions that will be added to the questionnaires that were not in the original approval will address topics such as seed treatments, GPS enabled equipment, nutrient management, crop insurance, environmental regulations, organic production practices, etc. Complete listings of the questions added and deleted have been added as supplemental documents to this submission.

This substantive change will not change the sample sizes of any of the surveys only the content of the ARMS II surveys for rice, corn and soybeans, the Vegetable Chemical Use Survey and the Cropping Practices Survey (done under a cooperative agreement with Mississippi State University). A detailed listing of the changes are attached to the docket submission. Based on the ARMS II and the Fruit Chemical Use surveys conducted in 2019, in which the field enumerators were asked to record beginning and ending times for personal interviews the changes in average burden per questionnaire a 10 to 15 minute increase was added to the questionnaires. This resulted in a net increase in respondent burden of 442 hours above the currently approved annual average total.

Need and Use of the Information: The Office of Pest Management Policy (OPMP), the Economic Research Service (ERS), and the Mississippi State University Extension Service (MSUES) will be able to better address changes in the farming practices and chemicals used on these crops that have occurred since the original approval of this docket.

Description of Respondents: Farms.

Number of Respondents: 16,815.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 13,610.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–07220 Filed 4–6–20; 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 Tuesday, April 14, 2020, at 3:00 p.m. EST. The purpose of the meeting is to review the recommendations section of their report.

DATES: The meeting will be held on Tuesday, April 14, 2020, at 3:00 p.m. EST.

Public Call Information: Dial: 888–254–3590, Conference ID: 6011106.

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 emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit 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 March 24, 2020 Minutes

III. Review Report Draft

a. Update

b. Recommendations
IV. Public Comment
V. Adjournment

Dated: April 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07287 Filed 4–6–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida 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 Florida Advisory Committee (Committee) will hold a meeting on Tuesday April 28, 2020, at 3:00 p.m. (Eastern) for the purpose of discussing next steps in their current study of voting rights in Florida.

DATES: The meeting will be held on Tuesday, April 28, 2020, from 3:00–4:00 p.m. Eastern.

Public Call Information: Dial: 888–394–8218, Conference ID: 7889521.

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

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free call-in number. 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.

Written comments may be mailed to the Regional Program 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 may be emailed to Carolyn Allen at *callen@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida 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 Program Unit at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Voting Rights in Florida
Public Comment
Adjournment

Dated: April 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07242 Filed 4–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–27–2020]

Approval of Subzone Status; Warehouse Specialists, LLC, Council Bluffs, Iowa

On February 7, 2020, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Iowa Foreign Trade Zone Corporation, grantee of FTZ 107, requesting subzone status subject to the existing activation limit of FTZ 107, on behalf of Warehouse Specialists, LLC, in Council Bluffs, Iowa.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 7919, February 12, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 107D was approved on March 31, 2020, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 107's 2,000-acre activation limit.

Dated: March 31, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07191 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on April 28, 2020, at 9:30 a.m. The meeting is open to the public via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Open Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than April 21, 2020.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–07187 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 29, 2020, at 1:00 p.m. The meeting is open to the public via teleconference. The ISTAC will meet again on April 30, 2020, in closed session. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, April 29

Open Session

1. Welcome and Introductions.
2. Working Group Reports.
3. Old Business.
4. Comments from the Bureau of Industry and Security.

Thursday, April 30

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than April 22, 2020.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 18, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–07186 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–108]

Ceramic Tile From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Partial Affirmative Critical Circumstances Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that ceramic tile from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The final dumping margins are listed in the ''Final Determination Margins'' section of this notice.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2019, Commerce published the *Preliminary Determination* of this investigation.[1] The petitioner is The Coalition for Fair Trade in Ceramic Tile. The mandatory respondents in this investigation are Belite[2] and Foshan Sanfi Import & Export Co., Ltd. (Foshan Sanfi).

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.[3] 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 *http://access.trade.gov,* and 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 is available at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is October 1, 2018 through March 31, 2019.

Scope of the Investigation

The scope of the investigation covers ceramic tile from China. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

On September 6, 2019, Commerce issued a Preliminary Scope Decision Memorandum.[4] Several interested parties submitted case and rebuttal

[1] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, and Postponement of Final Determination,* 84 FR 61877 (November 14, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); *see also Ceramic Tile from the People's Republic of China: Notice of Correction to the Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 84 FR 68114 (December 13, 2019).

[2] We collapsed Belite Ceramics (Anyang) Co., Ltd., Beilitai (Tianjin) Tile Co., Ltd. (Beilitai), and Tianjin Honghui Creative Technology Co., Ltd., collectively hereafter referred to as Belite. *See* Memorandum, ''Investigation of Ceramic Tile from the People's Republic of China: Affiliation and Collapsing of Belite Ceramics (Anyang) Co., Ltd., Beilitai (Tianjin) Tile Co., Ltd., and Tianjin Honghui Creative Technology Co., Ltd.,'' dated November 6, 2019.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Ceramic Tile from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Ceramic Tile from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated September 6, 2019 (Preliminary Scope Decision Memorandum).

briefs concerning the scope of this investigation. For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] Based on the comments received, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination.* The scope in Appendix I remains unchanged from that which appeared in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce conducted verification of the information submitted by Belite for use in the final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by Belite.[6] We did not conduct verification of Foshan Sanfi because it withdrew from participation in verification.[7]

Adverse Facts Available (AFA)

For the reasons explained in the *Preliminary Determination,* we continue to find that the use of AFA, pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity.[8] In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[9] For the final determination, we are assigning the China-wide entity, as AFA, the rate of 356.02 percent, which is the highest petition rate.[10]

Critical Circumstances

As explained in the Issues and Decision Memorandum, we find that critical circumstances exist for imports of ceramic tile from the China-wide entity pursuant to sections 735(a)(3)(A) and (B) of the Act and 19 CFR 351.206. With respect to the separate rate companies, we continue to find that the U.S. Census Bureau data provided by the petitioner in its critical circumstances allegation [11] does not show that imports of subject merchandise were massive during a relatively short period, and that critical circumstances do not exist for imports of ceramic tile from the separate rate companies pursuant to sections 735(a)(3)(A) and (B) of the Act and 19 CFR 351.206.

Separate Rates

Generally, Commerce looks to section 735(c)(5)(A) of the Act, which provides instructions for calculating the all-others rate in a market economy antidumping duty (AD) investigation, for guidance when calculating the rate for separate rate respondents that we did not individually examine in a non-market economy AD investigation. Section 735(c)(5)(A) of the Act states that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any margins that are zero, *de minimis,* or determined entirely on the basis of facts available.[12]

As discussed in the Issues and Decision Memorandum,[13] Belite and Foshan Sanfi have not received a separate rate for the final determination and, thus, are part of the China-wide entity. As such, we have assigned the average of the rates found in the Petition [14] as the rate for non-individually examined companies that have qualified for a separate rate.[15]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Anatolia Tile & Stone Inc	Hubei ASA Ceramics Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
	Foshan Mona Decoration Material Co., Ltd. (DBA Guang Dong Bo Hua Ceramics Co., Ltd.).	229.04	203.71
	Heyuan Dongyuan Eagle Branch Ceramics Ltd	229.04	203.71
	Foshan Gold Medal Ceramics International Trade Co., Ltd	229.04	203.71
	Greens Patio Workshop Co., Ltd	229.04	203.71
	Fujian Huatai Group Co., Ltd	229.04	203.71
	Foshan Tianyao Ceramics Co., Ltd	229.04	203.71
	Foshan Ibel Import and Export Ltd	229.04	203.71
	Max Glory International Limited	229.04	203.71
	Foshan Leo Import and Export Trading Co., Ltd	229.04	203.71
	Guangdong Mona Lisa Trading Co., Ltd	229.04	203.71
	Foshan Amosa International Business Company	229.04	203.71
	Foshan Yonglie Export and Import Company Limited	229.04	203.71

[5] *See* Memorandum, ''Ceramic Tile from the People's Republic of China: Scope Decision Memorandum for the Final Determinations,'' dated concurrently with this notice (Final Scope Decision Memorandum).

[6] *See* Memorandum, ''Verification of the Questionnaire Responses of Belite Ceramics (Anyang) Co., Ltd., in the Antidumping Investigation of Ceramic Tile from the People's Republic of China,'' dated January 6, 2020.

[7] *See* Foshan Sanfi's Letter, ''Ceramic Tile from the People's Republic of China—Notice of Intention Not to Participate in Verification,'' dated November 22, 2019.

[8] *See Preliminary Determination* PDM at 20–22.

[9] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[10] *See* Issues and Decision Memorandum at 3.

[11] *See Preliminary Determination* PDM at ''Critical Circumstances.''

[12] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum (IDM) at Comment 16.

[13] *See* IDM at Comments 1–2.

[14] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Ceramic Tile from the People's Republic of China,'' dated April 10, 2019 (the Petition) and the Petition Supplement at Exhibit II–21.

[15] *See* IDM at Comment 3.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Elegance International Inc	229.04	203.71
	Foshan International Trade Co., Ltd	229.04	203.71
	Foshan Rhino Building Materials Co., Ltd	229.04	203.71
	Foshan Romantic Ceramics Co., Ltd	229.04	203.71
	Heyuan Romantic Ceramics Co., Ltd	229.04	203.71
	Pingxiang Dacheng Ceramics Technology Co., Ltd	229.04	203.71
	Jingdezhen Seed Ceramic Co., Ltd	229.04	203.71
	Foshan Xinfu Imp. & Exp. Co., Ltd	229.04	203.71
	Foshan Nah Hai Sky Glass Mosaic Limited	229.04	203.71
	Super Building Material Co., Ltd. (Xiamen)	229.04	203.71
	Foshan Tong Hai International Import and Export Trading Corporation Limited.	229.04	203.71
	Rabbit Song Building Material Co., Ltd	229.04	203.71
Avangarde Ceramiche	Fujian Nan'an Xinglong Ceramics Co., Ltd	229.04	203.71
	Guangdong Jiajun Ceramics Co., Ltd	229.04	203.71
Beijing Shiji Mingtai Inc	Jinjiang Guoxing Ceramics Building Materials Co., Ltd	229.04	203.71
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Fujian Zhangzhou Jianhua Ceramics Co., Ltd	229.04	203.71
	Foshan Dongpeng Ceramics Co., Ltd	229.04	203.71
	Fujian Huatai Group Co., Ltd	229.04	203.71
	Quanzhou Zhiran Ceramics Co., Ltd	229.04	203.71
	Quanzhou Yuanlong Building Materials Development Co., Ltd	229.04	203.71
	Fujian Xindezhou Ceramics Co., Ltd	229.04	203.71
	Jinjiang Juntao Ceramics Industry Co., Ltd	229.04	203.71
Bestview (Fuzhou) Import & Export Co. Ltd	Foshan Lanyu Building Material Co. Ltd	229.04	203.71
	Tianjin Belite Ceramics Co., Ltd Foshan Branch	229.04	203.71
	Jingdezhen Leixi Building Material Factory	229.04	203.71
	Foshan Nanhai District Energy Building Material Co., Ltd	229.04	203.71
Buddy Mosaic Limited	Foshan Tanhua Building Material Co., Ltd	229.04	203.71
China Stone Limited	Qingyuan MegaCera Ceramic Co., Ltd	229.04	203.71
	Foshan Kovic Import and Export Co., Ltd	229.04	203.71
Dongguan City Wonderful Ceramics Industrial Park Co., Ltd	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd	229.04	203.71
Dongguan City Wonderful Decoration Materials Co., Ltd	Dongguan City Wonderful Decoration Materials Co., Ltd	229.04	203.71
Dox Building Materials Co., Limited	White Rabbit Ceramics Co., Ltd	229.04	203.71
	Rabbit Song Building Material Co., Ltd	229.04	203.71
Elegance International Inc	Tegaote Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai District Zhengbin New Materials Co., Ltd	229.04	203.71
		229.04	203.71
Everstone Industry (Qingdao) Co., Ltd		229.04	203.71
Foshan Ant Buying Service Co., Ltd	Foshan Xindonglong Ceramic Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Heshan Heqiang Art China & Dinnerware Co., Ltd	229.04	203.71
	Foshan Kingfer Building Material Co., Ltd	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd	229.04	203.71
	Foshan Xinamei Material Co., Ltd	229.04	203.71
	Foshan Be Tf Fu Decorative Material Co., Ltd	229.04	203.71
	Foshan Verona Borde Co., Ltd	229.04	203.71
	Jiangmen Xuri Ceramic Co., Ltd	229.04	203.71
	Foshan Yongzhuo Material Co., Ltd	229.04	203.71
	Sihui Jiefeng Material Co., Ltd	229.04	203.71
	Foshan Caidian Material Co., Ltd	229.04	203.71
Foshan Artist Ceramics Co., Ltd	Sheng Taoju Ceramics	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd	229.04	203.71
	Zhong Rong Ceramic Building Materials Co., Ltd	229.04	203.71
	Foshan Xindonglong Ceramic Co., Ltd	229.04	203.71
	Guangxi Jinmen Building Material Co., Ltd	229.04	203.71
	Fujian Lvdao Ecology Technology Co., Ltd	229.04	203.71
	Guangdong Fangxiang Ceramic Co., Ltd	229.04	203.71
	Foshan Nanhai Yuda Ceremics Co., Ltd	229.04	203.71
	Xinxing County Jin Mali Ceramics Co., Ltd	229.04	203.71
	Foshan Chancheng Lijiahua Ceramics Co., Ltd	229.04	203.71
	Foshan City Nanhai Junhong Ceramic Decoration Material Co., Ltd.	229.04	203.71
Foshan Atpalas Ceramics Co., Ltd	Foshan Yuanzhen Building Materials Co., Ltd	229.04	203.71
Foshan CTC Group Co., Ltd	Guangdong Jiajun Ceramics Co., Ltd	229.04	203.71
Foshan Disong Trading Co., Ltd	Zhaoqing Xinciyu Ceramics Co., Ltd	229.04	203.71
Foshan Dolphin Trading Co., Ltd	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Si Hui Jiefeng Decoration Materials Co., Ltd	229.04	203.71
	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
	Kaiping Tilee's Building Materials Co., Ltd	229.04	203.71
	Zhuhai Xuri Ceramics Co., Ltd	229.04	203.71
	Foshan Top Black Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Heyuan Romantic Ceramics Co., Ltd	229.04	203.71
	Guangdong Xiejin Ceramics Co., Ltd	229.04	203.71
	Liling Dolphin Ceramics Co., Ltd	229.04	203.71
	Foshan Oceano Ceramics Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Kaiping Lihang Building Materials Co., Ltd	229.04	203.71
	Hunan Tianxin Technology Co., Ltd	229.04	203.71
	Oyg Glass Spar Decoration Materials Co., Ltd	229.04	203.71
Foshan Dongpeng Ceramic Co., Ltd	Qingyuan Nafuna Ceramics Co., Ltd	229.04	203.71
	Fengcheng Dongpeng Ceramics Co., Ltd	229.04	203.71
	Lixian Xinpeng Ceramic Co., Ltd	229.04	203.71
	Foshan Donghuashengchang New Material Co., Ltd	229.04	203.71
Foshan Dongxin Economy And Trade Co., Ltd	Zhangzhou Aoli Ceramic Development Co., Ltd	229.04	203.71
Foshan Eiffel Ceramic Co., Ltd	Foshan Bubuking Decorating Techniques Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Qingyuan Baoshima Ceramics Co., Ltd	229.04	203.71
Foshan Eminent Industry Development Co., Ltd	Foshan Huanqiu Ceramics Co., Ltd	229.04	203.71
Foshan Everstone Import & Export Co., Ltd	Foshan Gani Ceramics Co., Ltd	229.04	203.71
Foshan Gani Ceramics Co., Ltd	Qingyuan Gani Ceramics Co., Ltd	229.04	203.71
Foshan Gold Medal Ceramics International Trade Co., Ltd	Guangdong Goldmedal Ceramics Co., Ltd	229.04	203.71
Foshan Griffiths Building Material Ltd	Foshan Lihua Ceramics Co., Ltd	229.04	203.71
Foshan Hudson Economics And Trade Co., Ltd	Guangdong Kito Ceramics Group Co., Ltd	229.04	203.71
	Foshan Shiwan Eagle Brand Ceramic Co., Ltd	229.04	203.71
	Guangdong Overland Ceramics Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
	Foshan Yuanmei Craft Ceramics Factory	229.04	203.71
	Foshan Nanhai Yuheng Decorative Material Co., Ltd	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd	229.04	203.71
	Guangdong Kito Trading Co., Ltd	229.04	203.71
Foshan International Trade Co., Ltd	Foshan B&W Ceramics Co., Ltd	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd	229.04	203.71
Foshan Junjing Industrial Co., Ltd	Guangdong Jialian Enterprise Ceramics Co., Ltd	229.04	203.71
	Foshan Jinhong Ceramics Co., Ltd	229.04	203.71
	Foshan Jinyi Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai Longpeng Vitrified Brick Co., Ltd	229.04	203.71
	Foshan Chancheng Oldenburg Ceramics Co., Ltd	229.04	203.71
	Fujian Nan'an Baoda Building Material Co., Ltd	229.04	203.71
	Guangdong Baiqiang Ceramics Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
	Foshan Huicheng Building Material Co., Ltd	229.04	203.71
	Foshan Jialeshi Building Material Co., Ltd	229.04	203.71
	Guangdong Jiamei Ceramics Co., Ltd	229.04	203.71
	Jiangxi Shiwan Global Ceramics Co., Ltd	229.04	203.71
	Xinxing County Jinmaili Ceramics Co., Ltd	229.04	203.71
	Foshan Lailida Building Material Co., Ltd	229.04	203.71
	Fujian Mingsheng Ceramic Development Co., Ltd	229.04	203.71
	Foshan Qiangshengda Building Material Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Guangdong Xiejin Ceramics Co., Ltd	229.04	203.71
	Qingyuan Xinjinshan Ceramics Co., Ltd	229.04	203.71
	Sihui Quanquan Ceramics Co., Ltd	229.04	203.71
	Enping Xiangda Ceramics Co., Ltd	229.04	203.71
	Foshan Xinhenglong Polishing Brick Co., Ltd	229.04	203.71
	Enping Xinjincheng Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramics Co., Ltd	229.04	203.71
	Jiangmen Xinxingwei Building Material Co., Ltd	229.04	203.71
	Jinjiang Zhongrong Ceramic Building Material Co., Ltd	229.04	203.71
Foshan Kiva Ceramics Co., Ltd	Guangdong Xinruncheng Ceramic Co., Ltd	229.04	203.71
	Foshan Nanhai Yuda Ceramic Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramic Co., Ltd	229.04	203.71
	Guangdong Kito Ceramic Trading Co., Ltd	229.04	203.71
	Zhaoqing Jincheng Ceramic Co., Ltd	229.04	203.71
	Guangdong Yongsheng Ceramic Co., Ltd	229.04	203.71
	Foshan Jialeshi Building Materials Co., Ltd	229.04	203.71
	Guangxi Yaou Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai Xinya Ceramic Co., Ltd	229.04	203.71
Foshan Leo Import and Export Trading Co., Ltd	Foshan Jingmeida Ceramics Procuct Co., Ltd	229.04	203.71
	Fujian Yuekai Building Materials Industry Co., Ltd	229.04	203.71
	Guangxi Hengxi Building Materials Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Chaoyang Rongfu Ceramics Co., Ltd	229.04	203.71
	Xianning Xianzhuanjiang Building Materials Co., Ltd	229.04	203.71
	Jiangxi Jingcheng Ceramics Co., Ltd	229.04	203.71
	Jiangxi Wifi Ceramics Co., Ltd	229.04	203.71
	Guangdong Jiajun Ceramics Co., Ltd	229.04	203.71
	Foshan Giania Ceramics Co., Ltd	229.04	203.71
Foshan Ligaote Ceramics Co., Ltd	Foshan Ligaote Ceramics Co., Ltd	229.04	203.71
Foshan Livin Ceramics Co., Ltd	Zhaoqing Jinhang Ceramics Co., Ltd	229.04	203.71
	Cenxi Lianchuang Ceramics Co., Ltd	229.04	203.71
Foshan Mainland Import and Export Co., Ltd	Fujian Nanan Baoda Building Materials Co., Ltd	229.04	203.71
	Fujian Jinjiang Baoda Ceramics Co., Ltd	229.04	203.71
	Nan'an Xiejin Building Material Commercial Firm	229.04	203.71
	Nan'an Xiejin Building Materials Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Fujian Xindezhou Ceramics Co., Ltd	229.04	203.71
Foshan Medici Building Material Co., Ltd	Chaoyang Rongfu Ceramic Tile Co., Ltd	229.04	203.71
	Jianping Jinzheng Ceramic Tile Co., Ltd	229.04	203.71
	Fujian Yuekai Building Material Co., Ltd	229.04	203.71
	Fuzhou Hengyu Ceramic Tile Co., Ltd	229.04	203.71
	Fujian Minqing Ouya Ceramic Tile Co., Ltd	229.04	203.71
	Foshan Lazio Building Material Co., Ltd	229.04	203.71
	Zhaoqing Gaoyao Guangfu Ceramic Tile Co., Ltd	229.04	203.71
Foshan Muzzi Decor And Tile Co., Ltd	Pingxiang Dacheng Ceramics Technologies Co., Ltd	229.04	203.71
Foshan Oceanland Ceramics Co., Ltd	Foshan Super Ceramics Co., Ltd	229.04	203.71
	Qingyuan Baoshima Ceramic Co., Ltd	229.04	203.71
	Xinxing Jianxing Ceramics Co., Ltd	229.04	203.71
	Enping Quansheng Ceramics Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
Foshan Paramount Import and Export Co., Ltd	Foshan Ligaote Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai District Energy Building Material Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
Foshan Porcelain Plaza Trading Co., Ltd	Foshan Ottima Ceramic Co., Ltd	229.04	203.71
	Foshan Dongpeng Ceramic Co., Ltd	229.04	203.71
	Jinjiang City Zhongrong Ceramic Building Material Co., Ltd	229.04	203.71
	Foshan Bannilu Ceramic Co., Ltd	229.04	203.71
	Foshan Yibaiwang Building Material Co., Ltd	229.04	203.71
Foshan Qualicer Industrial Co., Ltd	Guangzhou Cowin New Materials Co., Ltd	229.04	203.71
Foshan Rainbow Color Export & Import Co., Ltd	Foshan Baleno Ceramic Co., Ltd	229.04	203.71
	Foshan Ligaote Ceramic Co., Ltd	229.04	203.71
	Heshan Heqiang Art China & Dinnerware Co., Ltd	229.04	203.71
	Jiangmen Xuri Ceramic Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Foshan Jingmeida Ceramic Products Co., Ltd	229.04	203.71
Foshan Rhino Building Materials Co., Ltd	Guangdong Gold Medal Ceramics Co., Ltd	229.04	203.71
	Chaoyang Rong Fu Ceramic Co., Ltd	229.04	203.71
Foshan Romantic Ceramics Co., Ltd	Heyuan Romantic Ceramics Co., Ltd	229.04	203.71
	Pingxiang Dacheng Ceramics Technology Co., Ltd	229.04	203.71
Foshan Saiguan Import & Export Co., Ltd	Saifei (Guangdong) New Materials Co., Ltd	229.04	203.71
FoShan San Honore Imp & Exp Co., Ltd	Quanzhou Zhiran Ceramics Company Ltd	229.04	203.71
	Fujian Zunwei Ceramics Company Ltd	229.04	203.71
Foshan Sanden Enterprise Co., Ltd	Tegaote Ceramics Co., Ltd	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd	229.04	203.71
	Foshan Chengke New Material Co., Ltd	229.04	203.71
	Foshan Jingmeida Ceramics Co., Ltd	229.04	203.71
Foshan Shangking Group Co., Ltd	Guangdong Qianghui (QHTC) Ceramics Co., Ltd	229.04	203.71
Foshan Shiwan Yulong Ceramic Co., Ltd	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
Foshan Sincere Building Materials Co., Ltd	Foshan City Lihua Ceramic Co., Ltd	229.04	203.71
	Enping City Huachang Ceramic Co., Ltd	229.04	203.71
Foshan Soaraway Industrial Co., Ltd	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Foshan Tai-Decor Decoraiton Materials Co., Ltd	229.04	203.71
Foshan Sumso Construction Materials Co., Ltd	Foshan Laili Ceramics Co., Ltd	229.04	203.71
Foshan Sundare Building Materials Co., Ltd	Foshan Qingyuan Baoshima Co., Ltd	229.04	203.71
	Foshan New Henglong Polished Tiles Co., Ltd	229.04	203.71
	Foshan Nanhai Xinyiya Decoration Materials Co., Ltd	229.04	203.71
Foshan Sunvin Ceramics Co., Ltd	Sihui Jie Feng Decoration Materials Co., Ltd	229.04	203.71
Foshan Tbs Trading Co., Ltd	Foshan Jiameisheng Ceramic Co., Ltd	229.04	203.71
	Qingyuan Xinjinshan Ceramics Co., Ltd	229.04	203.71
	Zhuhai Xuri Ceramics Co., Ltd	229.04	203.71
	Foshan Elephome Ceramics Co., Ltd	229.04	203.71
	Jinjiang Zhongrong Ceramics Of Build Material Co., Ltd	229.04	203.71
	Quanzhou Yuanlong Building Materials Development Co., Ltd	229.04	203.71
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Foshan Nanhai Jinzhilan Decoration Material Co., Ltd	229.04	203.71
	Jinjiang Guoxing Ceramic Building Material Co., Ltd	229.04	203.71
	Guangdong Yongsheng Ceramics Co., Ltd	229.04	203.71
	Heyuan Romanic Ceramics Co., Ltd	229.04	203.71
	Zhaoqing Jinhang Ceramics Co., Ltd	229.04	203.71
	Foshan Yibao Ceramics Co., Ltd	229.04	203.71
	Qingyuan Ouya Ceramic Co., Ltd	229.04	203.71
	Foshan Top Black Ceramics Co., Ltd	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd	229.04	203.71
	Sihui City Xin Quan Ye Ceramics Co., Ltd	229.04	203.71
	Guangdong Hemei Ceramic Co., Ltd	229.04	203.71
	Fujian Jinjiang Lianxing Building Materials Co., Ltd	229.04	203.71
	Foshan New Yidian Ceramic Co., Ltd	229.04	203.71
Foshan Tianyao Ceramics Co., Ltd	Guangdong Sihui Kedi Ceramics Co., Ltd	229.04	203.71
Foshan Uni-Depot Porcelanico Co., Ltd	Guangdong Tianbi Ceramicsco., Ltd	229.04	203.71
Foshan United Export Co., Ltd	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Guangdong Zhongsheng Ceramics Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Guangdong Godbet Ceramics Co., Ltd	229.04	203.71
	Fujian Nan'an Baoda Building Material Co. Ltd	229.04	203.71
	Zhangzhou City Aoli Ceramic Development Co., Ltd	229.04	203.71
Foshan Viewgres Co., Ltd	Guangdong Bohua Ceramics Co., Ltd	229.04	203.71
	Shandong Tongyi Ceramics Science & Technology Co., Ltd	229.04	203.71
	Shandong Green Ceramics Co., Ltd	229.04	203.71
	Ginca Ceramics Co., Ltd	229.04	203.71
	Xiejin Ceramics Co., Ltd	229.04	203.71
	Foshan Yigao Ceramic Co., Ltd	229.04	203.71
	Enping City Huachang Ceramic Company Limited	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd	229.04	203.71
	Kaiping Kunen Building Materials Co., Ltd	229.04	203.71
Foshan Walton Building Materials Co., Ltd	Belite Ceramics (Anyang) Co., Ltd	229.04	203.71
	Lianxing Ceramics Co., Ltd	229.04	203.71
	Foshan Yibao Ceramics Co., Ltd	229.04	203.71
	Foshan Gaosheng Building Materials Co., Ltd	229.04	203.71
	Foshan Shiwan Eagle Brand Ceramic Co., Ltd	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd	229.04	203.71
Foshan Winbill Trading Company Limited	Guangdong Yonghang Advanced Materials Industrial Co., Ltd	229.04	203.71
Foshan Yinghui Industrial Co., Ltd	Heshan Heqiang Art China & Dinnerware Co., Ltd	229.04	203.71
Fujian Minmetals Cbm Co., Ltd	Fujian Minqing Ouya Ceramic Tile Co., Ltd	229.04	203.71
	Xinxing Jianxing Ceramics Co., Ltd	229.04	203.71
	Tianjin Belite Ceramics Co., Ltd. Foshan Branch	229.04	203.71
Fujian Minqing Hao Ye Ceramics Co., Ltd	Fujian Minqing Hao Ye Ceramics Co., Ltd	229.04	203.71
Fuzhou Shuangxin Ceramic Co., Ltd	Fujian Xindezhou Ceramic Co., Ltd	229.04	203.71
	Fujian Nan'an Baoda Building Material Co., Ltd	229.04	203.71
	Fujian Zhuangyi Building Material Co., Ltd	229.04	203.71
	Zhangzhou Aoli Ceramic Development Co., Ltd	229.04	203.71
Gearex Corporation	Kaiping Tilee's Building Materials Co., Ltd	229.04	203.71
	Foshan Oceano Ceramics Co., Ltd	229.04	203.71
	Jingdezhen Oceano Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Foshan Kioro Trade Co., Ltd	229.04	203.71
	Zhaoqing Xinhe Ceramics Co., Ltd	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd	229.04	203.71
	Foshan Bolier Building Materials Co., Ltd	229.04	203.71
	Guandong Kasor Ceramics Technology Co., Ltd	229.04	203.71
	Max Glory International Ltd	229.04	203.71
	Rongfu Ceramics Co., Ltd	229.04	203.71
	Tegaote Ceramics Co., Ltd	229.04	203.71
	Elegance International Inc	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd	229.04	203.71
	Foshan Top-Black Ceramic Co., Ltd	229.04	203.71
	Kim Hin Ceramics (Shanghai) Co., Ltd	229.04	203.71
	Jiangxi Province Shiwan Huanqiu Ceramics Co., Ltd	229.04	203.71
	Foshan Huanqiu Ceramics Co., Ltd	229.04	203.71
	Foshan Leo Import And Export Trading Co., Ltd	229.04	203.71
	Gearex Technical Ceramic Kun Shan Co., Ltd	229.04	203.71
Global Trading Co., Ltd	Guangdong Kito Ceramic Trading Co., Ltd	229.04	203.71
Guangdong Bode Fine Building Material Co	Guangdong Bode Fine Building Material Co	229.04	203.71
Guangdong Jiajun Ceramics Co., Ltd	Guangdong Jiajun Ceramics Co., Ltd	229.04	203.71
Guangdong Jiamei Ceramics Co., Ltd	Guangdong Jiamei Ceramics Co., Ltd	229.04	203.71
Guangdong Jinying Import & Export Co., Ltd	Guangdong Sheng Hui Ceramics Co., Ltd	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd	229.04	203.71
	Jiangxi Shiwan Huanqiu Ceramics Co., Ltd	229.04	203.71
Guangdong Kito Ceramics Group Co., Ltd	Jingdezhen Kito Ceramic Co., Ltd	229.04	203.71
	Foshan Sanshui Kito Ceramic Co., Ltd	229.04	203.71
	Guangdong Gold Medal Ceramics Co., Ltd	229.04	203.71
Guangdong Monalisa Trading Co., Ltd	Monalisa Group Co., Ltd	229.04	203.71
Guangdong Overland Ceramics Co., Ltd	Guangdong Overland Ceramics Co., Ltd	229.04	203.71
Guangdong Winto Ceramics Co., Ltd	Guangdong Homeway Ceramics Co., Ltd	229.04	203.71
Hangzhou Nabel China Co., Ltd	Deqing Nabel Co., Ltd	229.04	203.71
Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd	Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd	229.04	203.71
Hoe Hin Building Materials Co., Limited	Foshan liangjian ceramics Co., Limited	229.04	203.71
	Guangdong Bode Fine Building Material	229.04	203.71
	Kaipingkunenbuilding Materials Co., Ltd	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd	229.04	203.71
	Kaiping Tilee's Building Materials Co	229.04	203.71
	Foshan Shanghui decoration material Co., Ltd	229.04	203.71
	Tegaote Ceramics Co., Ltd	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Guangdong Simpire Building Material Co., Ltd	229.04	203.71
	Foshan Newyidian Ceramic Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co; Ltd	229.04	203.71
Hong Kong Kito Cerarnic Co., Limited	Guangdong Kito Ceramics Group Co., Ltd	229.04	203.71
	Jingdezhen Kito Ceramic Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Foshan Sanshui Kito Ceramic Co., Ltd	229.04	203.71
	Guangdong Gold Medal Ceramics Co., Ltd	229.04	203.71
JDD Industry Co., Limited	Guangdong KITO Ceramics Group Co., Ltd	229.04	203.71
	Guangdong KITO Trading Co., Ltd	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd	229.04	203.71
	White Rabbit Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd	229.04	203.71
	Enping Jingye Ceramic Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Zhaoqing Guoshi Enterprise Mingjia Ceramics Co., Ltd	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd	229.04	203.71
	Guangdong Overland Ceramics Co., Ltd	229.04	203.71
	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd	229.04	203.71
	Dongguan City Wonderful Decoration Materials Co., Ltd	229.04	203.71
	Guangdong Jiamei Ceramics Co., Ltd	229.04	203.71
	Jiangxi Hemei Ceramics Co., Ltd	229.04	203.71
	GuangDong Simpire Building Materials Co., Ltd	229.04	203.71
	Fujian Chaosheng Ceramics Co., Ltd	229.04	203.71
	Guangdong Tianbi Ceramics Co., Ltd	229.04	203.71
Jiangxi Wifi Ceramics Co., Ltd	Jiangxi Sun Ceramics Co., Ltd	229.04	203.71
Jingdezhen Kito Ceramic Co., Ltd	Jingdezhen Kito Ceramic Co., Ltd	229.04	203.71
	Guangdong Gold Medal Ceramic Co., Ltd	229.04	203.71
Jingdezhen Seed Ceramic Co., Ltd	Jingdezhen Seed Ceramic Co., Ltd	229.04	203.71
Kaiping City China Trade Import & Export Co., Ltd	Kaiping Tilee's Building Materials Co., Ltd	229.04	203.71
Kertiles (Foshan) Inc	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Bite Mosaic Co., Ltd	229.04	203.71
	Foshan Nanhai Suode Mosaic Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Foshan Jialeshi Building Co., Ltd	229.04	203.71
	Foshan Lailida Ceramics Co., Ltd	229.04	203.71
	Love Song Mosaic Co., Ltd	229.04	203.71
	Linyi Aoda Ceramic Co., LTD	229.04	203.71
	Toptiles International Shangdong Limited	229.04	203.71
	Linyi Lianshun Cermaics Co., Ltd	229.04	203.71
	Foshan Nanhai Yuda Ceramics Co., Ltd	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd	229.04	203.71
	Guangdong Yongsheng Ceramics Co., Ltd	229.04	203.71
	Foshan Viewgres Co., Ltd	229.04	203.71
	Shandong Lion king Ceramics Science & Technology Company., Ltd.	229.04	203.71
	Quanzhou Minmetals Huayi Trading Co., Ltd	229.04	203.71
	Heyuan Dongyuan Eagle Brand Ceramics Co., Ltd	229.04	203.71
	Foshan Liangjian Ceramics Co., Ltd	229.04	203.71
	Foshan Bull Ceramics Co., Ltd	229.04	203.71
	Foshan Huiya Ceramics Co., Ltd	229.04	203.71
	Foshan Jinmali Ceramics Co., Ltd	229.04	203.71
	Shandong Qidu Ceramics Co., Ltd	229.04	203.71
	Shandong Jiabao Ceramics Co., Ltd	229.04	203.71
	Foshan Huan Qiu Ceramics	229.04	203.71
	Jiangmen Xuri Ceramics Co., Ltd	229.04	203.71
Kim Hin Ceramics (Shanghai) Co., Ltd	KIM HIN CERAMICS (SHANGHAI) CO., LTD	229.04	203.71
McMarmocer Ceramics Limited	Guangdong Overland Ceramics Co., Ltd	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd	229.04	203.71
	Guangdong Owenlai Ceramics Co., Ltd	229.04	203.71
	Guangdong High Microcrystal Technology Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramics Co., Ltd	229.04	203.71
Megacera Incorporation Limited	Foshan Giance Trading Co., Ltd	229.04	203.71
	Foshan Accuwealth Trading Co., Ltd	229.04	203.71
Modern Home Ceramics Co., Limited	Zibo Fengxia Ceramics Co., Ltd	229.04	203.71
	Zibo Jin Yi Ceramics Co., Ltd	229.04	203.71
Nanning Ying Jin Ling Trade Co., Ltd	Saifei (Guangdong) New Materials Co., Ltd	229.04	203.71
	Guangdong Fuqiang Ceramic Co., Ltd	229.04	203.71
	Foshan Rongyi Construction Materials Co., Ltd	229.04	203.71
	Foshan Cizun Ceramics Co., Ltd	229.04	203.71
	Guangdong Xie Jin Ceramics Co., Ltd	229.04	203.71
New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong.	Southern Building Materials and Sanitary Co., Ltd of Qingyuan City.	229.04	203.71
	Guangdong Luxury Micro-Crystal Stone Technology Co., Ltd	229.04	203.71
	Jiangxi Fuligao Ceramics Co., Ltd	229.04	203.71
	Hubei Baojiali Ceramics Co., Ltd	229.04	203.71
Porschelain Building Materials Co., Ltd	Guangdong Gold Medal Ceramics Co., Ltd	229.04	203.71
Qingdao Oriental Bright Trading Co., Ltd	Zibo Fengxia Ceramics Co., Ltd	229.04	203.71
	Zibo Jin Yi Ceramics Co., Ltd	229.04	203.71
Quanzhou Lans Ceramic Products Co., Ltd	Fujian Tilechina Industrial Co., Ltd	229.04	203.71
	Quanzhou Yuanlong Building Materials Development Co., Ltd	229.04	203.71
	Fujian Likai Ceramic Co., Ltd	229.04	203.71
	Fujian Jinjiang Jincheng Ceramics Co., Ltd	229.04	203.71
Rabbit Song Building Material Co., Ltd	White Rabbit Ceramics Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shandong Kingstone Ceramics Co., Ltd	Shandong Lianzhong Ceramics Co., Ltd	229.04	203.71
	Shandong Shunwei Ceramics Co., Ltd	229.04	203.71
	Zibo Xinyijin Ceramic Technology Co., Ltd	229.04	203.71
Shanghai Gaudimila Import & Exporter Co., Ltd	Shanghai Gaudimila Construction Materials Co., Ltd	229.04	203.71
Sinorock (Jiangxi) Co., Ltd	Fujian Huatai Group Co., Ltd	229.04	203.71
Stota Ceramics Co., Ltd	Xingning Toscana Ceramics Co., Ltd	229.04	203.71
	Foshan Xinyidian Colored Ceramics Co., Ltd	229.04	203.71
	Foshan Sanshui Kaililai Craft Products Co., Ltd	229.04	203.71
	Gaoyao Tegaote Chinaware Co., Ltd	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Foshan Yitao Building Materials Co., Ltd	229.04	203.71
	Foshan Hangxin Building Materials Co., Ltd	229.04	203.71
	Foshan Saize Decorative Materials Co., Ltd	229.04	203.71
	Foshan Nanhai Suode Glass Technics Co., Ltd	229.04	203.71
	Jiangmen Huatao Ceramics Co., Ltd	229.04	203.71
Temgoo International Trading Limited	Xinxing Jianxing Ceramics Co., Ltd	229.04	203.71
	Xinxingxian Yinghao Ceramics Co., Ltd	229.04	203.71
	Zhaoqingshi Gaoyaoqu Xingda Ceramics Co., Ltd	229.04	203.71
	Foshan Skyplanet Import & Export Co., Ltd	229.04	203.71
The Tile Shop (Beijing) Trading Company, Ltd	Belite Ceramics (Anyang) Co., Ltd	229.04	203.71
	Foshan Xindonglong Ceramic Co., Ltd	229.04	203.71
	Quality Tile Co., Ltd	229.04	203.71
Super Building Material Co., Ltd. (Xiamen)	Xiamen Aidi Building Materials Industry Co., Ltd	229.04	203.71
	Zhangzhou Sage Building Material Technology Co., Ltd	229.04	203.71
	Zhangzhou Huitai Building Materials Technology Co., Ltd	229.04	203.71
	Quanzhou Zhengyifang Ceramic Technology Co., Ltd	229.04	203.71
	Foshan Nanhai Meitian Glass Technology Co., Ltd	229.04	203.71
	Yunfu Jiapeng Stone Co., Ltd	229.04	203.71
	Foshan Debang Building Material Co., Ltd	229.04	203.71
	Foshan Longjing Decoration Materials Co., Ltd	229.04	203.71
Yekalon Industry Inc	Fujian Minqing Tenglong Ceramics Co., Ltd	229.04	203.71
	Romantic Ceramics Co., Ltd	229.04	203.71
	Foshan Shiwan Eagle Brand Ceraminc Ltd	229.04	203.71
	Fujian Hongxing Ceramic Development Co., Ltd	229.04	203.71
	Fujian Zhangzhou Ruicheng Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai District Traven Development Decorative Tiles Co., Ltd.	229.04	203.71
	Foshan Czun Ceramics Co., Ltd	229.04	203.71
	Foshan Qiangguan Building Materials Co., Ltd	229.04	203.71
	Foshan Jiana Ceramics Co., Ltd	229.04	203.71
	Foshan GIANIA Ceramics	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd	229.04	203.71
	Foshan Tai-Decor Decoration Materials Co., Ltd	229.04	203.71
	Fujian Minqing Jintao Ceramic Co., Ltd	229.04	203.71
	Foshan Lihua Ceramics Co., Ltd	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd	229.04	203.71
	Foshan Nanhai Shengguan Building Materials Co., Ltd	229.04	203.71
	Jinjiang Zhongrong Ceramic Building Material Co., Ltd	229.04	203.71
	Foshan Yangguang Ceramics Co., Ltd	229.04	203.71
	Xindonglong Ceramices Co., Ltd	229.04	203.71
	Jinshajiang Ceramics Co., Ltd	229.04	203.71
	Enping Yijian Ceramics Co., Ltd	229.04	203.71
	Jiangmen Huatao Ceramic Co., Ltd	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd	229.04	203.71
	Fujian Huatai Group Co., Ltd	229.04	203.71
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd	229.04	203.71
	Jiangxi Jingcheng Ceramics Co., Ltd	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd	229.04	203.71
	Foshan Top-Black Ceramic Co., Ltd	229.04	203.71
	Zhaoqing Xinhe Ceramics Co., Ltd	229.04	203.71
Yingfei International Limited	Foshan Shuangou Ceramics Co., Ltd	229.04	203.71
Foshan Yinghui Industrial Co., Ltd	Heshan Heqiang Art China & Dinnerware Co., Ltd	229.04	203.71
Zhuhai Xuri Star Trading Co., Ltd	Zhuhai City Doumen District Xuri Pottery and Porcelain Company Limited.	229.04	203.71
Zi Bo Teng Chen International Trade Co., Ltd	Zibo Jinhao Ceramics Co., Ltd	229.04	203.71
	Shandong Yuan Feng Ceramics Co., Ltd	229.04	203.71
Zibo Belin Trading Co., Ltd	Shandong Lion King Ceramic Technology & Science Co., Ltd	229.04	203.71
	Shandong Yuanfeng Ceramic Co., Ltd	229.04	203.71
	Shandong Shunwei Ceramic Co., Ltd	229.04	203.71
Zibo Jiaxi Group Co., Ltd	Shandong Lionking Ceramics Co., Ltd	229.04	203.71
	Shandong Gengci Group Co., Ltd	229.04	203.71
	Shandong Lianzhong Ceramics Co., Ltd	229.04	203.71
	Shandong Greenkey Ceramics Co., Ltd	229.04	203.71
	Shandong Yuxi Ceramics Co., Ltd	229.04	203.71
	Zibo Jinhao Ceramics Co., Ltd	229.04	203.71
	Shandong Shunyuan Ceramics Co., Ltd	229.04	203.71
	Shandong Yuma Ceramics Co., Ltd	229.04	203.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Zibo Lipin Ceramic Co., Ltd	Shandong Shunwei Ceramics Co., Ltd	229.04	203.71
	Zibo New Jinyi Ceramic And Technoogy Co., Ltd	229.04	203.71
	Zibo Ginca Ceramics Co., Ltd	229.04	203.71
	Linyi Aoda Ceramics Co., Ltd	229.04	203.71
	Shandong Shunwei Ceramics Co., Ltd	229.04	203.71
	Shandong Yuanfeng Ceramics Co., Ltd	229.04	203.71
	Shandong Shiziwang Ceramics Technology Co., Ltd	229.04	203.71
	Shandong Zibo Luzhong Construction Materials Plant	229.04	203.71
	Shandong Mingyu Ceramics Technology Co., Ltd	229.04	203.71
	Zibo Xinjinyi Ceramics Technology Co., Ltd	229.04	203.71
	Shandong Guorun Ceramics Co., Ltd	229.04	203.71
	Zibo Jinyi Ceramics Co., Ltd	229.04	203.71
	Anyang Fuerjia Ceramics Technology Co., Ltd	229.04	203.71
	Shandong Gengci Group Co., Ltd	229.04	203.71
	Zhangzhou Aoli Ceramics Development Co., Ltd	229.04	203.71
	Nan'an Kuoda Construction Materials Co., Ltd	229.04	203.71
	Foshan Modern Mingshi Ceramics Co., Ltd	229.04	203.71
China-Wide Entity [16]		356.02	330.69

[16] Including: Belite Ceramics (Anyang) Co., Ltd., Beilitai (Tianjin) Tile Co., Ltd., Tianjin Honghui Creative Technology Co., Ltd., Foshan Sanfi Import & Export Co., Ltd., Foshan Foson Tiles Co., Ltd., and Foshan Ibel Import and Export Ltd.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of ceramic tile from China, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after November 14, 2019, the date of publication of the *Preliminary Determination* notice in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to require a cash deposit [17] equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of China exporters/producers of subject merchandise that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-China exporters of the subject merchandise which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the China exporter/producer combination that supplied that non-China exporter. These suspension of liquidation instructions will remain in effect until further notice.

We normally adjust AD cash deposit rates by the amount of export subsidies, where appropriate. In the companion countervailing duty (CVD) investigation we found that an export subsidy adjustment of 25.33 percent to the cash deposit rate is warranted, because this is the export subsidy rate included in the CVD all-others rate to which the separate-rate companies are subject. As part of our determination in this final determination to apply AFA to the China-wide entity, Commerce has adjusted the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, *i.e.,* 25.33 percent.[18]

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. As Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ceramic tile from China, or sales (or the likelihood of sales) for importation, of ceramic tile from China. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Importers

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c). Note that Commerce has temporarily modified certain of its requirements for serving documents

[17] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[18] *See, e.g., Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination,* 80 FR 4250 (January 27, 2015), and accompanying IDM at 35.

containing business proprietary information, until May 19, 2020, unless extended.[19]

Dated: March 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile ''slabs'' or ''panels'' (tiles that are larger than 1 meter^2 (11 ft.^{2})).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

[19] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

Appendix II—Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. China-Wide Rate
VI. Adjustment to Cash Deposit Rate for Export Subsidies
VII. Critical Circumstances
VIII. Discussion of the Issues
Comment 1: Separate Rate Status of Belite
Comment 2: Separate Rate Status of Foshan Sanfi
Comment 3: Calculation of the Separate Rate
Comment 4: Other Issues
IX. Recommendation

[FR Doc. 2020–07188 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Navneet Education Ltd. (Navneet) made sales of certain lined paper products (CLPP) from India below normal value (NV), and SAB International (SAB) did not, during the period of review (POR) September 1, 2017 through August 31, 2018.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt (for Navneet) and Cindy Robinson (for SAB), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on November 14, 2019.[1] On February 28, 2020, Commerce extended the deadline for these final results until May 12, 2020.[2] For a complete description of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The merchandise covered by the order is certain lined paper products from India. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily found that Lodha Offset Limited, Pioneer Stationery Private Limited, and Marisa International had no shipments of subject merchandise during the POR. Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding these companies, nor has any party submitted record evidence which would call our preliminary determination of no shipments into question. Therefore, for the final results, we continue to find that these three companies had no shipments of subject merchandise during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by these three companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties are addressed in the Issues and Decision Memorandum. The list of issues that interested parties raised, and to which we responded in the Issues and Decision Memorandum, are identified in the appendix to this notice. 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).

[1] *See Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2017–2018,* 84 FR 61887 (November 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Lined Paper Products from India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: 2017–2018,'' dated February 28, 2020.

[3] *See* Memorandum, ''Certain Lined Paper Products from India: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit (CRU), Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain revisions to the preliminary margin calculations for Navneet and SAB.[5] For Navneet, we used Navneet's comparison market sales to calculate NV rather than relying on constructed value.[6] For SAB, we (1) revised SAB's rent payment to an affiliated party; (2) recalculated SAB's reported scrap offset, and (3) reversed the incorrect conversion for credit expenses from positive to negative.[7]

Final Results of the Review

We have determined the following weighted-average dumping margins for the exporters or producers listed below for the POR:[8]

Producer/exporter	Weighted-average dumping margin (percent)
Cellpage Ventures Private Limited	1.93
Goldenpalm Manufacturers PVT Limited	1.93
Kokuyo Riddhi Paper Products Pvt. Ltd	1.93
Lotus Global Private Limited	1.93
Magic International Pvt. Ltd	1.93
Navneet Education Ltd	1.93
PP Bafna Ventures Private Limited	1.93
SAB International	0.00
SGM Paper Products	1.93
Super Impex	1.93

[5] *See* Issues and Decision Memorandum.

[6] *See* Memorandum, ''Certain Lined Paper Products from India (2017–2018): Sales and Cost of Production Calculation Memorandum for the Final Results of Navneet Education Limited (Navneet),'' dated concurrently with this notice.

[7] *See* Memorandum, ''Certain Lined Paper Products from India (2017–2018): Sales and Cost of Production Calculation Memorandum for the Final Results of SAB International (SAB),'' dated concurrently with this notice.

[8] For the companies that were not selected for individual review, we assigned a rate based on the rates for the respondents that were selected for individual review, excluding any rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).

Disclosure

We intend to disclose the calculations performed in connection with these final results within five days after publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For any individually-examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales, in accordance with 19 CFR 351.212(b)(1). Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- or customer-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. As indicated above, for the companies that had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any existing entries of merchandise produced by these companies, but exported by other parties, at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (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 recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the less-than-fair-value investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 this notice in accordance with sections

[9] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products form the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949, 56952 (September 28, 2006).

751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Scope of the Order
V. Changes Made Since the *Preliminary Results*
VI. Analysis of Comments
Comments Concerning Navneet Education Ltd. (Navneet)
Comment 1: Whether Commerce Should Apply Total or Partial Adverse Facts Available (AFA) to Navneet
Comment 2: Whether Commerce Should Adjust Navneet's General and Administrative Expenses
Comment 3: Whether Commerce Should Adjust the SAS Programs to Use Navneet's Comparison Market Sales for Normal Value (NV) Instead of Constructed Value (CV)
Comments Concerning SAB International (SAB)
Comment 4: Whether Commerce Should Apply Total or Partial AFA to SAB's Classification of Certain Sales as Canadian Sales Rather than U.S. Sales
Comment 5: Whether Commerce Should Adjust SAB's Calculations of Rent Paid to an Affiliated Party
Comment 6: Whether Commerce Should Recalculate SAB's Reported Scrap Offset
Comment 7: Whether Commerce Should Adjust SAB's Treatment of Certain Costs
Comment 8: Whether Commerce Incorrectly Converted Negative Credit Expenses into Positive Credit Expenses
VII. Recommendation

[FR Doc. 2020–07312 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853]

Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) determines that Jungbunzlauer Canada, Inc. (JBL Canada), a producer/exporter of citric acid and certain citrate salts (citric acid) from Canada, did not sell subject merchandise at prices below normal value (NV) during the period of review (POR) May 1, 2018 through April 30, 2019.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Dowling or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1646 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2020, Commerce published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on citric acid from Canada.[1] This review covers one producer/exporter of the subject merchandise, JBL Canada. We invited parties to comment on the *Preliminary Results.*[2] No interested party submitted comments.[3] On February 11, 2020, JBL Canada submitted a request to participate in a hearing in the event that Commerce held a hearing.[4] No other party submitted a request for a hearing in the instant review; therefore, Commerce did not hold a hearing. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order* is citric acid from Canada.[5] The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2918.14.0000, 2918.15.1000, 2918.15.5000, and 3824.90.9290. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.[6]

Changes Since the Preliminary Results

As no parties submitted comments on the margin calculation methodology used in the *Preliminary Results,* Commerce made no adjustments to that methodology in the final results of this review.

Final Results of the Review

As a result of this review, Commerce determines that a weighted-average dumping margin of 0.00 percent exists for entries of subject merchandise that were produced and/or exported by JBL Canada during the POR.

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Because we calculated a zero margin for JBL Canada in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue the appropriate assessment instructions to CBP 41 days after the date of publication of these final results of review, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of citric acid from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for JBL Canada will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers

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[1] *See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 3611 (January 22, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *Id.*

[3] JBL Canada submitted a case brief stating: ''Respondent JBL has no comments on Commerce's *Preliminary Results.* JBL reserves the right to submit a rebuttal brief in response to any issue(s) which may be raised by Petitioners in their case brief.'' *See* JBL Canada's Letter, ''Tenth Administrative Review of the Antidumping Order on Citric Acid and Certain Citrate Sales from Canada—Case Brief on Behalf of JBL Canada,'' dated February 11, 2020.

[4] *See* JBL Canada's Letter, ''Tenth Administrative Review of the Antidumping Order on Citric Acid and Certain Citrate Sales from Canada—JBL Canada's Comments regarding Hearing,'' dated February 11, 2020.

[5] *See Citric Acid and Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009) (*Order*).

[6] For a complete description of the scope of the *Order, see* Preliminary Decision Memorandum at 3.

or exporters will continue to be 23.21 percent, the all-others rate established in the *Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order (APO)

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

Notification to Interested Parties

We intend to issue and publish these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: April 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07293 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Less-Than-Fair-Value Investigation, and Notice of Amended Final Determination and Amended Antidumping Duty Order

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

SUMMARY: On March 24, 2020, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (Commerce's) second remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of welded line pipe (WLP) from the Republic of Korea (Korea). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's amended final determination in the LTFV investigation of WLP from Korea and that Commerce is amending the amended final determination and antidumping duty order with respect to the weighted-average dumping margin for Hyundai HYSCO Co. Ltd. (Hyundai HYSCO).

DATES: Applicable April 3, 2020.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Joshua Tucker, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 and (202) 482–2044, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2015, Commerce published its *Final Determination* in the LTFV investigation of WLP from Korea.[1] Subsequently, on November 10, 2015, Commerce published its *Amended Final Determination.*[2] On December 1, 2015, Commerce published the *Order* resulting from the investigation.[3] As reflected in Commerce's *Amended Final Determination* and *Order,* Commerce calculated weighted-average dumping margins of 6.23 percent for Hyundai HYSCO, 2.53 percent for SeAH Steel Corporation (SeAH), the other mandatory respondent in the investigation, and 4.38 percent for all others.[4]

Hyundai HYSCO, SeAH, and the petitioners[5] appealed Commerce's *Final Determination,* as amended by the *Amended Final Determination,* and resulting *Order* to the CIT. On January 8, 2019, the CIT remanded for Commerce to explain or reconsider its decision to include certain ''local sales'' in Hyundai HYSCO's home market sales database.[6] Separately, the CIT held that Commerce's rejection of Maverick's September 8, 2015 supplemental case brief constituted an abuse of discretion, and remanded for Commerce to review and determine which portions should be retained on the record.[7] On May 2, 2019, Commerce issued the *First Remand Results,* in which it determined that Hyundai HYSCO knew, or should have known, that certain ''local sales'' included in its home market database would be exported without further processing in Korea.[8] Accordingly, Commerce reclassified these sales and excluded them from the calculation of normal value (NV), which resulted in a recalculated weighted-average dumping margin of 6.22 percent for Hyundai HYSCO.[9] In addition, Commerce reopened the administrative record to permit Maverick to place its September 8, 2015 supplemental case brief on the record in its entirety, and to permit other interested parties to submit rebuttal briefs in response to Maverick's supplemental case brief. Consistent with its practice to determine home market viability early in a proceeding, Commerce did not reconsider Hyundai HYSCO's home market viability.[10]

The CIT, however, subsequently held that, by refusing to reassess the viability of HYSCO's home market, ''Commerce failed to comply with its statutory and regulatory mandate to ensure the sufficiency of the home market as a basis for normal value.''[11] On that basis, it remanded to Commerce to further explain or reconsider Hyundai HYSCO's home market viability.[12]

On January 14, 2020, Commerce issued the *Second Remand Results* in accordance with the CIT's order.[13] On remand, Commerce provided further explanation regarding Hyundai HYSCO's home market viability. Specifically, Commerce explained that Hyundai HYSCO's home market sales quantity was sufficient to permit Commerce to make a proper comparison

[1] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 61366 (October 13, 2015) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Welded Line Pipe from the Republic of Korea: Amended Final Determination of Sales at Less Than Fair Value,* 80 FR 69637 (November 10, 2015) (*Amended Final Determination*).

[3] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015) (*Order*).

[4] *See Amended Final Determination,* 80 FR at 69638; *see also Order,* 80 FR at 75057.

[5] The petitioners are: Stupp Corporation, a division of Stupp Bros., Inc., TMK IPSCO, Welspun Tubular LLC USA, and Maverick Tube Corporation (Maverick).

[6] *See Stupp Corporation et al.* v. *United States,* 359 F. Supp. 3d 1293, 1309–1312 (CIT 2019).

[7] *Id.,* 359 F. Supp. 3d. at 1311–12.

[8] *See* Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 15–00334, dated May 2, 2019 (*First Remand Results*).

[9] *Id.* at 13.

[10] *Id.*

[11] *See Stupp Corporation et al.* v. *United States,* 413 F. Supp. 3d 1326, 1332 (CIT 2019).

[12] *Id.,* 413 F. Supp. 3d at 1333.

[13] *See* Final Results of Redetermination Pursuant to Second Court Remand, Consol. Court No. 15–00334 (January 14, 2020) (*Second Remand Results*).

between export price and NV, consistent with its statutory and regulatory mandates. On March 24, 2020, the CIT sustained Commerce's *Second Remand Results.*[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades,*[16] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[17] The CIT's March 24 2020 judgment constitutes a final decision of that court that is not in harmony with Commerce's *Final Determination, Amended Final Determination,* and *Order.* Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Determination and Amended Order

Because there is now a final court decision, Commerce is amending its *Amended Final Determination* and *Order* with respect to the weighted-average dumping margin for Hyundai HYSCO.[18] The revised weighted-average dumping margin is as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Hyundai HYSCO Co., Ltd	6.22

Cash Deposit Requirements

Because there have been subsequent administrative reviews for Hyundai Steel Company (Hyundai Steel), the successor company to Hyundai HYSCO,[19] the cash deposit rate for Hyundai Steel will remain the rate established in the most recently-completed administrative review (*i.e.,* 29.89 percent).[20]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), and 777(i)(1) of the Act.

Dated: April 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07295 Filed 4–6–20; 8:45 am]

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[14] *See Stupp Corporation et al.* v. *United States,* Consol. Court No. 15–00334, Slip Op. 20–38, dated March 24, 2020.

[15] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[16] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[17] *See* sections 516A(c) and (e) of the Act.

[18] The change to Hyundai HYSCO's margin did not affect the calculation of the all-others rate. *See First Remand Results* at 13.

[19] As discussed in the *Final Determination,* and accompanying IDM at 1, Hyundai HYSCO merged with Hyundai Steel subsequent to the period of investigation and Hyundai HYSCO no longer exists.

[20] See *Welded Line Pipe From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative* Review; 2016–2017, 84 FR 35371, 35372 (July 23, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Sugar From Mexico: Final Results of the Expedited First Sunset Review of the Agreement Suspending the Antidumping Duty Investigation

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that termination of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Agreement) and the suspended antidumping duty (AD) investigation would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice. The magnitude of the dumping margin likely to prevail is indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Bilateral Agreements, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2019, Commerce published the notice of initiation of the first sunset review of the agreement suspending the antidumping investigation on sugar from Mexico, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[1] We received notice of intent to participate in the review from the following parties, both domestic interested parties: Imperial Sugar Company and the American Sugar Coalition (''ASC'').[2] Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We rejected untimely submissions filed by Sweetener Users Association (SUA) on January 21, 2020 and January 23, 2020.[4] We received no substantive responses from any other interested parties, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the Agreement and suspended investigation.[5]

Scope of the Agreement

The merchandise subject to the Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C12H22O11; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) for sucrose is 1S/C12H22O11/c13-l-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17) 5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChl Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical

[1] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 58687 (November 1, 2019); *Initiation of Five-Year (Sunset) Review; Correction,* 84 FR 66153 (December 3, 2019).

[2] *See* Letter, ''Sugar from Mexico: Notice of Intent to Participate'', dated December 18, 2019; Letter, ''Sugar from Mexico, Case Nos. C–201–846 and A–201–845 (Five-Year Sunset Reviews): Notice of Intent to Participate'', dated December 18, 2019.

[3] *See* Letter, American Sugar Coalition, ''Sugar from Mexico: Substantive Response to Notice of Initiation of Five-Year (Sunset) Reviews of the Antidumping and Countervailing Duty Suspension Agreements,'' dated January 2, 2020; Letter, ''Sugar from Mexico: Substantive Response of the Imperial Sugar Company to Commerce's Notice of Initiation of Five-Year (''Sunset'') Reviews'', dated January 2, 2020.

[4] *See* Letter to Wilbur Ross, Secretary of Commerce, from Sweetener Users Association. re: ''Sugar from Mexico'' (January 21, 2020); Letter to Wilbur Ross, Secretary of Commerce, from Sweetener Users Association, re: ''Sugar from Mexico'' (January 23, 2020); Letter, ''Rejection on January 21 and January 23 Filings'', dated February 5, 2020.

[5] *See* Letter, ''Sunset Reviews Initiated on December 2, 2019'', dated January 22, 2020.

Abstracts Service (CAS) Number of sucrose is 57–50–1.

Sugar includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, de-sugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement. Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000.

The scope of the Agreement excludes sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture, sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico, inedible molasses (other than inedible desugaring molasses noted above), beverages, candy, certain specialty sugars, and processed food products that contain sugar (*e.g.,* cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: Caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.[6]

Analysis of Comments Received

All issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of the termination of the Agreement and suspended investigation, and the magnitude of the margins likely to prevail, are addressed in the accompanying Issues and Decision Memorandum.[7] 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 *http://access.trade.gov* and 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/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that termination of the Agreement and suspended antidumping investigation on sugar from Mexico is likely to lead to the continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 42.14.[8]

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 31, 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 Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely To Prevail
VII. Final Results of Reviews
VIII. Recommendation

[FR Doc. 2020–07199 Filed 4–6–20; 8:45 am]

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[6] *See Sugar from Mexico: Suspension of Antidumping Investigation,* 79 FR 78039 (December 29, 2014).

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Review of the Agreement Suspending the Antidumping Investigation on Sugar from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *See Sugar from Mexico: Final Determination of Sales at Less than Fair Value,* 80 FR 57341 (September 23, 2015).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008]

Calcium Hypochlorite From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

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

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty order on calcium hypochlorite from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2015, Commerce published its antidumping duty order on calcium hypochlorite from China.[1] On December 2, 2019, Commerce published the notice of initiation of the five-year sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 17, 2019, Commerce received a notice of intent to participate in this review from Innovative Water Care, LLC dba Sigura (IWC) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] IWC claimed interested party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States. On January 2, 2020, IWC provided a complete substantive response for this review within the 30-day deadline specified in

[1] *See Calcium Hypochlorite from the People's Republic of China: Antidumping Duty Order,* 80 FR 5085 (January 30, 2015) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019) (*Notice of Initiation*).

[3] *See* IWC's Letter, ''Notice of Intent to Participate,'' dated December 17, 2019.

19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties, nor was a hearing requested. On December 23, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The product covered by this order is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation Ca(OCl)2, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, Ca(OCl)2.CaCl2.Ca(OH)2.2H2O or hemibasic calcium hypochlorite with the chemical formula of 2Ca(OCl)2.Ca(OH)2 or Ca(OCl)2.0.5Ca(OH)2. Calcium hypochlorite has a Chemical Abstract Service (CAS) registry number of 7778–54–3, and a U.S. Environmental Protection Agency (EPA) Pesticide Code (PC) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (IMDG) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this review, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the order were revoked, are addressed in the accompanying Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. 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 *http://access.trade.gov,* and 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/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on calcium hypochlorite from China would likely lead to continuation or recurrence of dumping and that the magnitude of the margins is up to 210.52 percent.[6]

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[7]

Dated: March 31, 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. History of the Order
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2020–07298 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–109]

Ceramic Tile From the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of ceramic tile from the People's Republic of China (China).

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, Moses Song, or John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813, (202) 482–7885, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2019, Commerce published the *Preliminary Determination* of this investigation.[1]

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[4] *See* IWC's Letter, ''Substantive Response to Notice of Initiation,'' dated January 2, 2020.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 2, 2019,'' dated December 23, 2019.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Calcium Hypochlorite from the People's Republic of China,'' dated concurrently with this notice.

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[1] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty*

The petitioner is The Coalition for Fair Trade in Ceramic Tile. The mandatory respondents in this investigation are Temgoo International Trading Limited (Temgoo) and Foshan Sanfi Import & Export Co., Ltd. (Foshan Sanfi). In the *Preliminary Determination,* Commerce aligned the final determination in this countervailing duty (CVD) investigation with the final determination in the companion less-than-fair-value (LTFV) investigation, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4).

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.[2] 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 *http://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 at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is from January 1, 2018 through December 31, 2018.

Scope of the Investigation

The product covered by this investigation covers ceramic tile from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation and the concurrent LTFV investigation of ceramic tile from China, Commerce received scope comments from interested parties. On September 6, 2019, Commerce issued a Preliminary Scope Decision Memorandum.[3] Several interested parties submitted case and rebuttal briefs concerning the scope of this investigation. For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] Based on the comments received, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination.* The scope in Appendix I remains unchanged from that which appeared in the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation, other than those issues related to scope, are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum, is attached at Appendix II.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[6] For description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Adverse Facts Available (AFA)

Commerce relied on ''facts otherwise available,'' including adverse facts available (AFA), for several findings in the *Preliminary Determination.* For this final determination, we are basing the CVD rates for Temgoo and Foshan Sanfi on facts otherwise available, with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

In the *Preliminary* Determination, Commerce determined, pursuant to section 703(e)(1) of the Act, that information provided in the critical circumstances allegation does not demonstrate the existence of critical circumstances with respect to imports of ceramic tile from China. For this final determination, we continue to find that critical circumstances do not exist with respect to imports of ceramic tile from China. For a full description of the methodology and results of Commerce's analysis, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on AFA under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that, where all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis,* or based entirely on facts available, Commerce may use ''any reasonable method'' for assigning an all-others rate, including ''averaging the estimated average countervailable subsidy rates

Investigation, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination, 84 FR 48125 (September 12, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision for the Final Determination in the Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China,'' dated concurrently, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Ceramic Tile from the People's Republic of China Decision Memorandum for the Preliminary Determinations,'' dated September 6, 2019 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Ceramic Tile from the People's Republic of China: Scope Decision Memorandum for the Final Determinations, dated concurrently with this notice (Final Scope Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* Memorandum, ''Ceramic Tile from the People's Republic of China Decision Memorandum for the Final Determination, dated concurrently with this notice (Final Scope Decision Memorandum).

determined for the exporters and producers individually investigated.'' In this investigation, all rates for the individually investigated respondents are based entirely on facts available, pursuant to section 776 of the Act. We are relying on a simple average of the total AFA rates assigned to Temgoo and Foshan Sanfi as the all-others rate in this final determination, consistent with the statutory provision to rely on ''any reasonable method.''

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established individual estimated countervailable subsidy rates, as follows:

Company	Subsidy rate (percent)
Temgoo International Trading Limited	358.81
Sanfi Imp & Exp Co., Ltd[7]	358.81
All Others	358.81

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from China that were entered or withdrawn from warehouse, for consumption, on or after September 17, 2019, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 10, 2020, but continue the suspension of liquidation of all entries from September 17 through January 9, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of ceramic tile from China. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ceramic tile from China, or sales (or the likelihood of sales) for importation of ceramic tile from China. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[8]

Dated: March 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile ''slabs'' or ''panels'' (tiles that are larger than 1 meter^2 (11 ft.^{2})).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

[7] Commerce assigned Sanfi's rate to each of the entities for which Sanfi provided an initial questionnaire response: Guangdong Sanfi Ceramics Group Co., Ltd.

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Critical Circumstances
VI. Subsidies Valuation
VII. Benchmarks and Interest Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Discussion of Issues
Comment 1: Application of AFA to Sanfi and Temgoo and Calculation of the All-Others Rate
Comment 2: Whether Commerce's Calculation of the AFA Rate in Unreasonable
Comment 3: Selection of AFA Rates for Subsidy Programs
Comment 4: Preliminary Scope Determination
X. Recommendation

[FR Doc. 2020–07189 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–009]

Calcium Hypochlorite From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order would be likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2015, Commerce published in the **Federal Register** the CVD order on calcium hypochlorite from the People's Republic of China (China).[1] On December 2, 2019, Commerce published the notice of initiation of the first sunset review of the CVD order on calcium hypochlorite from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On January 2, 2019, Commerce received a timely filed notice of intent to participate from Innovative Water Care, LLC dba Sigura (IWC) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] IWC claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.

Commerce received an adequate substantive response to the notice of initiation from IWC within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties, including the Government of China, nor was a hearing requested. On December 23, 2019, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C), Commerce conducted an expedited (120-day) sunset review of the CVD order on calcium hypochlorite from China.

Scope of the Order

The product covered by this order is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation Ca(OCl)2, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, Ca(OCl)2.CaCl2.Ca(OH)2.2H2O or hemibasic calcium hypochlorite with the chemical formula of 2Ca(OCl)2.Ca(OH)2 or Ca(OCl)2.0.5Ca(OH)2. Calcium hypochlorite has a Chemical Abstract Service (CAS) registry number of 7778–54–3, and a U.S. Environmental Protection Agency (EPA) Pesticide Code (PC) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (IMDG) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum,[6] which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order were revoked. 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 *http://access.trade.gov,* and to all 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 at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the CVD order on calcium hypochlorite from China would

[1] *See Calcium Hypochlorite from the People's Republic of China: Countervailing Duty Order,* 80 FR 5082 (January 30, 2015).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019).

[3] *See* IWC's Letter, ''Countervailing Duty Order on Calcium Hypochlorite from the People's Republic of China: Notice of Intent to Participate,'' December 17, 2019.

[4] *See* IWC's Letter, ''Countervailing Duty Order on Calcium Hypochlorite from the People's Republic of China: Substantive Response to Notice of Initiation,'' dated January 2, 2020.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 2, 2019,'' dated December 23, 2019.

[6] *See* Memorandum ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Calcium Hypochlorite from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

be likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/exporter	Net subsidy rate (percent)
Hubei Dinglong Chemical Co. Ltd	65.85
W&W Marketing Corporation	65.85
Tianjin Jinbin International Trade Co., Ltd	65.85
All Others	65.85

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[7]

Dated: March 31, 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. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of continuation or recurrence of a countervailable subsidy
  2. Net countervailable subsidy rates that are likely to prevail
  3. Nature of the subsidies
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2020–07297 Filed 4–6–20; 8:45 am]

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[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

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Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable March 30, 2020.

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SUPPLEMENTARY INFORMATION:

The Petitions

On March 9, 2020, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of common alloy aluminum sheet (aluminum sheet) from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey filed in proper form on behalf the petitioners,[1] domestic producers of aluminum sheet.[2] The Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of aluminum sheet from Bahrain, Brazil, India and Turkey.[3]

Between March 12 and 20, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[4] The petitioners filed responses to the supplemental questionnaires between March 16 through 23, 2020.[5]

[1] The Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its Individual Members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc.

[2] *See* Petitioners' Letter, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated March 9, 2020 (the Petitions).

[3] *Id.*

[4] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey: Supplemental Questions,'' dated March 13, 2020 (General Issues Supplemental); and country specific supplemental questionnaires: Bahrain Supplemental, Brazil Supplemental, Croatia Supplemental, Egypt Supplemental, Germany Supplemental, Greece Supplemental, India Supplemental, Indonesia Supplemental, Italy Supplemental, Korea Supplemental, Oman Supplemental, Romania Supplemental, Serbia Supplemental, Slovenia Supplemental, South Africa Supplemental, Spain Supplemental, Taiwan Supplemental, and Turkey Supplemental, dated March 12, 2020 or March 13, 2020; *see also* country-specific Memoranda regarding telephone conversation with counsel for the petitioners, dated March 20, 2020.

[5] *See* Petitioners' First country-specific Supplemental Responses, dated March 16, 2020 through March 18, 2020; *see also* Petitioners' Letter, ''Common Alloy Aluminum Sheet from Bahrain,

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the domestic aluminum sheet industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (F) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

Period of Investigations

Because the Petitions were filed on March 9, 2020, the period of investigation (POI) for these AD investigations is January 1 through December 31, 2019, pursuant to 19 CFR 351.204(b)(1).[7]

Scope of the Investigations

The products covered by these investigations are aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on April 20, 2020, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 30, 2020, which is ten calendar days from the initial comment deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of aluminum sheet to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe aluminum sheet, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on April 20, 2020, which is 20 calendar days from the signature date of this notice.[13] Any rebuttal comments must be filed by 5:00 p.m. ET on April 30, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on

Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey—Petitioners' Amendments to Volume I Relating to General Issues,'' dated March 17, 2020 (General Issues Supplement); Petitioners' Letters, ''Petitioners' Revised Confidential Foreign Market Research Declarations,'' dated between March 17, 2020 and March 18, 2020; Second country-specific Supplemental Responses, dated March 20, 2020 through March 23, 2020; and the petitioners' Letter, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey—Petitioners' Second Amendment to Volume I Relating to General Issues,'' dated March 23, 2020 (Second General Issues Supplement).

[6] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[7] *See* 19 CFR 351.204(b)(1).

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, April 20, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* 19 CFR 351.303(b). Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, April 20, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[16] Based on our analysis of the information submitted on the record, we have determined that aluminum sheet, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the domestic like product.[18] In addition, the petitioners provided 2019 production data for and a letter of support from Jupiter Aluminum Corporation.[19] The petitioners estimated the production of the domestic like product for the entire domestic industry based on shipment data collected by the Aluminum Association, and the Aluminum Association's knowledge of the industry.[20] We relied on data provided by the petitioners for purposes of measuring industry support.[21]

Our review of the data provided in the Petitions, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[22] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[26]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, with regard to Oman, Germany, Bahrain, Indonesia, Taiwan, Turkey, India, South Africa, Korea, Brazil, and Greece, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27] With regard to Italy, Spain, Egypt, Slovenia, Romania, Croatia, and Serbia, while the allegedly dumped imports from each of these countries do not individually exceed the statutory requirements for negligibility, the petitioners provide data demonstrating that the aggregate import share from these five countries is 9.7 percent, which exceeds the seven percent threshold established by the exception in section 771(24)(A)(ii) of the Act.[28]

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[16] *See* Volume I of the Petitions at 13–15.

[17] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* country-specific AD Initiation Checklists at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey (Attachment II).

[18] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* General Issues Supplement at 3.

[19] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* Second General Issues Supplement.

[20] *See* Volume I of the Petitions at 4 and Exhibits GEN–2 and GEN–3; *see also* General Issues Supplement at 3.

[21] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* General Issues Supplement at 3. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.

[22] *Id.*

[23] *Id.; see also* section 732(c)(4)(D) of the Act.

[24] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* General Issues Supplement at 3. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.

[25] *Id.*

[26] *Id.*

[27] *See* Volume I of the Petitions at 15–17 and Exhibit GEN–9.

[28] Section 771(24)(A)(ii) of the Act states ''{i}mports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with

Therefore, the subject imports from these countries are not negligible for purposes of the material injury analysis in these Petitions.[29]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining capacity utilization; a declining number of production and related workers; and a decline in financial performance and profitability.[30] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[31]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

U.S. Price

For all countries, the petitioners based export price (EP) or constructed export price (CEP) (as applicable), on pricing information for sales of, or sales offers for, aluminum sheet produced in and exported from each country. The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.[32]

Normal Value[33]

For Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, Spain, Taiwan, and Turkey, the petitioners based NV on a home market price quote obtained through market research for aluminum sheet produced in and sold, or offered for sale, in each country within the applicable time period.[34] For Oman, the petitioners provided information indicating that the price quote was below the COP and, therefore, the petitioners also calculated NV based on constructed value (CV).

For South Africa, the petitioners were unable to obtain a price quote for aluminum sheet produced in and sold, or offered for sale, in South Africa that was usable for comparison to the price of aluminum sheet exported to the United States from South Africa, nor were third country prices reasonably available to the petitioners.[35] The petitioners therefore calculated NV based on CV.[36]

For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Normal Value Based on Constructed Value

As noted above, the petitioners were unable to obtain information relating to the prices charged for aluminum sheet produced in South Africa and sold in South Africa, or any third country market, and the price quote obtained for the sale in Oman was below the COP. Accordingly, the petitioners based NV on CV.[37] Pursuant to section 773(e) of the Act, the petitioners calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[38]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP or CEP, as applicable, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for aluminum sheet for each of the countries covered by this initiation are as follows: (1) Bahrain—58.45 percent; (2) Brazil—17.96 and 27.01 percent; (3) Croatia—13.79 percent; (4) Egypt—31.50 percent; (5) Germany—37.22 percent; (6) Greece—61.87 percent; (7) India—122.80 to 151.00 percent; (8) Indonesia—32.12 percent; (9) Italy—29.13 percent; (10) Korea—36.55 and 44.03 percent; (11) Oman—15.90 and 58.17 percent; (12) Romania—12.51 percent; (13) Serbia—25.84 percent; (14) Slovenia—12.95 percent; (15) South Africa—63.27 percent; (16) Spain—24.26 percent; (17) Taiwan—27.22 percent; and (18) Turkey—42.88 percent.[39]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioners named one company in Bahrain, six companies in Brazil, one company in Croatia, one company in Egypt, 37 companies in Germany, two companies in Greece, 14 companies in India, four companies in Indonesia, 20 companies in Italy, 25 companies in Korea, one company in Oman, two companies in Romania, two companies in Serbia, one company in Slovenia, one company in South Africa, 16 companies in Spain, 12 companies in Taiwan, and 21 companies in Turkey[40]

respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported in to the United States during the applicable 12-month period.''

[29] *See* Volume I of the Petitions at 15–16 and Exhibit GEN–9.

[30] *See* Volume I of the Petitions at 22–37 and Exhibits GEN–7, and GEN–10 through GEN–15.

[31] *See* country-specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Petitions Covering Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey (Attachment III).

[32] *See* country-specific AD Initiation Checklists.

[33] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[34] *Id.*

[35] *See* South Africa AD Initiation Checklist.

[36] *Id.*

[37] *See* country-specific AD Initiation Checklists for details of calculations.

[38] *See* Oman AD Initiation Checklist and South Africa AD Initiation Checklist.

[39] *See* country-specific Initiation Checklists for details of calculations.

[40] *See* Volume I of the Petitions at Exhibit GEN–6.

as producers/exporters of aluminum sheet.

Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents in Brazil, Germany, India, Indonesia, Italy, Korea, Spain, Taiwan, and Turkey based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the appendix.

On March 24, 2020, Commerce released CBP data on imports of aluminum sheet from those countries with a large number of companies, specifically, Brazil, Germany, India, Indonesia, Italy, Korea, Spain, Taiwan, and Turkey under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[41] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gove/apo.*

The petitioners identified one company in Bahrain as the producer/exporter of aluminum sheet (*i.e.,* Gulf Aluminium Rolling Mill Company (GARMCO)), one company in Croatia as the producer/exporter of aluminum sheet (*i.e.,* Impol-TLM,d.o.o.), one company in Egypt as the producer/exporter of aluminum sheet (*i.e.,* Aluminium Co. of Egypt (Egyptalum)), two companies in Greece as producers/exporters of aluminum sheet (*i.e.,* Argiropoulos B.A.E.E and Elval Hellenic Aluminium Industry S.A.), one company in Oman as the producer/exporter aluminum sheet (*i.e.,* Oman Aluminium Rolling Company (OARC)), two companies in Romania as producers/exporters of aluminum sheet (*i.e.,* Alro, S.A. and Vimetco Group), two companies in Serbia as producers/exporters of aluminum sheet (*i.e.,* Impol Seval Aluminium Rolling Mill and Otovici Doo), one company in Slovenia as the producer/exporter of aluminum sheet (*i.e.,* Impol 2000, dd and its subsidiary companies including Impol d.o.o. and Impol FT, d.o.o. (Impol Group)), and one company in South Africa as the producer/exporter of aluminum sheet (*i.e.,* Hulamin Operations (PtY) Ltd.), and provided independent third-party information as support.[42] We currently know of no additional producers/exporters of aluminum sheet from Bahrain, Croatia, Egypt, Greece, Oman, Romania, Serbia, Slovenia, or South Africa. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.,* the companies cited above).

Parties wishing to comment on respondent selection for Bahrain, Croatia, Egypt, Greece, Oman, Romania, Serbia, Slovenia, or South Africa must do so within three business days of the publication of this notice in the **Federal Register**. Commerce will not accept rebuttal comments regarding respondent selection for Bahrain, Croatia, Egypt, Greece, Oman, Romania, Serbia, Slovenia, or South Africa. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and/or Turkey are materially injuring, or threatening material injury to, a U.S. industry.[43] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[44] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[45] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[46] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[47] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under

[41] *See* Memoranda, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet: Release of Customs Data from U.S. Customs and Border Protection,'' dated March 24, 2020.

[42] *See* country-specific Supplemental Responses dated March 17, 2020 or March 18, 2020.

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

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

this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

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

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[48] Parties must use the certification formats provided in 19 CFR 351.303(g).[49] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[50]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: March 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The products covered by these investigations are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of these investigations includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a IXXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these investigations is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these investigations may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2020–07179 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–DS–P

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

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

[50] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–855, C–489–840, C–525–002, C–533–896]

Common Alloy Aluminum Sheet From Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations

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

DATES: Applicable March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer at (202) 482–0410 (Bahrain); Jonathan Hall-Eastman at (202) 482–1468 (Brazil); Benito

Ballesteros at (202) 482–7425 (India); Mark Hoadley at (202) 482–3148 (Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 9, 2020, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of common alloy aluminum sheet (aluminum sheet) from Bahrain, Brazil, India, and Turkey, filed in proper form on behalf of the Aluminum Association Common Alloy Aluminum Sheet Working Group (petitioners).[1] The Petitions were accompanied by antidumping duty (AD) petitions concerning imports of aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey.

On March 12, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[2] The petitioners filed responses to the supplemental questionnaires between March 16 and 19, 2020.[3] On March 20, 2020, Commerce requested additional information in a phone call with the petitioners,[4] and the petitioners responded to Commerce's request on March 23, 2020.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Governments of Bahrain, Brazil, India, and Turkey (GBA, GBR, GOI, and GOT, respectively)[6] are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of aluminum sheet in Bahrain, Brazil, India, and Turkey, and that imports of such products are materially injuring, or threatening material injury to, the domestic aluminum sheet industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions are accompanied by information reasonably available to the petitioners supporting the allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are an interested party, as defined in sections 771(9)(C) and (F) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigations.[7]

Periods of Investigation

Because the Petitions were filed on March 9, 2020, the periods of investigation are January 1, 2019 through December 31, 2019.

Scope of the Investigations

The product covered by these investigations is aluminum sheet from Bahrain, Brazil, India, and Turkey. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Scope Comments

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on April 20, 2020, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 30, 2020, which is 10 calendar days from the initial comment deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An

[1] *See* Petitioners' Letter, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey,'' dated March 9, 2020 (Petitions).

[2] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Bahrain: Supplemental Questions''; ''Petition for the Imposition of Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Bahrain: Supplemental Questions''; ''Petition for the Imposition of Countervailing Duties on Imports of Common Alloy Aluminum Sheet from India: Supplemental Questions''; and ''Petition for the Imposition of Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Turkey: Supplemental Questions'', dated March 12, 2020. *See also* Commerce Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Supplemental Questions,'' dated March 13, 2020.

[3] *See* Petitioner's Letters, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey—Petitioners' Amendments to Volume I Relating to General Issues'' (General Issues Supplement); ''Petitioners' Responses to Supplemental Questions Concerning Volume XX Relating to Bahrain Countervailing Duty''; ''Common Alloy Aluminum Sheet from Brazil—Petitioners' Supplement to Volume XXI Relating to Brazil Countervailing Duties''; ''Common Alloy Aluminum Sheet from India—Petitioners' Supplement to Volume XXII Relating to India Countervailing Duties''; and ''Petitioners' Responses to Supplemental Questions Concerning Volume XXIII Relating to Turkey Countervailing Duty'', dated March 17, 2020.

[4] *See* Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Phone Call with Counsel to the Petitioners,'' dated March 20, 2020.

[5] *See* Petitioners' Letter, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey—Petitioners' Second Amendment to Volume I Relating to General Issues,'' dated March 23, 2020 (Second General Issues Supplement).

[6] Petitioners' filings refer to both the Government of Bahrain and Government of Brazil and ''GOB.'' To avoid confusion, we will use ''GBA'' and ''GBR'' to refer to the governments of Bahrain and Brazil, respectively.

[7] *See* the ''Determination of Industry Support for the Petition'' section, *infra.*

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b) (21) (defining ''factual information'').

[10] Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, April 20, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures;*

electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GBA, GBR, GOI, and GOT of the receipt of the Petitions and provided them the opportunity for consultations with respect to the Petitions.[13] The consultations with the GOI were scheduled for March 23, 2020. However, on March 23, 2020, the GOI requested that Commerce postpone the consultations to a later date.[14] Consultations were held with the GOT on March 20, 2020.[15] Consultations were held with the GBR on March 27, 2020.[16] Consultations were not held with the GBA because the GBA did not request them.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[19] Based on our analysis of the information submitted on the record, we have determined that aluminum sheet, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[20]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the domestic like product.[21] In addition, the petitioners provided 2019 production data for, and a letter of support from, Jupiter Aluminum Corporation.[22] The petitioners estimated the production of the domestic like product for the entire domestic industry based on shipment data collected by the Aluminum Association, and the Aluminum Association's knowledge of the industry.[23] We relied on data provided by the petitioners for purposes of measuring industry support.[24]

Our review of the data provided in the Petitions, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[25] First, the Petitions established support

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* Commerce's Letters, ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from Brazil: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 10, 2020; ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from Bahrain;'' and ''Petition for Countervailing Duties on Common Alloy Aluminum Sheet from the Republic of Turkey,'' each dated March 11, 2020; and ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 13, 2020.

[14] *See* Memorandum, ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Government Consultations,'' dated March 23, 2020.

[15] *See* Memorandum, ''Consultations with the Government of the Republic of Turkey (Turkey) on the Countervailing Duty Petition Regarding Common Alloy Aluminum Sheet from Turkey,'' dated March 23, 2020.

[16] *See* Memorandum, ''Consultations with the Government of Brazil on the Countervailing Duty Petition Regarding Common Alloy Aluminum Sheet from Brazil,'' dated March 27, 2020.

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[19] *See* Volume I of the Petitions at 13–15.

[20] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Common Alloy Aluminum Sheet from Bahrain (Bahrain CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey (Attachment II); *see also* Countervailing Duty Investigation Initiation Checklist: Common Alloy Aluminum Sheet from Brazil (Brazil CVD Initiation Checklist) at Attachment II; Countervailing Duty Investigation Initiation Checklist: Common Alloy Aluminum Sheet from India (India CVD Initiation Checklist) at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Common Alloy Aluminum Sheet from Turkey (Turkey CVD Initiation Checklist) at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[21] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* General Issues Supplement at 3.

[22] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* Second General Issues Supplement.

[23] *See* Volume I of the Petitions at 4 and Exhibits GEN–2 and GEN–3; *see also* General Issues Supplement at 3.

[24] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; see also General Issues Supplement at 3. For further discussion, *see* Attachment II of the Bahrain CVD Initiation Checklist, Brazil CVD Initiation Checklist, India CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

[25] *Id.*

from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[26] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[27] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[28] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[29]

Injury Test

Because Bahrain, Brazil, India, and Turkey are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Bahrain, Brazil, India, and/or Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[30]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining capacity utilization; a declining number of production and related workers; and a decline in financial performance and profitability.[31] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[32]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of aluminum sheet from Bahrain, Brazil, India, and Turkey benefit from countervailable subsidies conferred by the GBA, GBR, GOI, and GOT, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

Bahrain

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 9 of the 12 alleged programs. For a full discussion of the basis for our decision whether to initiate on each program, *see* Bahrain CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Brazil

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 18 of the 19 alleged programs. For a full discussion of the basis for our decision whether to initiate on each program, *see* Brazil CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation, in whole or part, on 41of the 43 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Turkey

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation, in whole or part, on all of the 21 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Turkey CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioners named one company in Bahrain, six companies in Brazil, 14 companies in India, and 21 companies in Turkey as producers/exporters of aluminum sheet.[33] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of aluminum sheet from Bahrain, Brazil, India, and Turkey during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the Appendix.

On March 24, 2020 and March 26, 2020, Commerce released CBP data on imports of aluminum sheet from those countries with a large number of companies, specifically, Brazil, India, and Turkey under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[34] Commerce will not

[26] *Id.; see also* section 702(c)(4)(D) of the Act.

[27] *See* Volume I of the Petitions at 4 and Exhibit GEN–2; *see also* General Issues Supplement at 3. For further discussion, *see* Attachment II of the Bahrain CVD Initiation Checklist, Brazil CVD Initiation Checklist, India CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

[28] *Id.*

[29] *Id.*

[30] *See* Volume I of the Petitions at 15–17, and Exhibit GEN–9.

[31] *See* Volume I of the Petitions at 22–37, and Exhibits GEN–7 and GEN–10 through GEN–15.

[32] *See* Bahrain CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petition Petitions Covering Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey (Attachment III); *see also* Attachment III of the Brazil CVD Initiation Checklist, India CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

[33] *See* Volume I of the Petitions at Exhibit GEN–6.

[34] *See* Memoranda, ''Petition for the Imposition of Countervailing Duties (CVD) on Imports of Common Alloy Aluminum Sheet from Brazil: Release of U.S.

accept rebuttal comments regarding the CBP data or respondent selection.

The petitioners identified one company in Bahrain as the sole producer/exporter of aluminum sheet (*i.e.,* Gulf Aluminum Rolling Mill Company (GARMCO)). We currently know of no additional producers/exporters of aluminum sheet from Bahrain. Accordingly, for Bahrain, Commerce intends to individually examine GARMCO. Parties wishing to comment on respondent selection for Bahrain, must do so within three business days of the publication date of the notice of initiation of these investigations.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the GBA, GBR, GOI, and GOT *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of aluminum sheet from Bahrain, Brazil, India, and Turkey are materially injuring, or threatening material injury to, a U.S. industry.[35] A negative ITC determination in any country will result in the investigations being terminated with respect to that country.[36] Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[37] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[38] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[39] Parties must use the certification formats provided in 19 CFR 351.303(g).[40] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[41]

This notice is issued and published pursuant to sections 702(c)(2) and 777(i) of the Act and 19 CFR 351.203(c).

Dated: March 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width.

Customs and Border Protection Data;'' and ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Release of U.S. Customs and Border Protection Data,'' dated March 24, 2020; *see also* Memorandum, ''Countervailing Duty Petition on Common Alloy Aluminum Sheet from the Republic of Turkey: Release of U.S. Customs and Border Protection Data,'' dated March 26, 2020.

[35] *See* section 703(a)(2) of the Act.

[36] *See* section 703(a)(1) of the Act.

[37] *See* 19 CFR 351.301(b).

[38] *See* 19 CFR 351.301(b)(2).

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

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

[41] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

Common alloy sheet within the scope of the investigations includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these investigations is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its Start Printed Page 2159 movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.1l 6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.9.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these investigations may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2020–07180 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Sugar From Mexico: Final Results of the Expedited First Sunset Review of the Agreement Suspending the Countervailing Duty Investigation

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that termination of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Agreement) and the suspended countervailing duty (CVD) investigation would be likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION: Sally C. Gannon, Bilateral Agreements, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2019, Commerce published the notice of initiation of the first sunset review of the agreement suspending the countervailing duty investigation on sugar from Mexico, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[1] We received notice of intent to participate in the review from the following parties, both domestic interested parties: Imperial Sugar Company and the American Sugar Coalition (ASC).[2] Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We rejected untimely submissions filed by Sweetener Users Association (SUA) on January 21, 2020 and January 23, 2020.[4] We received no substantive responses from any other interested parties, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C), Commerce conducted an expedited (120-day) sunset review of the Agreement and suspended investigation.[5]

Scope of the Agreement

The merchandise subject to the Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C12H22O11; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) for sucrose is 1S/C12H22O11/c13-l-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17) 5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChl Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57–50–1.

Sugar includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, de-sugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement. Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000,

[1] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 58687 (November 1, 2019); *see also Initiation of Five-Year (Sunset Review); Correction,* 84 FR 66153 (December 3, 2019).

[2] *See* Letter, American Sugar Coalition, ''Sugar from Mexico: Notice of Intent to Participate'', dated December 18, 2019; Letter, Imperial Sugar Company, ''Sugar from Mexico, Case Nos. C–201–846 and A–201–845 (Five-Year Sunset Reviews): Notice of Intent to Participate'', dated December 18, 2019.

[3] *See* Letter, American Sugar Coalition, ''Sugar from Mexico: Substantive Response to Notice of Initiation of Five-Year (Sunset) Reviews of the Antidumping and Countervailing Duty Suspension Agreements,'' dated January 2, 2020; Letter, ''Sugar from Mexico: Substantive Response of the Imperial Sugar Company to Commerce's Notice of Initiation of Five-Year (''Sunset'') Reviews'', dated January 2, 2020.

[4] *See* Letter to Wilbur Ross, Secretary of Commerce, from Sweetener Users Association. re: ''Sugar from Mexico'' (January 21, 2020); Letter to Wilbur Ross, Secretary of Commerce, from Sweetener Users Association, re: ''Sugar from Mexico'' (January 23, 2020); Letter, ''Rejection on January 21 and January 23 Filings'', dated February 5, 2020.

[5] *See* Letter, ''Sunset Reviews Initiated on December 2, 2019'', dated January 22, 2020.

1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000.

The scope of the Agreement excludes sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture, sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico, inedible molasses (other than inedible desugaring molasses noted above), beverages, candy, certain specialty sugars, and processed food products that contain sugar (*e.g.,* cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: Caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.[6]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order were revoked.[7] 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 *http://access.trade.gov* and 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 at *http://enforcement.trade.gov/frn.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that termination of the Agreement and suspended countervailing duty investigation on sugar from Mexico is likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:

Company	Net countervailable subsidy (percent)
Fondo de Empresas Expropiadas del Sector Azucarero	43.93
Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V	5.78
All Others	[8] 38.11

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 31, 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 Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
  2. Net Countervailable Subsidy Rates Likely to Prevail
  3. Nature of the Subsidy
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2020–07200 Filed 4–6–20; 8:45 am]

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[6] *See* ''Sugar from Mexico: Suspension of Antidumping Investigation'', 79 FR 78039 (December 29, 2014).

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–123]

Certain Corrosion Inhibitors From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2020, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of corrosion inhibitors from the People's Republic of China.[1] Currently, the preliminary determination is due no later than April 30, 2020.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless

[1] *See Certain Corrosion Inhibitors from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 12502 (March 3, 2020).

it finds compelling reasons to deny the request.[2]

On March 27, 2020, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioner requests postponement because, {t}he current deadline does not provide adequate time for Commerce to select mandatory respondents, issue questionnaires, receive responses, and then follow up with deficiency questionnaires.'' [4] In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* July 6, 2020.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: April 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07294 Filed 4–6–20; 8:45 am]

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[2] *See* 19 CFR 351.205(e).

[3] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated March 27, 2020.

[4] *Id.*

[5] In this case, 130 days after initiation falls on July 4, 2020, a Saturday. Where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR111]

Endangered and Threatened Species; Notice of Initiation of a 5-Year Review of Three Foreign Corals

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

ACTION: Notice; request for information.

SUMMARY: NMFS announces the initiation of a 5-year review for three foreign corals (*Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on these three coral species, particularly information on the status, threats, and recovery of the species that has become available since their listing, effective November 6, 2015 (80 FR 60560).

DATES: To allow us adequate time to conduct this review, we must receive your information no later than June 8, 2020.

ADDRESSES: You may submit information on this document, identified by NOAA–NMFS–2020–0040, by either of the following methods:

- *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2020–0040. Click on the ''Comment Now!'' icon and complete the required fields. Enter or attach your comments.
- *Mail:* Submit written comments to Adrienne Lohe, Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Adrienne Lohe at the above address, by phone at (301) 427–8403 or *Adrienne.Lohe@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our review of the following foreign coral species listed as endangered under the ESA: *Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana.* Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. This will be the first review of these species since they were listed in 2015. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (*i.e.,* delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; and/or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

Background information on each of the three species is available on the NMFS website at: *https://www.fisheries.noaa.gov/corals.*

Public Solicitation of New Information

To ensure that the reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of *Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana.* Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the reviews, you may submit your

information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 1, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division,Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–07243 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XW019]

U.S. Stakeholder Meeting on Pacific Bluefin Tuna Fishery Management Framework; Meeting Announcement

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

ACTION: Notice of public meeting; rescheduled meeting.

SUMMARY: NMFS is holding a meeting to discuss the future management of the U.S. West Coast Pacific bluefin tuna (PBF) fishery, including management objectives and a management framework. Given recent developments related to Coronavirus/COVID–19, we have decided to reschedule this meeting originally planned for April 23, 2020. We are taking this step out of an abundance of caution to consider the safety of our visitors. The new date for this meeting is May 19, 2020.

DATES: The meeting will be held May 19, 2020, from 9 a.m. to 4:30 p.m. PDT, or until business concludes.

ADDRESSES: The meeting will be held in Room 3400 at the Glenn M. Anderson Federal Building, 501 W. Ocean Blvd., Long Beach, California 90802. Please notify Eric Poncelet (meeting facilitator), at *eponcelet@kearnswest.com* or (415) 697–0566 by May 4, 2020, if you plan to attend. If interested members of the public cannot reasonably attend the meeting in person, NMFS may provide for a teleconference phone line or webinar for such members if a request is made to the meeting facilitator. NMFS strongly encourages in-person participation in order to facilitate discussion, unless developments related to Coronavirus/COVID–19 restrict attendance in person at that time. See **SUPPLEMENTARY INFORMATION** for additional information on attendance, participation instructions, and meeting materials.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, West Coast Region, NMFS, at *Celia.Barroso@noaa.gov,* or at (562) 432–1850.

SUPPLEMENTARY INFORMATION: NMFS intended to hold a meeting to discuss the future management of the U.S. West Coast PBF fishery, including management objectives and a management framework, on April 23, 2020 (85 FR 11967; February 28, 2020). However, given recent developments related to Coronavirus/COVID–19, we have decided to reschedule this meeting originally planned for April 23, 2020. We are taking this step out of an abundance of caution to consider the safety of our participants. The new date for this meeting is May 19, 2020.

Stakeholders have expressed an interest in developing management objectives and a long-term management framework for PBF. In September 2018, the Pacific Fishery Management Council (PFMC) recommended that its Highly Migratory Species Management Team develop a long-term management strategy for PBF (see the PFMC's ''September 2018 Decision Summary Document'' at *https://www.pcouncil.org/wp-content/uploads/2018/09/0918_Decision_Summary_DocumentV2.pdf*). On May 2, 2019, NMFS held a stakeholder meeting in which participants discussed potential management objectives and strategies to achieve those objectives for the domestic commercial PBF fishery (see the NMFS report to the June PFMC meeting at *https://www.pcouncil.org/wp-content/uploads/2019/06/J2b_Sup_NMFS_Rpt3_JUN2019BB.pdf*). The upcoming meeting that is rescheduled for May 19, 2020, is intended to follow up the discussion from the 2019 stakeholder meeting as well as provide an opportunity for early comments on how to implement a new Inter-American Tropical Tuna Commission (IATTC) resolution on PBF conservation and management for 2021–2022 that NMFS anticipates the IATTC will adopt at its annual meeting in August 2020. In order to facilitate discussion, NMFS strongly encourages in-person participation at the meeting location described in the **ADDRESSES** section, if possible and unless developments related to Coronavirus/COVID–19 restrict attendance in person at that time. NMFS will email attendance instructions, which may include instructions to attend by teleconference or webinar, and background materials to the meeting participants who notify the meeting facilitator as described in the **ADDRESSES** section.

PBF U.S. Stakeholder Meeting Topics

The PBF U.S. stakeholder meeting topics may include, but are not limited to, the following:

(1) An overview of international management of PBF and current management of the U.S. PBF fishery; and,

(2) Potential management options for 2021–2022 and in the long-term.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Celia Barroso, at *Celia.Barroso@noaa.gov* or (562) 432–1850, by April 27, 2020.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 6901 *et seq.*

Dated: April 2, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–07288 Filed 4–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX053]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application submitted by the Northeast Fisheries Science Center in support of the 2020 Study Fleet Program contains all of the required information and warrants further consideration. This Exempted Fishing Permit would exempt participating vessels from minimum fish sizes and possession limits for species of interest, for sampling purposes only.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

DATES: Comments must be received on or before April 22, 2020.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC STUDY FLEET EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''NEFSC STUDY FLEET EFP.''

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, 978–281–9196.

SUPPLEMENTARY INFORMATION: The Northeast Fisheries Science Center (Center) submitted a complete application for an Exempted Fishing Permit (EFP) in support of the 2020 Study Fleet Program. This EFP would exempt 19 commercial fishing vessels from minimum fish sizes and possession limits for species of interest, as well as allow temporary retention of species prior to discarding.

The Center established the Study Fleet Program in 2002 to more fully characterize commercial fishing operations and provide sampling opportunities to augment NMFS's data collection programs. As part of the program, the Center contracts commercial fishing vessels to collect biological data and fish specimens for the Center to use in research relevant to stock assessments and fish biology. The Center's Study Fleet Program trains participating captains and crew to conduct at-sea sampling consistent with Center sampling protocols for survey and observer programs. During EFP trips, crew would sort, weigh, and measure fish prior to discarding. During sampling, some discarded fish would remain on deck slightly longer than they would under normal sorting procedures. Exemptions from minimum fish sizes and possession restrictions would allow vessels to temporarily retain catch for at-sea sampling.

Table 1 lists the regulations from which participating vessels would be exempt for at-sea sampling or when retaining and landing fish for research purposes. The exemptions listed in Table 1 are necessary for contracted vessels to acquire the biological samples needed to meet Center research objectives.

TABLE 1—LIST OF VESSEL EXEMPTIONS FOR RETAINING AND LANDING FISH

	2020 Study fleet program EFP
Number of Vessels	19.
Exempted regulations in 50 CFR part 648	*Minimum fish sizes* § 648.83 Northeast multispecies minimum fish sizes for redfish, yellowtail flounder, and winter flounder. *Possession restrictions* § 648.86(a) Haddock. § 648.86(g) Yellowtail flounder. § 648.94 Monkfish.

When directed by the Center, participating vessels would also be authorized to retain and land specific amounts of fish exceeding possession limits and/or below minimum fish sizes, for research purposes only. The captain or crew would deliver these fish to Center staff upon landing. In these limited circumstances, the Study Fleet Program would give participating vessels a formal biological sampling request prior to landing. This would ensure that the landed fish do not exceed any collection needs of the Study Fleet, as detailed in Table 2.

TABLE 2—STUDY FLEET PROGRAM'S BIOLOGICAL SAMPLE COLLECTION NEEDS

Species	Stock area *	Gear types #	Collection frequency	Individual fish per collection period	Maximum weight allowed per trip	Maximum allowance
Acadian redfish	GOM	OTF	Monthly (Mar–July).	50 per month	150 lb (331 kg)	750 lb (1,653 kg).
Haddock	GOM, GB	OTF, DRS	Monthly (Dec–Mar).	80 per week (40 from each stock area).	300 lb (661 kg)	4,800 lb (10,582 kg).
Winter flounder	GOM, GB, SNE	OTF, DRS	Monthly (Jan–Apr)	120 per week (40 from each stock area).	160 lb (353 kg)	3,840 lb (8,466 kg).
Yellowtail flounder	GOM, GB, SNE	OTF, DRS	Monthly (Jan–Apr)	120 per week (40 from each stock area).	90 lb (198 kg)	2,160 lb (4,762 kg).
Monkfish	SNE	OTF	Twice	10 per trip	120 lb (295 kg)	240 lb (529 kg).
Butterfish	SNE	OTM	Twice	20 per trip	10 lb (22 kg)	20 lb (44 kg).
Atlantic mackerel	SNE	OTM	Twice	20 per trip	10 lb (22 kg)	20 lb (44 kg).
Shortfin squid	Any Area	OTM, OTF	Monthly (Dec–Mar).	30 per month	15 lb (33 kg)	60 lb (132 kg).

* Stock area abbreviations: Gulf of Maine (GOM), Georges Bank (GB), Southern New England (SNE)

Gear abbreviations: Otter trawl (OTF), bottom longline (LLB), sink gillnet (GNS), sea scallop dredge (DRS), fish pot (PTF), hand lines, auto jig (HND), purse seine (PUR), otter trawl midwater (OTM), pair trawl midwater (PTM).

All catch would be attributed to the appropriate commercial fishing quota. For a vessel fishing on a groundfish sector trip, all catch of groundfish stocks allocated to sectors would be deducted from the vessel's sector's annual catch entitlement (ACE). Once the ACE for a stock has been reached in a sector, vessels would no longer be allowed to fish in that stock area unless the sector acquired additional ACE for the stock in question. For common pool vessels, all groundfish catch would be counted toward the appropriate trimester total allowable catch (TAC). Common pool vessels would be exempt from possession and trip limits on EFP trips when directed for sampling by the Center, but would still be subject to trimester TAC closures.

If approved, the Center may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that does not change the scope of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 1, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–07218 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2020–0021]

Grant of Interim Extension of the Term of U.S. Patent No. 7,534,790; Vernakalant Hydrochloride

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension for a one-year interim extension of the term of U.S. Patent No. 7,534,790.

FOR FURTHER INFORMATION CONTACT: Ali Salimi by telephone at (571) 272–0909; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at (571) 273–0909; or by email to *ali.salimi@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On February 5, 2020, Correvio International Sàrl, the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 7,534,790. The patent claims the human drug product, vernakalant hydrochloride. The application for patent term extension indicates that New Drug Application (NDA) 22–034 was submitted to the Food and Drug Administration (FDA) on December 19, 2006.

Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the once-extended expiration date of the patent, March 31, 2020, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 7,534,790 is granted for a period of one year from the extended expiration date of the patent.

Robert Bahr,

Deputy Commissioner for Patent Examination Policy,United States Patent and Trademark Office.

[FR Doc. 2020–07190 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:30 p.m. EDT, Tuesday, April 14, 2020.

PLACE: This meeting will be convened on a telephone conference call.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: April 3, 2020.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2020–07422 Filed 4–3–20; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Instructions for AmeriCorps State and National Competitive New and Continuation

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 8, 2020.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Attention Arminda Pappas, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Arminda Pappas, 202–606–6659, or by email at *apappas@cns.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Instructions for AmeriCorps State and National Competitive New and Continuation.

OMB Control Number: 3045–0047.

Type of Review: Renewal.

Respondents/Affected Public: Organizations and State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 18,000.

Abstract: The application instructions conform to the Corporation for National and Community Service's online grant application system, eGrants, which applicants must use to respond to CNCS Notices of Funding Opportunities. CNCS also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on June 30, 2020.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: March 31, 2020.

Arminda Pappas,

Grant Review Manager.

[FR Doc. 2020–07217 Filed 4–6–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement and Public Scoping Meeting for Dow Chemical Company's Harris Reservoir Expansion Project, Brazoria County, Texas (Department of the Army Permit SWG–2016–01027)

AGENCY: U.S. Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Galveston District, has received a permit application for a U.S. Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act from Dow Chemical Company (Dow) (SWG–2016–01027) for the Harris Reservoir Expansion Project (proposed Project). The proposed Project site is located between the Brazos River and Oyster Creek approximately 8 miles northwest of the City of Angleton in Brazoria County, Texas. The primary federal involvement associated with the proposed action (proposed Project) is the discharge of dredged or fill material into waters of the United States (U.S.), and the construction of structures and/or work that may affect navigable waters. Federal authorizations for the Project would constitute a major federal action. Based on the potential impacts, both individually and cumulatively, the Corps intends to prepare an environmental impact statement (EIS) in compliance with the National Environmental Policy Act (NEPA) to render a final decision on the permit applications. The Corps' decision will be to issue, issue with modification, or deny DA permits for the proposed action. The EIS will assess the potential social, economic, and environmental impacts of the construction and operation of the proposed project, and is intended to be sufficient in scope to address federal, state, and local requirements; environmental and socioeconomic issues concerning the proposed action; and permit reviews.

ADDRESSES: Written comments regarding the proposed EIS scope should be addressed to Mr. Jayson Hudson, USACE, Galveston District, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553–1229. Individuals who would like to electronically provide comments should contact Mr. Hudson by electronic mail at *SWG201601027@usace.army.mil.* Emailed comments, including attachments, should be provided in .doc, .docx, .pdf or .txt formats.

FOR FURTHER INFORMATION CONTACT: For information about this project, to be included on the mailing list for future updates and meeting announcements, or to receive a copy of the Draft EIS when it is issued, contact Mr. Jayson Hudson, at the Corps at (409) 766–3108, email address *SWG201601027@usace.army.mil,* or the address provided above.

SUPPLEMENTARY INFORMATION: The Corps Galveston District intends to prepare an EIS for the proposed Harris Reservoir Expansion Project located in Brazoria County, Texas. The proposed Project would include the construction of a 1,929-acre impoundment with a nominal storage capacity of 50,000 acre-feet, an intake and pump station to divert Dow's existing surface water rights from the Brazos River, an outlet to Oyster Creek, and an emergency spillway. The Project would also include floodplain enhancements on Oyster Creek, stream restoration, and temporary construction staging and laydown areas. As part of the Department of the Army permit application process, a public notice was issued on March 2, 2018. The purpose of the public notice was to initiate an early public scoping process to solicit comments and information from the public as well as state and federal agencies to better enable us to make a reasonable decision on factors affecting the public interest. All comments received to date, including those provided for review during the public notice comment period, will be considered by the Galveston District during EIS preparation.

1. *Scoping Process/Public Involvement:* The Corps invites all affected federal, state, and local agencies, affected Native American Tribes, other interested parties, and the

general public to participate in the NEPA process during development of the EIS. The purpose of the public scoping process is to provide information to the public, narrow the scope of analysis to significant environmental issues, serve as a mechanism to solicit agency and public input on alternatives and issues of concern, and ensure full and open participation in scoping for the Draft EIS. To ensure that all of the issues related to this proposed project are addressed, the Corps will conduct public scoping meeting(s) in which agencies, organizations, and members of the general public are invited to present comments or suggestions with regard to the range of actions, alternatives, and potential impacts to be considered in the EIS. The scoping meeting will begin with an informal open house including a presentation of the proposed action and a description of the NEPA process. These will be held in person, or virtually, as determined by the Agency. Comments will be accepted for 14 days following the scoping meeting. Displays and other forms of information about the proposed action will be available, and the Corps and Dow personnel will be present at the informal session to discuss the proposed project and the EIS Process. The Corps invites comments on the proposed scope and content of the EIS from all interested parties. Verbal transcribers will be available at the scoping meeting to accept verbal comments. A time limit will be imposed on verbal comments. Written comments may be submitted prior, during, or up to 14 days after the scoping meeting. The specific dates, times, and locations of the meetings will be published in press releases, special public notices and on the Corps' project website: *https://www.swg.usace.army.mil/Business-With-Us/Regulatory/Special-Projects-Environmental-Impact-Statements/.*

2. *Project Background:* The proposed Project would consist of the following:

Component 1: Construction of an approximately 50,000-acre-foot off-channel impoundment reservoir would be located directly upstream and adjacent to the existing Harris Reservoir, referred to as the Harris Reservoir Expansion. The proposed reservoir would cover approximately 2,000 acres and would include a pumped intake station on the Brazos River and gravity outfall to Oyster Creek via a new bypass channel that would be constructed. The proposed reservoir would operate with the existing Harris and Brazoria Reservoirs in a manner similar to current operations. During periods of drought, the proposed reservoir would be exhausted first, followed by the existing Harris Reservoir, and then the Brazoria Reservoir. As with current operations, emergency releases would occur because of severe weather, such as tropical storms and hurricanes with wind speeds that can overtop the embankments.

Component 2: As part of the proposed Project, Oyster Creek restoration is planned under three projects (referred to as Projects 1, 2, and 3) to enhance the flood capacity and to provide riparian restoration and enhancements. Stream restoration projects comprise bankfull benching, 100-foot buffer preservation, and buffer re-establishment out to 200 feet. Project 1 is located on a 3,600-linear-foot unnamed tributary to Oyster Creek, and Project 2 is located on a 12,860-linear-foot segment of Oyster Creek. Project 3, located on an 11,200-linear-foot segment of Oyster Creek, would serve as a receiving channel conveying overflows from Oyster Creek during high flows by providing additional hydraulic conveyance capacity in the floodplain, and would provide additional flood storage capacity by receiving backwater from Oyster Creek at the downstream end of Project 3 during flood events.

Planning: In response to public concerns on potential impacts to floodplains and hydrology raised during the 2018 Public Notice scoping period, Dow prepared the following studies:

(i) A geomorphic assessment of Oyster Creek that applied Rosgen Stream Classification Levels I, II, and III. The assessment was used to develop the proposed Oyster Creek enhancement prescriptions.

(ii) A Level I and II stream condition assessment to determine the functions and values for wetlands and waters of the U.S. that would be affected as a result of reservoir and associated facility placement.

(iii) A hydrology and hydraulic modeling report using HEC–HMS, Riverware™, and HEC–RAS models. HEC–HMS provides hydrologic modeling, Riverware™ provides reservoir operational modeling, and HEC–RAS provides hydraulic modeling. The modeling and analysis focused on drought conditions during the life of the proposed Project.

(iv) Planning-level floodplain analysis and modeling for areas downstream of the proposed Project to confirm the floodplain storage changes that would occur if the proposed Project is implemented.

(v) An updated interim hydrogeomorphic functional assessment to determine the functional capacities of wetlands and waters of the U.S. within the proposed Project site.

(vi) Other planning studies, including a Phase I Environmental Site Assessment.

Mitigation: Since the Public Notice was issued, additional wetland delineation work was conducted in September 2019 that included preparation of a functional assessment and stream assessment referred to above. The Corps verified that wetland delineation on October 10, 2019. A conceptual mitigation plan was submitted with the Section 404 Permit application in 2018 to address compensation of unavoidable impacts to waters of the U.S. The conceptual mitigation plan will be revised based on the verified wetland delineation and results of the functional assessment and stream assessments and as part of the EIS development.

3. *Location:* The project site is located between the Brazos River and Oyster Creek approximately eight miles northwest of the City of Angleton and abuts the Brazos River. The project can be located on the U.S.G.S. quadrangle map titled: OTEY, Texas.

4. *Purpose and Need:* The purpose of the proposed Project is to utilize Dow's existing run-of-river water rights from the Brazos River to improve reliability during extended drought conditions for the existing water supply system that serves Dow's Texas Operations in Freeport as well as other industrial, community and potable water users that rely on Dow's water supply. Based on modeling, Dow estimates that a total of 78,000 acre-feet of water storage capacity is necessary to provide Texas Commission on Environmental Quality's recommended 180 days of drought resilience. The current combined storage capacity in the existing Brazoria and Harris reservoirs is approximately 29,000 acre-feet. Therefore, Dow will need to develop the Harris Reservoir Expansion Reservoir to provide an additional storage capacity of at least 49,000 to provide a reliable water supply during drought.

5. *Alternatives:* An evaluation of alternatives to Dow's preferred alternative initially being considered includes a No Action alternative; alternatives that would avoid, minimize, and compensate for impacts to the environment within the proposed Project footprint; alternatives that would avoid, minimize, and compensate for impacts to the environment outside the footprint; alternatives using alternative practices; and other reasonable alternatives that will be developed through the Project scoping process, which may also meet the identified purpose and need.

6. *Public Involvement:* The purpose of the public scoping process is used to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. General concerns in the following categories have been identified to date: Waters of the U.S. including wetlands, water quality, sedimentation and erosion, hydrology and flood hazards, water rights, wildlife and aquatic species, migratory birds, threatened and endangered species, invasive species, air quality, environmental justice, socioeconomic environment, archaeological and cultural resources, navigation and recreational resources, hazardous waste and materials, public health and safety, downstream and off-site impacts, and cumulative impacts. All parties who express interest will be given an opportunity to participate in the process.

7. *Coordination:* The proposed action is being coordinated with a number of federal, state, regional, and local agencies, including the U.S. Environmental Protection Agency (a cooperating agency under NEPA), U.S. Fish and Wildlife Service, U.S. National Marine Fisheries Service, Texas Commission on Environmental Quality, Texas General Land Office, and Texas Parks and Wildlife Department.

8. *Availability of Draft EIS and Scoping:* The draft EIS is estimated to be available for public review and comment no sooner than the spring of 2021. At that time a 45-day public review period will be provided for individuals and agencies to review and comment on the DEIS.

Pete G. Perez,

Director, Programs Directorate.

[FR Doc. 2020–07315 Filed 4–6–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[Department of the Army Permit Number SWG–2019–00067]

[Intent To Prepare an Environmental Impact Statement and Public Scoping Meeting for the Port of Corpus Christi Channel Deepening Project, Nueces and Aransas Counties, Texas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District (Corps), has received a permit application for a Department of the Army (DA) Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act from the Port of Corpus Christi Authority (PCCA) (SWG–2019–00067) for the deepening of the Corpus Christi Ship Channel (CCSC). The primary Federal involvement associated with the proposed action is the discharge of dredged or fill material into waters of the United States, the construction of structures and/or work that may affect navigable waters, and ocean disposal of dredged material. Federal authorizations for the proposed project would constitute a ''major federal action.'' Based on the potential impacts, both individually and cumulatively, the Corps intends to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) to render a final decision on the permit application. The Corps' decision will be to issue, issue with modification, or deny DA permits for the proposed action. The EIS will assess the potential social, economic, and environmental impacts of the proposed project and is intended to be sufficient in scope to address Federal, State and local requirements, environmental and socioeconomic issues concerning the proposed action, and permit reviews.

ADDRESSES: Written comments regarding the proposed EIS scope should be addressed to Mr. Jayson Hudson, USACE, Galveston District, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553–1229. Individuals who would like to electronically provide comments should contact Mr. Hudson by electronic mail at: *SWG201900067@usace.army.mil.* Emailed comments, including attachments, should be provided in .doc, .docx, .pdf or .txt formats.

FOR FURTHER INFORMATION CONTACT: For information about this project, to be included on the mailing list for future updates and meeting announcements, or to receive a copy of the Draft EIS when it is issued, contact Mr. Jayson Hudson, at the Corps at (409) 766–3108, the email address *SWG201900067@usace.army.mil,* or the address provided above.

SUPPLEMENTARY INFORMATION: The Corps Galveston District intends to prepare an EIS for the proposed Port of Corpus Christi Deepening project. The proposed project is needed to accommodate transit of fully laden very large crude carriers (VLCCs) that draft approximately 70 feet. The deepening activities would be completed within the footprint of the authorized CCSC channel width. The proposed project does not include widening the channel; however, some minor incidental widening of the channel is expected to meet side slope requirements and to maintain the stability of the channel. As part of the Department of the Army permit application process, a public notice was published on August 1, 2019. The purpose of the public notice was to initiate an early public scoping process to solicit comments and information from the public as well as state and federal agencies to better enable us to make a reasonable decision on factors affecting the public interest. All comments received to date, including those provided for review during the public notice comment period, will be considered by the Galveston District during EIS preparation.

1. *Scoping Process/Public Involvement:* The Corps invites all affected federal, state, and local agencies, affected Native American Tribes, other interested parties, and the general public to participate in the NEPA process during development of the EIS. The purpose of the public scoping process is to provide information to the public, narrow the scope of analysis to significant environmental issues, serve as a mechanism to solicit agency and public input on alternatives and issues of concern, and ensure full and open participation in scoping for the Draft EIS. To ensure that all of the issues related to this proposed project are addressed, the Corps will conduct public scoping meeting(s) in which agencies, organizations, and members of the general public are invited to present comments or suggestions with regard to the range of actions, alternatives, and potential impacts to be considered in the EIS. The scoping meeting will begin with an informal open house including a presentation of the proposed action and a description of the NEPA process. These will be held in person, or virtually, as determined by the Agency. Comments will be accepted for 14 days following the scoping meeting. Displays and other forms of information about the proposed action will be available, and the Corps and PCCA personnel will be present at the informal session to discuss the proposed project and the EIS Process. The Corps invites comments on the proposed scope and content of the EIS from all interested parties. Verbal transcribers will be available at the scoping meeting to accept verbal comments. A time limit will be imposed on verbal comments. Written comments

may be submitted prior, during, or up to 14 days after the scoping meeting. The specific dates, times, and locations of the meetings will be published in press releases, special public notices and on the Corps' project website: *https://www.swg.usace.army.mil/Business-With-Us/Regulatory/Special-Projects-Environmental-Impact-Statements/.*

2. *Project Background:* The CCSC is currently authorized by the USACE to project depths of −54 feet and −56 feet mean lower low water (MLLW) from Station 110+00 to Station −330+00 as part of the CCSC Improvement Project. The current authorized width of the CCSC is 600 feet inside the jetties and 700 feet in the entrance channel. The proposed project would deepen the channel from Station 110+00 to Station −72+50 to a maximum depth of –79 feet MLLW (–75 feet MLLW plus two feet of advanced maintenance and two feet of allowable overdredge), and from Station −72+50 to Station −330+00, the channel would be deepened to a maximum depth of −81 feet MLLW (−77 feet MLLW plus two feet of advanced maintenance and two feet of allowable overdredge). The proposed project includes a 29,000-foot extension of the CCSC from Station–330+00 to Station –620+00 to a maximum depth of –81 MLLW (−77 feet MLLW plus two feet of advanced maintenance and two feet of allowable overdredge) to reach the −80-foot MLLW bathymetric contour in the Gulf of Mexico. The proposed project would span approximately 13.8 miles from a location near the southeast side of Harbor Island to the –80-foot MLLW bathymetric contour in the Gulf of Mexico. The proposed project would cover approximately 1,778 acres, creating approximately 46 million cubic yards (MCY) of new work dredged material (17.1 MCY of clay and 29.2 MCY of sand).

The proposed project consists of the following:

Deepening a portion of the CCSC from the currently authorized depth of −54 to −56 MLLW to final constructed depths ranging from −79 to −81 feet MLLW;

Extending the existing terminus of the authorized channel an additional 29,000 feet into the Gulf of Mexico to reach the −80-foot MLLW bathymetric contour;

Expanding the existing Inner Basin at Harbor Island as necessary to accommodate VLCC turning, which includes construction of a flare transition from the CCSC within Aransas to meet the turning basin expansion;

Potential placement of new work dredged material into waters of the United States for beneficial use sites located in and around Corpus Christi and Redfish Bays;

Potential placement of dredged material on San Jose Island for dune restoration;

Potential placement of dredged material feeder berms for beach restoration along San Jose and Mustang Islands; and

Transport of new work dredged material to the CCSC Improvement Project New Work Ocean Dredged Material Disposal Site (ODMDS).

3. *Location:* The proposed project is located within the existing channel bottom of the CCSC starting at station 110+00 near the southeast side of Harbor Island, traversing easterly through the Aransas Pass, and extending beyond the currently authorized terminus Station −330+00 an additional 29,000 feet terminating out into the Gulf of Mexico at the proposed new Terminus Station −620+00, an approximate distance of 13.8 miles, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas.

4. *Purpose and Need:* To safely, efficiently, and economically export current and forecasted crude oil inventories via VLCC, a common vessel in the world fleet. Crude oil is delivered via pipeline from the Eagle Ford and Permian Basins to multiple locations at the Port of Corpus Christi. Crude Oil inventories exported at the Port of Corpus Christi have increased from 280,000 barrels per day in 2017 to 1,650,000 barrels in January 2020 with forecasts increasing to 4,500,000 barrels per day by 2030. Current facilities require vessel lightering to fully load a VLCC which increases cost and affects safety.

5. *Alternatives:* An evaluation of alternatives to PCCA's preferred alternative initially being considered includes a No Action alternative; alternatives that would avoid, minimize, and compensate for impacts to the environment within the proposed Project footprint; alternatives that would avoid, minimize, and compensate for impacts to the environment outside the footprint; alternatives using alternative practices; and other reasonable alternatives that will be developed through the Project scoping process, which may also meet the identified purpose and need.

6. *Public Involvement:* The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. General concerns in the following categories have been identified to date: Potential direct effects to waters of the United States including wetlands; water and sediment quality; aquatic species; air quality; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; hazardous waste and materials; aesthetics; public health and safety; navigation; ferry operations; erosion; invasive species; cumulative impacts; public benefit and needs of the people along with potential effects on the human environment. All parties who express interest will be given an opportunity to participate in the process.

7. *Coordination:* The proposed action is being coordinated with a number of Federal, State, regional and local agencies. As part of the NEPA process, the U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard will be cooperating agencies in the preparation of the EIS. The Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department will be participating agencies in the preparation of the EIS.

8. *Availability of Draft EIS and Scoping:* The draft EIS is estimated to be available for public review and comment no sooner than the spring of 2021. At that time a 45-day public review period will be provided for individuals and agencies to review and comment on the DEIS.

Pete G. Perez,

Director, Programs Directorate.

[FR Doc. 2020–07313 Filed 4–6–20; 8:45 am]

BILLING CODE 3720–58–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: PR20–47–000.

Applicants: Public Service Company of Colorado.

Description: Tariff filing per 284.123(b),(e)+(g): Statement of Rates 3.1.2020 to be effective 3/1/2020.

Filed Date: 3/27/2020.

Accession Number: 202003275291.

Comments Due: 5 p.m. ET 4/17/2020.

284.123(g) Protests Due: 5 p.m. ET 5/26/2020.

Docket Numbers: RP20–694–000.
Applicants: Rover Pipeline LLC.
Description: Compliance filing Flow Through of Cash-Out and Penalty Revenues filed on 3–30–20.
Filed Date: 3/30/20.
Accession Number: 20200330–5063.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–695–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Tenaska PALS Negotiated Rate to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5097.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–696–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Amendment to Negotiated Rate Service Agreement to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5119.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–697–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—April 1 2020 City of Winfield 1011266 & Tenaska 1011653 to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5186.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–698–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: EQT to Nextera Perm Releases—NC Agrmts & NRA eff 4.1.2020 to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5204.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–699–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—March 30, 2020 MCS Negotiated Rate Agreements to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5222.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–700–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—EAP Ohio 860161 Apr 1 Releases to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5226.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–701–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX Evaluation of Credit Revisions (GT&C Section 13) to be effective 4/30/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5240.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–702–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 4–1–20) to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5278.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–703–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Neg Rate Agmt (FPL 48381) to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5280.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–704–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (TVA 35341 eff 4–1–2020) to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5281.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–705–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 3–30–20 to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5284.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–706–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice Regarding Non-Jurisdictional Gathering Facilities (Zero-Flow Meters).
Filed Date: 3/30/20.
Accession Number: 20200330–5303.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–707–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 4.1.20 to be effective 4/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5309.
Comments Due: 5 p.m. ET 4/13/20.

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: April 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07256 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–49–000.
Applicants: PSEG Fossil LLC, Yards Creek Energy, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of PSEG Fossil LLC, et al.
Filed Date: 3/30/20.
Accession Number: 20200330–5419.
Comments Due: 5 p.m. ET 5/14/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1975–025; ER10–1976–012; ER10–1985–012; ER10–1989–013; ER10–2078–018; ER10–2641–035; ER11–2192–015; ER11–4678–014; ER12–1660–017; ER12–2444–013; ER12–631–015; ER12–676–012; ER13–2458–012; ER13–2461–012; ER13–2474–015; ER14–2708–017; ER14–2709–016; ER14–2710–016; ER15–1016–007; ER15–2243–005; ER15–30–014; ER15–58–014; ER16–1277–008; ER16–1293–007; ER16–1440–010; ER16–1913–005; ER16–2240–010; ER16–2297–009; ER16–2506–009; ER17–196–004; ER17–2270–009; ER17–582–005; ER17–583–005; ER18–1981–005; ER18–2032–005; ER18–2091–004; ER18–2224–007; ER18–807–004; ER19–11–004; ER19–2266–001; ER19–2382–001; ER19–2495–001; ER19–2513–001; ER19–774–004.

Applicants: North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Oleander

Power Project, Limited Partnership, Oliver Wind III, LLC, Osborn Wind Energy, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, Pegasus Wind, LLC, Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Pima Energy Storage System, LLC, Pinal Central Energy Center, LLC, Pratt Wind, LLC, Quitman Solar, LLC, Red Mesa Wind, LLC, River Bend Solar, LLC, Roswell Solar, LLC, Rush Springs Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Sky River LLC, Stanton Clean Energy, LLC, Steele Flats Wind Project, LLC, Story County Wind, LLC, Stuttgart Solar, LLC, Titan Solar, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Wessington Springs Wind, LLC, Westside Solar, LLC, White Oak Energy LLC, White Oak Solar, LLC, White Pine Solar, LLC, Whitney Point Solar, LLC, Wildcat Ranch Wind Project, LLC, Wilton Wind Energy II, LLC, Windpower Partners 1993, LLC.

Description: Notice of Change in Status of the NextEra MBR Sellers (Part 3), et al.

Filed Date: 3/27/20.

Accession Number: 20200327–5337.

Comments Due: 5 p.m. ET 4/17/20.

Docket Numbers: ER18–254–000.

Applicants: Buckeye Power, Inc.

Description: Buckeye Power, Inc. submits tariff filing per 35.19a(b): Refund Report_South Central Power Company [ER18–254 and ER19–1457] to be effective N/A.

Filed Date: 3/30/20.

Accession Number: 20200330–5308.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1442–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Filing of Annual Formula Rate of PEB and PBOP Changes to be effective 4/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5019.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1443–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5609; Queue No. AE1–219 to be effective 3/5/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5022.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1444–000.

Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

Description: § 205(d) Rate Filing: 2020–03–31_MidAmerican Attachment O Revisions to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5047.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1445–000.

Applicants: Emera Maine.

Description: § 205(d) Rate Filing: Service Agreement for NISTA—Houlton Water Company to be effective 3/31/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5057.

Comments Due: 5 p.m. ET 4/21/20.

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: March 31, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07197 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL20–5–000]

Business Continuity of Energy Infrastructure

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Commission states that it will expeditiously review and act on requests for relief in response to the national emergency caused by COVID–19, and that it will give its highest priority to processing filings made for the purpose of assuring the business continuity of regulated entities' energy infrastructure during this extraordinary time.

DATES: This policy statement will become applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT:

Caroline Wozniak (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–8931, *caroline.wozniak@ferc.gov*.

Kaleb Lockwood (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8255, *kaleb.lockwood@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. On March 13, 2020, the President issued a proclamation declaring a National Emergency concerning COVID–19. Entities regulated by the Commission have had to take unprecedented actions in response to the emergency conditions, including directing staff to work remotely for an extended period, which may disrupt, complicate, or otherwise change their normal course of business operations. In light of the President's proclamation, the Commission believes it is appropriate to provide regulatory guidance on certain energy infrastructure, market, reliability and security matters. We understand that regulated entities may need to implement new procedures, update and/or suspend existing procedures, and take other measures to safeguard the business continuity of their systems. We are aware that such regulated entities may have questions about their ability to meet regulatory requirements and/or recover the expenses necessary if they take steps to safeguard the business continuity of their systems during the national emergency. We want to assure regulated entities that we will expeditiously review and act on requests for relief, including but not limited to, requests for cost recovery necessary to assure business continuity of the regulated entities' energy infrastructure in response to the national emergency.

2. We will give our highest priority to processing filings made for the purpose of assuring the business continuity of regulated entities' energy infrastructure during this extraordinary time. We view the reliability and security of our Nation's vital energy infrastructure as critical to meeting the energy requirements essential to the American people.

3. The Commission fully supports the continued cooperation of the energy industry, customers, and Federal, State,

and local government partners to provide any additional safeguards necessary to protect the business continuity of the Nation's vital energy infrastructure.

By the Commission.

Issued: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07301 Filed 4–2–20; 5:15 pm]

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: EG20–108–000.

Applicants: Yards Creek Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/30/20.

Accession Number: 20200330–5268.

Comments Due: 5 p.m. ET 4/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1883–008; ER15–1418–008; ER18–2118–006; ER19–2373–001; ER10–2005–018; ER11–26–018; ER10–2551–015; ER12–569–021; ER16–91–008; ER16–632–006; ER20–819–001; ER20–820–001; ER15–1925–014; ER16–2453–011; ER16–2190–010; ER16–2191–010; ER19–2901–002; ER10–1841–018; ER15–2582–007; ER18–1978–005; ER15–2676–013; ER16–1672–011; ER13–712–022; ER18–1863–005; ER17–2152–007; ER19–2461–001; ER19–987–005; ER19–1003–005; ER10–1845–018; ER19–2269–001; ER10–1846–014; ER13–1991–013; ER13–1992–013; ER18–1534–005; ER18–882–006; ER10–1849–020; ER19–2437–001; ER19–1393–005; ER19–1394–005; ER13–752–012; ER12–2227–020; ER10–1851–012; ER10–1852–036; ER10–1855–013; ER10–1857–013; ER10–1887–020; ER10–1890–014; ER10–1899–013; ER11–2160–014; ER10–1905–018; ER10–1907–017; ER10–1918–018; ER10–1920–021; ER10–1925–018; ER10–1927–018; ER10–1928–021; ER11–2642–015.

Applicants: Adelanto Solar, LLC, Adelanto Solar II, LLC, Armadillo Flats Wind Project, LLC, Ashtabula Wind I, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Baldwin Wind, LLC, Blackwell Wind, LLC, Blythe Solar 110, LLC, Blythe Solar II, LLC, Blythe Solar III, LLC, Blythe Solar IV, LLC, Breckinridge Wind Project, LLC, Brady Interconnection, LLC, Brady Wind, LLC, Brady Wind II, LLC, Bronco Plains Wind, LLC, Butler Ridge Wind Energy Center, LLC, Carousel Wind Farm, LLC, Casa Mesa Wind, LLC, Cedar Bluff Wind, LLC, Chaves County Solar, LLC, Cimarron Wind Energy, LLC, Coolidge Solar I, LLC, Cottonwood Wind Project, LLC, Crowned Ridge Wind, LLC, Crystal Lake Wind III, LLC, Dougherty County Solar, LLC, Day County Wind, LLC Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, East Hampton Energy Storage Center, LLC, Elk City Renewables II, LLC, Elk City Wind, LLC, Emmons-Logan Wind, LLC, Endeavor Wind I, LLC, Endeavor Wind II, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Burleigh County Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC.

Description: Notice of Change in Status of the NextEra MBR Sellers (Part 1), et al.

Filed Date: 3/27/20.

Accession Number: 20200327–5332.

Comments Due: 5 p.m. ET 4/17/20.

Docket Numbers: ER10–1930–012; ER10–1931–013; ER10–1932–013; ER10–1935–013; ER13–2147–001; ER10–1950–018; ER13–2112–009; ER16–90–007; ER17–2340–004; ER15–2477–007; ER15–2101–008; ER10–1952–019; ER19–2389–002; ER15–2601–005; ER18–1952–007; ER19–2398–002; ER11–3635–013; ER10–2006–018; ER18–2246–006; ER19–1392–004; ER10–1961–019; ER12–1228–021; ER10–1962–013; ER16–2275–009; ER16–2276–009; ER10–1964–016; ER18–1771–007; ER12–2226–011; ER12–2225–011; ER14–2138–008; ER16–1354–007; ER10–1966–012; ER18–2003–005; ER17–822–005; ER17–823–005; ER18–241–004; ER14–2707–016; ER14–1630–009; ER16–1872–008; ER15–1375–007; ER15–2602–005; ER10–2720–021; ER11–4428–021; ER12–1880–020; ER18–2182–005; ER12–895–019; ER18–1535–004; ER14–21–007; ER11–4462–041; ER18–772–004; ER16–2443–004; ER17–1774–003; ER10–1970–017; ER11–4677–014; ER10–1972–017; ER17–838–016; ER10–1973–012; ER10–1951–020; ER10–1974–023; ER16–2241–009.

Applicants: FPL Energy Stateline II, Inc., FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Frontier Utilities Northeast LLC, Garden Wind, LLC, Genesis Solar, LLC, Golden Hills Interconnection, LLC, Golden Hills North Wind, LLC, Golden Hills Wind, LLC, Golden West Power Partners, LLC, Gray County Wind Energy, LLC, Grazing Yak Solar, LLC, Green Mountain Storage, LLC, Gulf Power Company, LLC, Hancock County Wind, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, Heartland Divide Wind Project, LLC, High Lonesome Mesa Wind, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, High Winds, LLC, Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC, Lake Benton Power Partners II, LLC, Langdon Renewables, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Live Oak Solar, LLC, Logan Wind Energy LLC, Lorenzo Wind, LLC, Luz Solar Partners Ltd., III, Luz Solar Partners Ltd., IV, Luz Solar Partners Ltd., V, Mammoth Plains Wind Project, LLC, Manuta Creek Solar, LLC, Marshall Solar, LLC, McCoy Solar, LLC, Meyersdale Storage, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco IV & V Interconnection, LLC, Minco Wind Interconnection Services, LLC, Montauk Energy Storage Center, LLC, Mountain View Solar, LLC, NEPM II, LLC, New Mexico Wind, LLC, NextEra Blythe Solar Energy Center, LLC, NextEra Energy Bluff Point, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, Ninnescah Wind Energy, LLC.

Description: Notice of Change in Status of the NextEra MBR Sellers (Part 2), et al.

Filed Date: 3/27/20.

Accession Number: 20200327–5336.

Comments Due: 5 p.m. ET 4/17/20.

Docket Numbers: ER19–1195–001.

Applicants: GSG 6, LLC.

Description: Report Filing: Refund Report per Settlement (ER19–1195) to be effective N/A.

Filed Date: 3/30/20.

Accession Number: 20200330–5196.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1074–001.

Applicants: Marsh Landing LLC.

Description: Tariff Amendment: Amendment to Filing of Black Start Agreement to be effective 4/26/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5302.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: ER20–1422–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Taylor EC-Golden Spread EC 5th A&R Interconnection Agreement to be effective 3/12/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5187.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1423–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5608; Queue No. AE1–218 to be effective 3/5/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5213.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1424–000.
Applicants: Yards Creek Energy, LLC.
Description: Baseline eTariff Filing: Reactive Service Rate Schedule to be effective 12/31/9998.
Filed Date: 3/30/20.
Accession Number: 20200330–5214.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1425–000.
Applicants: Jersey Central Power & Light Company.
Description: § 205(d) Rate Filing: Rate changes to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5216.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1426–000.
Applicants: Monongahela Power Company.
Description: § 205(d) Rate Filing: Rate changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5217.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1427–000.
Applicants: Pennsylvania Electric Company.
Description: § 205(d) Rate Filing: Rate changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5225.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1428–000.
Applicants: The Cleveland Electric Illuminating Comp.
Description: § 205(d) Rate Filing: Normal Rate Schedule changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5234.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1429–000.
Applicants: PJM Interconnection, L.L.C., Buckeye Power, Inc.
Description: § 205(d) Rate Filing: Revised SA No. 4753—NITSA Among PJM and Buckeye Power, Inc. to be effective 3/1/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5236.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1430–000.
Applicants: Ohio Edison Company.
Description: § 205(d) Rate Filing: Normal Rate Schedule changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5237.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1431–000.
Applicants: The Toledo Edison Company.
Description: § 205(d) Rate Filing: Normal Rate Schedule changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5239.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1432–000.
Applicants: Pennsylvania Power Company.
Description: § 205(d) Rate Filing: Normal Rate Schedule changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5244.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1433–000.
Applicants: Metropolitan Edison Company.
Description: § 205(d) Rate Filing: Normal Rate Schedule changes 2020 to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5245.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1434–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: First Amendment to Sappi North America, Inc. Interconnection Agreement to be effective 2/29/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5283.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1435–000.
Applicants: Energy Harbor LLC.
Description: Compliance filing: Notice of Succession and Requests for Administrative Cancellation and Waiver to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5334.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1436–000.
Applicants: Energy Harbor LLC.
Description: Compliance filing: Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5335.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1437–000.
Applicants: Energy Harbor Generation LLC.
Description: Compliance filing: Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5352.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1438–000.
Applicants: Energy Harbor Nuclear Generation LLC.
Description: Compliance filing: Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 2/27/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5324.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1439–000.
Applicants: Pleasants Corp..
Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 3/31/2020.
Filed Date: 3/30/20.
Accession Number: 20200330–5329.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1440–000.
Applicants: Yards Creek Energy, LLC.
Description: § 205(d) Rate Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 12/31/9998.
Filed Date: 3/30/20.
Accession Number: 20200330–5338.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1441–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: Tariff Cancellation: Cancellation of Yards Creek to be effective 12/31/9998.
Filed Date: 3/30/20.
Accession Number: 20200330–5347.
Comments Due: 5 p.m. ET 4/20/20.

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: March 31, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07195 Filed 4–6–20; 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: EG20–109–000.
Applicants: Inter-Power/AhlCon Partners, L.P.
Description: Notice of Self-Certification of EWG Status of Inter-Power/AhlCon Partners, L.P.
Filed Date: 3/31/20.
Accession Number: 20200331–5078.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: EG20–110–000.
Applicants: Northern Colorado Wind Energy Center, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generation Status of Northern Colorado Wind Energy Center, LLC.
Filed Date: 3/31/20.
Accession Number: 20200331–5283.
Comments Due: 5 p.m. ET 4/21/20.

Take notice that the Commission received the following electric rate filings:.

Docket Numbers: ER04–835–010.
Applicants: California Independent System Operator Corporation.
Description: Second Supplemental Informational Compliance Filing of the California Independent System Operator Corporation.
Filed Date: 3/31/20.
Accession Number: 20200331–5477.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER17–256–011; ER17–242–010; ER17–243–010; ER17–245–010; ER17–652–010.
Applicants: Darby Power, LLC, Gavin Power, LLC, Lawrenceburg Power, LLC, Waterford Power, LLC, Lightstone Marketing LLC.
Description: Notice of Non-Material Change in Status of Darby Power, LLC, et al.
Filed Date: 3/31/20.
Accession Number: 20200331–5475.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1458–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E Southern Oaks BESS SGIA (SA 448) to be effective 6/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5282.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1459–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E Mission Ranch BESS SGIA (SA 449) to be effective 6/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5277.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1460–000.
Applicants: Wisconsin Power and Light Company.
Description: § 205(d) Rate Filing: REC Amendment to Wholesale Power Agreement to be effective 6/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5279.
Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1461–000.
Applicants: Wisconsin Power and Light Company.
Description: § 205(d) Rate Filing: CWEC Amendment to Wholesale Power Agreement to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5001.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1462–000.
Applicants: Union Electric Company, Outlaw Wind Project, LLC.
Description: § 205(d) Rate Filing: Purchase and Sale Agreement to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5090.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1463–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits ECSA SA No. 5566 to be effective 5/31/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5091.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1464–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: Amendment PASNY Tariff 4–1–2020 to be effective 4/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5114.
Comments Due: 5 p.m. ET 4/22/20.
Docket Numbers: ER20–1465–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Avista Comm. Lease Agmt (Saddle Mtn) to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5188.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1466–000.
Applicants: Louisville Gas and Electric Company.
Description: Compliance filing: Order No. 864 Compliance TCJA Att O Revision to be effective 1/27/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5192.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1467–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: Revised DEF–SECI RS No. 194 to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5193.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1468–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 371, Amendment No. 2—TOUA to be effective 4/2/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5196.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1469–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA No. 3810 RE: Deactivation to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5200.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1470–000.
Applicants: New York Independent System Operator, Inc.
Description: Request for Limited Waiver of Tariff Provisions of New York Independent System Operator, Inc.
Filed Date: 4/1/20.
Accession Number: 20200401–5202.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1471–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Annual Real Power Loss Factor Filing for 2020 to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5214.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1472–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.
Description: § 205(d) Rate Filing: 2020–04–01_Entergy Pension Filing to be effective 6/1/2020.
Filed Date: 4/1/20.

Accession Number: 20200401–5222.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1473–000.
Applicants: AEP Generation Resources Inc.
Description: § 205(d) Rate Filing: Reactive Supply and Voltage Control from Generation Service to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5224.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1473–000.
Applicants: AEP Generation Resources Inc.
Description: § 205(d) Rate Filing: Reactive Supply and Voltage Control from Generation Service to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5225.
Comments Due: 5 p.m. ET 4/22/20.

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: April 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07255 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1417–000]

Roundhouse Renewable 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 Roundhouse Renewable 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 April 21, 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: April 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07252 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 31, 2020.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP18–922–005.
Applicants: Trailblazer Pipeline Company LLC.
Description: Compliance filing TPC RP18–922 Stipulation and Agreement Compliance Filing to be effective 1/1/2019.
Filed Date: 3/27/20.
Accession Number: 20200327–5141.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–688–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Amended Macquarie 510932 to be effective 4/1/2020.
Filed Date: 3/27/20.
Accession Number: 20200327–5026.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–689–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Update Filing (Conoco Apr 20) to be effective 4/1/2020.
Filed Date: 3/27/20.
Accession Number: 20200327–5040.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–690–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: Compressor Usage Surcharge 2020 to be effective 5/1/2020.
Filed Date: 3/27/20.
Accession Number: 20200327–5043.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–691–000.
Applicants: Kern River Gas Transmission Company.
Description: Annual Gas Compressor Fuel Report of Kern River Gas Transmission Company under RP20–691.
Filed Date: 3/27/20.
Accession Number: 20200327–5117.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–692–000.
Applicants: Pine Needle LNG Company, LLC.
Description: § 4(d) Rate Filing: Tariff Clean-Up to be effective 4/27/2020.
Filed Date: 3/27/20.
Accession Number: 20200327–5132.
Comments Due: 5 p.m. ET 4/8/20.

Docket Numbers: RP20–693–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Tariff Clean Up Filing to be effective 4/27/2020.

Filed Date: 3/27/20.

Accession Number: 20200327–5299.

Comments Due: 5 p.m. ET 4/8/20.

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: March 31, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07198 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1586–007; ER10–1630–007.

Applicants: Big Sandy Peaker Plant, LLC, Wolf Hills Energy, LLC.

Description: Notification of Change in Status of the Avenue MBR Sellers, et al.

Filed Date: 3/30/20.

Accession Number: 20200330–5430.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1446–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4541; Queue No. W1–124/AA2–049 (amend) to be effective 9/20/2016.

Filed Date: 3/31/20.

Accession Number: 20200331–5120.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1447–000.

Applicants: Brookfield Energy Marketing US LLC.

Description: Compliance filing: New eTariff Baseline and Revised MBR Tariff to be effective 4/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5125.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1448–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Avangrid Const Agmt for Klamath Metering (Rev 1) to be effective 5/31/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5126.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1449–000.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.

Description: § 205(d) Rate Filing: 2020–03–31_Entergy NOL Filing to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5128.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1450–000.

Applicants: Entergy Louisiana, LLC.

Description: § 205(d) Rate Filing: ELL-Cleco 2nd Amended Implementation Agreement to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5132.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1451–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Enhancement of PJM's Credit Rules to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5142.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1452–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2020 TACBAA Update to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5147.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1453–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–03–31_Revisions to Schedule 17 Financial Schedules to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5202.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1454–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Apr 2020 Membership Filing to be effective 3/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5205.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1455–000.

Applicants: Cordova Energy Company LLC.

Description: § 205(d) Rate Filing: Reactive Power Compensation Tariff Filing to be effective 4/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5212.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1456–000.

Applicants: The Empire District Electric Company.

Description: § 205(d) Rate Filing: Revised Service Agreement and Revised Wholesale Distribution Service Agreement to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5222.

Comments Due: 5 p.m. ET 4/21/20.

Docket Numbers: ER20–1457–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: ACEC Amendment to Wholesale Power Agreement to be effective 6/1/2020.

Filed Date: 3/31/20.

Accession Number: 20200331–5259.

Comments Due: 5 p.m. ET 4/21/20.

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: March 31, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07194 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–745–000]

Alliance for Open Markets, BP Canada Energy Marketing Corp., Oasis Petroleum Marketing LLC and Tenaska Marketing Ventures v. Northern Border Pipeline Company; Notice of Complaint

Take notice that on March 31, 2020, pursuant to Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2019), BP Canada Energy Marketing Corp., Oasis Petroleum Marketing LLC, and Tenaska Marketing Ventures (Complainants) filed a complaint against Northern Border Pipeline Company (NBPL or Respondent), alleging that that Respondent awarded capacity in a pre-arranged transaction in a manner violating sections 4 and 5 of the Natural Gas Act, 18 CFR 284.13(d)(1) (2019), Commission policy, and the provisions of NBPL's Tariff., as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent 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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 20, 2020.

Dated: April 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07251 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1440–000]

Yards Creek 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 proceeding of Yards Creek 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 April 21, 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: April 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07254 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX20–2–000]

City of Goose Creek, South Carolina; Notice of Filing

Take notice that on March 30, 2020, pursuant to sections 210 and 212 of the Federal Power Act,[1] and Rule 204 of the Commission's Rules of Practice and Procedure,[2] the City of Goose Creek, South Carolina filed an application for an order directing South Carolina Public Service Authority to administratively transition the interconnection customer at the Mt. Holly Interconnection from Century Aluminum of South Carolina, Inc. to Goose Creek and take all necessary steps to maintain the Mt. Holly Interconnection.

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

[1] 16 U.S.C. 824i and 824k.

[2] 18 CFR 385.204.

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 20, 2020.

Dated: March 31, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07196 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–6–003]

FirstEnergy Service Company; Notice of Filing

Take notice that on March 30, 2020, FirstEnergy Service Company submitted a Notice of Non-Material Change in Circumstances pursuant to the order issued by the Federal Energy Regulatory Commission (Commission), in the above captioned proceeding, on February 2, 2018.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 20, 2020.

Dated: March 31, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07225 Filed 4–6–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *FirstEnergy Service Company,* 162 FERC ¶ 61,087 (2018).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10007–43–OMS]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee meeting teleconference.

SUMMARY: Under the Federal Advisory Committee Act, The Environmental Protection Agency (EPA) gives notice of a public meeting of the National Advisory Committee (NAC) and the Government Advisory Committee (GAC). The NAC and GAC provide advice the EPA Administrator a broad range of environmental policy, technology, and management issues. NAC/GAC members represent academia, business/industry, non-governmental organizations, and state, local and tribal governments. The purpose of this meeting is to provide advice to the EPA Administrator, regarding the draft 2021–2025 Strategic Plan of the Commission for Environmental Cooperation (CEC). A copy of the meeting agenda will be posted at *http://www.epa.gov/faca/nac-gac.* Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days notice.

DATES: NAC/GAC will hold a public teleconference on April 10, 2020, from 11 a.m. to 3 p.m. (EST).

ADDRESSES: This meeting will be broadcasted via teleconference only. To gain access to the meeting please contact Oscar Carrillo, Designated Federal Officer for the NAC/GAC at 202–564–0347 or *carrillo.oscar@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Program Analyst, *carrillo.oscar@epa.gov*, (202) 564–0347, U.S. EPA, Office of Resources, Operations and Management; Federal Advisory Committee Management Division (MC1601M), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NAC/GAC should be sent to Oscar Carrillo at *carrillo.oscar@epa.gov* by April 6th, 2020. The teleconference is open to the public, with limited lines available on a first-come, first-served basis. Members of the public wishing to participate in the teleconference should contact Oscar Carrillo via email or by calling (202) 564–0347 no later than April 6, 2020.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Oscar Carrillo at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the teleconference meeting.

Dated: April 1, 2020.

Oscar Carrillo,

Program Analyst.

[FR Doc. 2020–07219 Filed 4–6–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10007–05–OLEM; EPA–HQ–OLEM–2019–0589]

Existing Comprehensive Procurement Guideline Designations and Recovered Materials Advisory Notice Recommendations: Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: Buying products with recycled content fosters the diversion of materials from the solid waste stream and promotes the use of these materials in the manufacture of new products, strengthening the United States' recycling system. Congress required the issuance of procurement guidelines in Section 6002 of the Resource Conservation and Recovery Act (RCRA). Section 6002 requires the Environmental Protection Agency (EPA or the Agency) to designate items that are or can be made with recovered materials and to recommend practices for procurement of such items. EPA has designated 61 items in eight product categories in a Comprehensive Procurement Guideline (CPG) and has issued recycled-content recommendations and procurement specifications for these items in a series of Recovered Materials Advisory Notices (RMANs) published in the **Federal Register**. EPA last updated the CPG/RMANs in 2007. Today, the Agency is seeking comment concerning the list of CPG-designated items and recommendations issued in the associated RMANs.

DATES: Comments must be received on or before July 6, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0589, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action, EPA–HQ–OLEM–2019–0589. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ksenija Janjic, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery (5306P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 347–0376; email address: *janjic.ksenija@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984, established the government ''buy-recycled'' program that seeks to harness the federal purchasing power to stimulate the demand for products made with recovered materials. The statute requires EPA to issue guidelines to be used by procuring agencies to buy products with recovered material content. Section 1004(17) defines ''procuring agency'' to include any Federal or State agency using appropriated Federal funds for a procurement as well as any person contracting with any such agency with respect to work performed under the contract. The EPA must designate items that are or can be made with recovered materials and must also recommend practices to assist procuring agencies in meeting their obligations. Once an item is designated by EPA, procuring agencies that use appropriated federal funds to purchase the item are required to purchase the item composed of the highest percentage of recovered materials practicable.

Within one year after EPA designates a CPG item, federal agencies must revise their procurement specifications to require the use of recovered materials to the maximum extent possible without jeopardizing the intended end-use of the item (Section 6002(d)(2)). Federal agencies responsible for drafting or reviewing specifications must also review all their product specifications to eliminate both provisions prohibiting the use of recovered materials and requirements specifying the exclusive use of virgin materials (Section 6002(d)(1)). For each item designated by EPA, procuring agencies are further required to develop an affirmative procuring program, which sets forth the agency's policies and procedures for implementing the requirements of RCRA section 6002 (Section 6002(i)). Finally, the Office of Federal Procurement Policy must implement the statute requirements and coordinate the purchasing policy with other federal procurement policies in order to maximize the use of recovered materials (Section 6002(g)).

Executive Order (E.O.) 12873, entitled ''Federal Acquisition, Recycling, and Waste Prevention'' established a bifurcated, two-part process for EPA to use when developing and issuing the procurement guidelines for items containing recovered materials, as required by RCRA section 6002(e). The first part, the Comprehensive Procurement Guideline (CPG), involved designating items that are or can be made with recovered materials, which is an activity requiring a rulemaking, including the formal notice-and-comment rulemaking procedures. CPGs are therefore, codified in the *Code of Federal Regulations (CFR).* The second part involves issuing recommendations to procuring agencies on purchasing the items designated in CPGs. These recommendations are issued in Recovered Materials Advisory Notices (RMANs) and published in the notice section of the **Federal Register** (FR) for public comment but are not codified in the Code of Federal Regulations.

Subsequent E.O.s continued to require the preferred purchasing of recycled content products, as required by statutory mandates. Between 1995 and 2007, EPA issued five CPGs designating 61 items in eight distinct product categories. With each group of proposed items, EPA also published recommendations on purchasing designated items in RMANs. The recommendations published in the RMANs were developed based on information on commercially available items with recovered materials and their associated specifications.

The process established in E.O. 12873 that provides for publication of an RMAN in the FR for public comment without its being codified in the Code of Federal Regulations, fulfills the statutory intent and requirements of RCRA Section 6002. Procuring agencies can obtain information on the availability and sourcing of designated items for use in developing procurement programs to meet their obligations under the statute. Furthermore, because the established process is more flexible than a rulemaking process, RMAN can be issued more expeditiously as well as revised easily to reflect development of new technologies and/or changes in commercial availability of items.

II. Request for Comment

Today, EPA requests comments on the existing five CPGs and the five corresponding RMANs. These five CPGs and RMANs pertain to 61 items in the following eight product categories:

- Paper and Paper Products;
- Vehicular Products;
- Construction Products;
- Transportation Products;
- Park and Recreation Products;
- Landscaping Products;
- Non-paper Office Products; and,
- Miscellaneous Products.

A. Topic Areas

EPA is seeking comment, relating to the following topics:

Topic 1: Designated Items

- Based on procuring agencies purchases, are the right items designated?
- Do the items currently designated represent items that procuring agencies purchase?
- Should items be deleted, added or modified? Why?

Topic 2: Recommendations for the Designated Items Including Recovered Material Content and Specifications

- Are the recommended recovered content levels/ranges appropriate?
  - ○ If not, please provide appropriate levels.
- Are the specifications published in RMANs appropriate?
  - ○ If not, please provide appropriate specifications.

Commenters should provide ample justification and background information for their comments in order to ensure appropriate consideration of the commenter's recommendations.

B. Where To Find Documents

The individual FR notices that were published to designate the CPG items and provide RMAN recommendations, as well as the supporting technical information, can be accessed from the table entitled **Federal Register** Notices Related to the Guidelines for Procurement of Products Containing Recovered Materials, at *https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg.* Existing notices are also available under Docket Details for this Docket, ID No. EPA–HQ–OLEM–2019–0589, at *https://www.regulations.gov.*

III. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0589, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For example, commenters should provide ample justification and background information for their comments to ensure appropriate consideration of the commenter's views.

IV. Follow-Up Actions

The EPA plans to review all comments received and determine next steps. Any future revisions to the CPG or RMANs will be noticed in the **Federal Register**. Action with respect to a CPG will be made through the notice-and-comment rulemaking. EPA will also make every attempt to alert the public when an action is forthcoming via multiple official social media platforms.

Dated: March 31, 2020.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2020–07193 Filed 4–6–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10007–69–OLEM]

FY2020 Supplemental Funding for Brownfields Revolving Loan Fund (RLF) Grantees; Extension of Application Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability of funds; extension of application period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the application period for a notice issued in the **Federal Register** of March 9, 2020, announcing the availability of approximately $5 million to provide supplemental funds to Revolving Loan Fund (RLF) cooperative agreements previously awarded competitively under section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This document extends the due date for supplemental funding requests to April 22, 2020.

DATES: Supplemental funding requests must be submitted by April 22, 2020.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of March 9, 2020 (85 FR 13647) (FRL–10006–24–OLEM).

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 566–2745; email address: *lentz.rachel@epa.gov.* You may also contact the appropriate Regional Brownfields Coordinator listed under **SUPPLEMENTARY INFORMATION** in the **Federal Register** document of March 9, 2020.

SUPPLEMENTARY INFORMATION: EPA is extending the due date for supplemental funding requests Brownfields Revolving Loan Fund cooperative agreements to April 22, 2020 due to disruptions stemming from the Novel Coronavirus

(COVID–19) public health emergency. The original due date was April 8, 2020. This extension is consistent with the guidance that the Office of Management and Budget provided on March 19, 2020 in M–20–17, *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID–19) due to Loss of Operations* regarding extending due dates for funding applications EPA will continue to monitor the impact on COVID–19 and any further extension of the due date for submission of FY2020 RLF Supplemental Funding applications will be announced on the EPA's Brownfields web page at *www.epa.gov/brownfields* rather than in the **Federal Register**.

Dated: April 1, 2020.

David Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management.

[FR Doc. 2020–07201 Filed 4–6–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0400; FRS 16624]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 8, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2,749 respondents; 4,152 responses.

Estimated Time per Response: 0.5–53 hours.

Frequency of Response: One-time, on occasion, biennially, and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in section 47 U.S.C. 10(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 60,722.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission has developed standardized Tariff Review Plans (TRPs) that set forth the summary material that incumbent LECs (ILECs) file to support revisions to the rates in their interstate access service tariffs. The TRPs display basic data on rate development in a consistent manner, thereby facilitating review of the ILEC rate revisions by the Commission and interested parties. The TRPs have served this purpose effectively in past years.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison.

[FR Doc. 2020–07210 Filed 4–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0804; FRS 16621]

Information Collection 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 and recommendations for the proposed information collection should be submitted on or before May 7, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to

Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the 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: 3060–0804.

Title: Universal Service—Rural Health Care Program.

Form Numbers: FCC Forms 460, 461, 462, 463, 465, 466, and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal governments.

Number of Respondents and Responses: 10,494 unique respondents; 93,687 responses.

Estimated Time per Response: 0.30–17 hours.

Frequency of Response: On occasion, One-time, Annual, Quarterly, and Monthly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 254, 303(r), and 403, unless otherwise noted.

Total Annual Burden: 382,741 hours.

Total Annual Cost: No Cost.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. Information submitted on FCC Forms for the RHC Program is subject to public inspection and is used by USAC to update and expand the RHC Program dataset as part of its Open Data Platform. However, respondents may request materials or information submitted to the Commission or to USAC be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission seeks OMB approval of revisions (change in reporting and recordkeeping requirements) to this information collection as a result of the *2019 Promoting Telehealth Report and Order* (WC Docket No. 17–310; FCC 19–78; 84 FR 54952, October 11, 2019). This collection is utilized for the RHC support mechanism of the Commission's universal service fund (USF). The collection of this information is necessary so that the Commission and the Universal Service Administrative Company (USAC) will have sufficient information to determine if entities are eligible for funding pursuant to the RHC universal service support mechanism, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. This information is also necessary in order to allow the Commission to evaluate the extent to which the RHC Program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals for the RHC Program.

This information collection is being revised to: (1) Extend some of the existing information collection requirements for the Healthcare Connect Fund and Telecommunications (Telecom) Programs; (2) revise some of the information collection requirements for the Healthcare Connect Fund and Telecom Programs and (3) add some new information collection requirements applicable to both the Healthcare Connect Fund Program and the Telecom Program as a result of the *2019 Promoting Telehealth Report and Order.* As part of this information collection, the Commission is also revising the FCC Form templates for both programs, reformatting and revising the Telecommunications Program Invoice Template, and creating a new Post-Commitment Request Form consistent with the changes adopted in the *2019 Promoting Telehealth Report and Order* and to promote transparency into the RHC Program procedures and requirements.

The Healthcare Connect Fund Program currently includes FCC Forms 460, 461, 462, and 463 and the Telecom Program currently includes FCC Forms 465, 466, and 467. The revisions to these FCC Form templates, where applicable, are intended to make the RHC Program information requests consistent between the programs, to the extent possible, and help to ensure and verify that RHC Program participants are not engaging in fraudulent conduct or otherwise violating the Commission's rules. Some of the changes to the FCC Form templates have different effective dates. Therefore, for administrative ease, we have indicated the applicable funding year of the FCC Form template, and where a specific form includes changes applicable to funding year 2020 and others to funding year 2021, we have provided separate forms applicable to each funding year. In the *2019 Promoting Telehealth Report and Order,* the Commission directed USAC to streamline the data collection requirements and consolidate the program forms to the extent possible. Such streamlining and consolidation will not affect the underlying information collected as part of this information collection, but may change the format in which it may be collected. The information on the FCC Form templates is a representative description of the information to be collected via an online portal and is not intended to be a visual representation of what each applicant or service provider will see, the order in which they will see information, or the exact wording or directions used to collect the information. Where possible, information already provided by applicants from previous filing years or

that was pre-filed in the system portal will be carried forward and auto-generated into the form to simplify the information collection for applicants. Additionally, in the *2019 Promoting Telehealth Report and Order,* the Commission adopted rules to reflect the changes in the Report and Order. The new and revised rules impacted by this collection are listed and described within the collection.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07208 Filed 4–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0016; FRS 16628]

Information Collection 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 and recommendations for the proposed information collection should be submitted on or before May 7, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *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 No.: 3060–0016.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule C (Former FCC Form 346); Sections 74.793(d) and 74.787, Low Power Television (LPTV) Out-of-Core Digital Displacement Application; Section 73.3700(g)(1)–(3), Post-Incentive Auction Licensing and Operations; Section 74.799, Low Power Television and TV Translator Channel Sharing.

Form No.: FCC Form 2100, Schedule C.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 4,460 respondents and 4,460 responses.

Estimated Time per Response: 2.5–7 hours (total of 9.5 hours).

Frequency of Response: One-time reporting requirement; on occasion reporting requirement; third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 42,370 hours.

Annual Cost Burden: $24,744,080.

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: FCC Form 2100, Schedule C is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or DTV Transition. 47 CFR 74.799 (previously 74.800) permits LPTV and TV translator stations to seek approval to share a single television channel with other LPTV and TV translator stations and with full power and Class A stations. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule C in order to have the channel sharing arrangement approved. If the sharing station is proposing to make changes to its facility to accommodate the channel sharing, it must also file FCC Form 2100 Schedule C.

The information collection requirements contained in 47 CFR 74.793(d) require that certain digital low power and TV translator stations submit information as to vertical radiation patterns as part of their applications (FCC Form 2100, Schedule C) for new or modified construction permits.

Applicants are also subject to the third-party disclosure requirement of 47

CFR 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be locally maintained along with the application.

The information collection requirements contained in 47 CFR 73.3700(g)(1)–(3) permits licensees of operating low power TV and TV translator stations that are displaced by a broadcast television station or a wireless service provider or whose channel is reserved as a guard band as a result of the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act to submit an application for displacement relief in a restricted filing window to be announced by the Media Bureau by public notice. Except as otherwise indicated in this section, such applications will be subject to the rules governing displacement applications set forth in §§ 73.3572(a)(4) and 74.787(a)(4) of this chapter. In addition to other interference protection requirements set forth in the rules, when requesting a new channel in a displacement application, licensees of operating low power TV and TV translator stations will be required to demonstrate that the station would not cause interference to the predicted service of broadcast television stations on: (i) Pre-auction channels; (ii) Channels assigned in the Channel Reassignment Public Notice; or (iii) Alternative channels or expanded facilities broadcast television station licensees have applied for pursuant to paragraph (b)(2) of this section. Licensees of low power TV and TV translator stations that file mutually exclusive displacement applications will be permitted to resolve the mutual exclusivity through an engineering solution or settlement agreement. If no resolution of mutually exclusive displacement applications occurs, a selection priority will be granted to the licensee of a displaced digital replacement translator.

Full power television stations (see 47 CFR 74.787) are required to obtain a digital-to-digital replacement translator to replace service areas lost as a result of the incentive auction and repacking processes. Stations submit FCC Form 2100 Schedule C to obtain a construction permit for the new replacement translator.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07211 Filed 4–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1241; FRS 16623]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 8, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1241.

Title: Connect America Phase II Auction Waiver Post-Selection Review.

Form Number: FCC Form 5625.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 50 respondents; 150 responses.

Estimated Time per Response: 2–4 hours.

Frequency of Response: Annual reporting requirements and one-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, and 254.

Total Annual Burden: 500 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There are no assurances of confidentiality. However, the Commission intends to keep the information private to the extent permitted by law. Also, respondents may request materials or information submitted to the Commission believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: On January 26, 2017, the Commission released *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90 and 14–58, Order, FCC 17–2 (*New York Auction Order*), which granted New York waiver of the Phase II auction program rules, subject to certain conditions. Specifically, the Commission made an amount up to the amount of Connect America Phase II model-based support that Verizon declined in New York—$170.4 million—available to applicants selected in New York's New NY Broadband Program in accordance with the framework adopted in the *New York Auction Order.*

This information collection addresses the eligibility requirements that New York winning bidders must meet before the Wireline Competition Bureau (Bureau) will authorize them to receive Connect America Phase II support. For each New York winning bid that includes Connect America-eligible areas, the Commission authorizes

Connect America support up to the total reserve prices of all of the Connect America Phase II auction eligible census blocks that are included in the bid, provided that New York has committed, at a minimum, the same dollar amount of New York support to the Connect America-eligible areas in that bid. Before Connect America Phase II support is authorized, the Bureau will closely review the winning bidders to ensure that they have met the eligibility requirements adopted by the Commission and that they are technically and financially qualified to meet the terms and conditions of Connect America support. To aid in collecting this information regarding New York State's winning bidders and the applicants' ability to meet the terms and conditions of Connect America Phase II support in a uniform fashion, parties must complete FCC Form 5625.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–07209 Filed 4–6–20; 8:45 am]

BILLING CODE 6712–01–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 May 7, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *ChoiceOne Financial Services, Inc., Sparta, Michigan;* to merge with Community Shores Bank Corporation and thereby indirectly acquire Community Shores Bank, both of Muskegon, Michigan.

Board of Governors of the Federal Reserve System, April 2, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–07291 Filed 4–6–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 April 22, 2020.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *JGD III (J. Gordon Douglas, III) & DESC UA 8 A3 UW MB (Margaret Boegner) BGI Trust, Martha Phipps Maguire, trustee, both of New York, New York; Andrew P. Sidamon-Eristoff 2003 Grantor Retained Annuity Trust, Woodbridge, New Jersey, Martha Phipps Maguire, trustee; Elizabeth Sidamon-Eristoff 2003 Grantor Retained Annuity Trust, Woodbridge, New Jersey, Martha Phipps Maguire, trustee; and Simon Sidamon-Eristoff 2003 Grantor Retained Annuity Trust, Woodbridge, New Jersey, Martha Phipps Maguire, trustee;* to acquire voting shares of Bessemer Group, Inc., and thereby indirectly acquire voting shares of Bessemer Trust Company, both of Woodbridge, New Jersey, and Bessemer Trust Company, N.A, New York, New York.

Board of Governors of the Federal Reserve System, April 2, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–07290 Filed 4–6–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on October 31, 2020.

DATES: Comments must be submitted by June 8, 2020.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment and file your comment online at *https://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 J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue

NW, Room 8607, Washington, DC 20580, (202) 326–3711, *ctodaro@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Franchise Rule, 16 CFR part 436.

OMB Control Number: 3084–0107.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 16,750.

Estimated Annual Labor Costs: $3,603,125.

Estimated Annual Non-Labor Costs: $7,250,000.

Abstract: The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision and compare different franchise offerings. The Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document (''FDD'') that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits made to a prospective franchise purchaser. The Rule also requires that franchisors maintain records to facilitate enforcement of the Rule.[1] The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make.

Estimated Annual Hours Burden: 16,750.

Based on information from state regulatory authorities and relevant trade journals, staff estimates that there are approximately 2,500 sellers of franchises covered by the Rule, with approximately 10% of that total reflecting an equal amount of new and departing business entrants.[2] Staff estimates that the average annual disclosure burden for established franchisors to update existing disclosure documents will be three hours per seller for a total of 6,750 hours (2,250 franchisors × 3 hours). For new franchisors, staff estimates that preparation of disclosure documents by new sellers of franchise opportunities will require approximately 30 hours for a total of 7,500 hours (250 new franchisors × 30 hours).

Covered franchisors also may need to maintain an alternative version of the FDD for use in non-registration states, which may differ from FDDs used in registration states. Staff estimates that this recordkeeping obligation would require approximately one hour per year. This results in an additional burden of 2,500 hours (2,500 franchisors × 1 hour). Under the Rule, a franchisor is also required to retain copies of receipts of disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states that have franchise registration and disclosure laws. Accordingly, staff believes that incremental recordkeeping burden, if any, would be de minimis.

Estimated Annual Labor Costs: $3,603,125.

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. FTC staff anticipates that an attorney will prepare required disclosure documents at an estimated hourly attorney rate of $250.[3] For established franchisors, estimates the following annual labor costs: $750 per established franchisor (3 hours × $250) for a total annual cost burden of $1,687,500 ($750 × 2,250 established franchisors). For new franchisors, this yields an annual cost of $7,500 per new franchisor (30 hours × $250) for a total annual cost burden of $1,875,000 for new franchisors ($7,500 × 250 new franchisors).

The FTC additionally anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately $16.25 per hour.[4] Thus, 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual labor cost of $40,625.

Estimated Annual Non-Labor Costs: $7,250,000.

In developing cost estimates for this Rule, FTC staff consulted with practitioners who prepare disclosure documents for a cross-section of franchise systems. The FTC believes that its cost estimates remain representative of the costs incurred by franchisors generally.

FTC staff estimates that the non-labor burden incurred by franchisors differs based on the length of the disclosure document, the number produced, and the method of distribution employed by franchisors. Staff estimates that the estimated 2,500 sellers of franchise opportunities distribute approximately 100 disclosure documents each annually for a total of 250,000 disclosure documents. Staff estimates that 80% of these disclosure documents are distributed in hard copy format at a cost of $35 each for printing and mailing costs. This results in a total estimated $7,000,000 in non-labor costs printing and mailing disclosure documents (200,000 × $35). Staff estimates that the remaining 20% of disclosure documents (50,000) are distributed electronically, at a cost of $5 per electronic disclosure. This yields a total non-labor cost burden associated with the electronic distribution of disclosure documents of $250,000 (50,000 × $5).

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Franchise Rule, 16 CFR part 436 (OMB Control No. 3084–0107).

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

[1] The Rule was amended in 2007 to conform its disclosure requirements with the disclosure format accepted by 15 states that have franchise registration or disclosure laws. *See* 72 FR 15444 (Mar. 30, 2007). The amended Rule has significantly minimized any compliance burden beyond what is required by state law.

[2] This number appears to be consistent with the number of business format franchise offerings registered in compliance with state franchise laws, and listed in franchise directories.

[3] Commission staff believes this is a reasonable estimate for mean hourly attorney rates for franchisor consultation on compliance with the Rule's disclosure and recordkeeping requirements.

[4] Based on mean hourly wages for file clerks found in Table 1. ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018,'' *at https://www.bls.gov/news.release/ocwage.t01.htm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 8, 2020. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment, including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, 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 *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from *https://www.regulations.gov,* 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.

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 June 8, 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.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–07269 Filed 4–6–20; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 192 3050]

Ortho-Clinical Diagnostics, Inc.; Analysis of Proposed Consent Order 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 May 7, 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 ''Ortho-Clinical Diagnostics, Inc.; File No. 192 3050'' 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: Kenneth Abbe (310–824–4300), 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 March 30, 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 May 7, 2020. Write ''Ortho-Clinical Diagnostics, Inc.; File No. 192 3050'' 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.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Ortho-Clinical Diagnostics, Inc.; File No. 192 3050'' 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 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 your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 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 Ortho-Clinical Diagnostics, Inc. (''Ortho'' or ''Respondent'').

The proposed consent order (''proposed order'') has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty 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.

This matter concerns alleged false or misleading representations that Ortho made concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (''EU''). The Privacy Shield framework allows for the lawful transfer of personal data from the EU to participating companies. The framework consists of a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens.

To participate in the framework, a company must comply with the Privacy Shield principles and self-certify that compliance to the U.S. Department of Commerce (''Commerce''). Commerce reviews companies' self-certification applications and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies who have completed the requirements for certification. Companies are required to recertify every year in order to continue benefitting from Privacy Shield.

Ortho markets and sells medical devices and in vitro diagnostics services to the global clinical laboratory and immunohematology communities. It collects personal data from its suppliers and capital customers around the world, including from EU citizens. According to the Commission's complaint, from approximately September 2017 until March 2019, Ortho published on its website, *https://www.orthoclinicaldiagnostics.com/en-us/home/privacy-policy,* a privacy policy containing statements related to its participation in Privacy Shield.

The Commission's proposed three-count complaint alleges that Respondent violated Section 5(a) of the Federal Trade Commission Act. Specifically, the first count in the proposed complaint alleges that Respondent engaged in a deceptive act or practice by falsely representing that it was a certified participant in the EU-U.S. Privacy Shield Framework. The second count alleges that Ortho did not verify the truth of the Privacy Shield assurances in its privacy policy, either through a self-assessment or a third party compliance review, so its representation that it ''complied with'' the Privacy Shield principles was false. Finally, the third count alleges that Ortho failed to annually affirm to Commerce that Ortho will continue to apply the Privacy Shield Principles to personal data it received while it was part of the framework after it withdraws from Privacy Shield.

Part I of the proposed order prohibits the Respondent from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Part II also specifically requires the Respondent to comply with the Privacy Shield requirement to continue to protect personal information received while in the framework.

Parts III through VI of the proposed order are reporting and compliance provisions. Part III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures

notification to the FTC of changes in corporate status and mandates that the Respondent submit an initial compliance report to the FTC. Part V requires the Respondent to create certain documents relating to its compliance with the order for ten years and to retain those documents for a five-year period. Part VI mandates that the Respondent make available to the FTC information or subsequent compliance reports, as requested.

Part VII is a provision ''sun-setting'' the order after twenty 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. 2020–07311 Filed 4–6–20; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 202 3025]

Williams-Sonoma, Inc.; 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 May 7, 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 ''Williams-Sonoma, Inc.; File No. 202 3025'' 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: Julia Ensor (202–326–2377), 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 March 30, 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 May 7, 2020. Write ''Williams-Sonoma, Inc.; File No. 202 3025'' 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.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Williams-Sonoma, Inc.; File No. 202 3025'' 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 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 your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 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 (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Williams-Sonoma, Inc., also d/b/a Williams Sonoma, Williams Sonoma Home, Pottery Barn, Pottery Barn Kids, Pottery Barn Teen, West Elm, Rejuvenation, Outward, and Mark & Graham (''Respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Respondent's marketing, sale, and distribution of home products as made in the United States. According to the FTC's complaint, Respondent represented that its Goldtouch Bakeware products, Rejuvenation-branded products, and Pottery Barn Teen and Pottery Barn Kids-branded upholstered furniture products, including the materials and subcomponents used to make such products, are all or virtually all made in the United States. In fact, in numerous instances, Respondent's Goldtouch Bakeware products, Rejuvenation-branded products, and Pottery Barn Teen and Pottery Barn Kids-branded upholstered furniture products are wholly imported or incorporate significant imported materials or subcomponents. Based on the foregoing, the complaint alleges that Respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Consistent with the FTC's Enforcement Policy Statement on U.S. Origin Claims, Part I prohibits Respondent from making U.S.-origin claims for its products unless either: (1) The final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

Part II prohibits Respondent from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and Respondent has a reasonable basis substantiating the representation.

Parts III through V are monetary provisions. Part III imposes a judgment of $1,000,000. Part IV includes additional monetary provisions relating to collections. Part V requires Respondent to provide sufficient customer information to enable the Commission to administer consumer redress, if appropriate.

Parts VI through IX are reporting and compliance provisions. Part VI requires Respondent to acknowledge receipt of the order, to provide a copy of the order to certain current and future principals, officers, directors, and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order. Part VII requires Respondent to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order. Part VIII requires Respondent to maintain certain records, including records necessary to demonstrate compliance with the order. Part IX requires Respondent to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview Respondent's personnel.

Finally, Part X is a ''sunset'' provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–07310 Filed 4–6–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0196; Docket No. 2020–0053; Sequence No. 2]

Information Collection; Payments to Small Business Subcontractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding payments to small business subcontractors.

DATES: Submit comments on or before May 7, 2020.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0196, Payments to Small Business Subcontractors.

Instructions: All items submitted must cite Information Collection 9000–0196, Payments to Small Business Subcontractors. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0196, Payments to Small Business Subcontractors.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the Federal Acquisition Regulation (FAR) clause at 52.242–5, Payments to Small Business Subcontractors. This clause requires the prime contractor to self-report to the contracting officer when the prime contractor makes late or reduced payments to small business subcontractors. The notice shall include the reason(s) for making the reduced or untimely payment. The contracting officer uses the information to record the identity of contractors with a history of late or reduced payments to small business subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS). The contracting officer considers and evaluates the contractor's written explanation for a reduced or an untimely payment to determine whether the reduced or untimely payment is justified.

C. Annual Burden

Respondents: 473.

Total Annual Responses: 473.

Total Burden Hours: 946.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 5660, on January 31, 2020. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0196, Payments to Small Business Subcontractors, in all correspondence.

Dated: April 2, 2020.

Janet Fry,

Director,Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–07272 Filed 4–6–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket No. 2020–0053; Sequence No.1]

Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding examination of records by Comptroller General and contract audit.

DATES: Submit comments on or before May 7, 2020.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0034, Examination of Records by Comptroller General and Contract Audit.

Instructions: All items submitted must cite Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0034, Examination of Records by Comptroller General and Contract Audit.

B. Needs and Uses

The objective of this information collection, for the examination of records by Comptroller General and contract audit, is to require contractors to maintain certain records and to ensure the Comptroller General and/or agency have access to, and the right to, examine and audit records, which includes: Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, for a period of three years after final payment. This information is necessary for examination and audit of contract surveillance, verification of contract pricing, and to provide reimbursement of contractor costs, where applicable. The records retention period is required by the statutory authorities at 10 U.S.C. 2313, 41 U.S.C. 4706, and 10 U.S.C. 2306, and are implemented through the following Federal Acquisition Regulation clauses: 52.214–26, Audit and Records-Sealed Bidding; 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items; and 52.215–2, Audit and Records-Negotiation. This information collection does not require contractors to create or maintain any records that the contractor does not normally maintain in its usual course of business.

C. Annual Burden

Respondents: 20,678.
Total Annual Responses: 80,068.
Total Burden Hours: 80,068.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 5659, on January 31, 2020. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F

Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: April 2, 2020.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–07271 Filed 4–6–20; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number: NIOSH 232]

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH), National Firefighter Registry Subcommittee

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

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH), National Firefighter Registry Subcommittee. This meeting is open to the public via webcast and by teleconference. If you wish to attend by webcast or teleconference, please register at the NIOSH website *https://www.cdc.gov/niosh/bsc/nfrs/registration.html* or call (513–841–4203) at least five business days in advance of the meeting. Adobe Connect webcast will be available at *https://niosh-connect.adobeconnect.com/nfrs/event/event_info.html* for participants wanting to connect remotely, teleconference is available toll-free at (855) 644–0229, and the participant pass code is 9777483. This meeting is open to the public, limited only by the number of adobe license seats available, which is 1,000. The public is welcome to participate during the public comment period, from 11:15 a.m. to 12:00 p.m., EDT, on May 15, 2020. Please note that the public comment period ends at the time indicated above.

DATES: The meeting will be held on May 15, 2020, from 10:00 a.m. to 5:00 p.m., EDT.

ADDRESSES: The web conference access is *https://niosh-connect.adobeconnect.com/nfrs/event/event_info.html* and the teleconference access is (855) 644–0229, and the participant pass code is 9777483.

FOR FURTHER INFORMATION CONTACT: Paul J. Middendorf, Ph.D., Executive Secretary, National Firefighter Registry Subcommittee of the NIOSH Board of Scientific Counselors, NIOSH, CDC, 2400 Century Parkway NE, MS V24–4, Atlanta, GA 30345, telephone (404) 498–6439, or email at *pmiddendorf@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors Subcommittee for the National Firefighter Registry (the Subcommittee) provides guidance to the Director, National Institute for Occupational Safety and Health on matters related to the National Firefighter Registry. Specifically, the Subcommittee provides guidance and professional input to the Board of Scientific Counselors (BSC) that will assist the BSC in advising the Director about NIOSH's efforts to establish and operate the National Firefighter Registry. The Subcommittee advises the Board of Scientific Counselors (BSC) on the following issues pertaining to the ''required strategy'' as mandated by the Firefighter Cancer Registry Act of 2018 (the Act): (1) Increase awareness of the National Firefighter Registry and encouraging participation among all groups of firefighters, (2) consider data collection needs, (3) consider data storage and electronic access of health information, and (4) in consultation with subject matter experts develop a method for estimating the number and type of fire incidents attended by a firefighter. Additional responsibilities of the Subcommittee are to provide guidance to the BSC regarding inclusion and the maintenance of data on firefighters as required by the Act.

Matters to be Considered: The agenda for the meeting addresses issues related to: The National Firefighter Registry protocol including the questionnaire, enrollment process, and data sharing. Agenda items are subject to change as priorities dictate. An agenda is also posted on the NIOSH website *https://www.cdc.gov/niosh/bsc/nfrs/.*

Comments should be specifically related to the National Firefighter Registry protocol which can be found in docket 232 or by visiting the subcommittee website: *https://www.cdc.gov/niosh/bsc/nfrs/.* Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Members of the public who wish to address the NIOSH BSC Subcommittee are requested to contact the Executive Secretary for scheduling purposes (see contact information below). Written comments will also be accepted from those unable to attend the public session. Written comments can be sent directly to the Docket for the NFRS at NIOSH Docket Office, Docket #232, 1090 Tusculum Avenue, Mail Stop C–34, Cincinnati, OH 45226, or emailed to the *niocindocket@cdc.gov.* The Docket number must be specified on the comments. Comments received by May 6, 2020, will be provided to the Subcommittee prior to the meeting. The docket will close May 22, 2020 and will be considered by the National Firefighter Registry Program when developing the final protocol.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07304 Filed 4–6–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10260]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect

information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 7, 2020.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3); *Use:* Pursuant to disclosure requirements set out in sections 1851(d)(2)(A) and 1860D–1(c) of the Social Security Act (the Act), and cited in §§ 422.111(a)(3) and 423.128(a)(3), Medicare Advantage (MA) organizations and Part D sponsors must provide notice to plan members of impending changes to plan benefits, premiums and cost sharing in the coming year. To this effect, members will be in the best position to make an informed choice on continued enrollment or disenrollment from that plan at least 15 days before the Annual Election Period (AEP) using the Annual Notice of Change (ANOC) and before the first day of the AEP for the Evidence of Coverage (EOC). MA organizations and Part D sponsors must notify plan members of the coming year changes using the standardized ANOC. Plans must disseminate the EOC at the time of enrollment and at least annually thereafter.

CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851 (d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D–1(c) of the Act and § 423.128(a)(3) for Part D sponsors.

Sections 1851(h)(1) and (2) of the Act require MA organizations and Part D sponsors to obtain CMS approval of marketing materials to ensure that MA organizations and Part D sponsors disclose correct information to current and potential enrollees. CMS collects and retains the MA organization and Part D plan marketing materials via the Health Plan Management System (HPMS). MA organizations and Part D plans submit marketing materials to the CMS marketing material review process using HPMS. Both current and potential enrollees can review other marketing materials to find plan benefits, premiums, and cost sharing for the coming year (after October 1) and the current year to be in a better position to make.

MA organizations and Part D sponsors use the information discussed in the Medicare Communication and Marketing Guidelines (MCMG) to comply with the requirements to seek CMS approval on marketing materials under MA and Part D law and regulations, as described above. CMS requires MA organizations and Part D sponsors to obtain CMS approval of marketing materials to ensure that MA organizations and Part D sponsors disclose correct information to current and potential enrollees. Both current and potential enrollees can review other marketing materials to find plan benefits, premiums, and cost sharing for the coming year (after October 1) and the current year to be in a better position to make informed and educated plan selections. *Form Number:* CMS–10260 (OMB control number: 0938–1051); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 795; *Total Annual Responses:* 47,962; *Total Annual Hours:* 33,124. (For policy questions regarding this collection contact Timothy Roe at 410–786–2006.)

Dated: April 1, 2020

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–07181 Filed 4–6–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10636 and CMS–10592]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect

information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 8, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10636 Triennial Network Adequacy Review for Medicare Advantage Organizations and 1876 Cost Plans

CMS–10592 Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Triennial Network Adequacy Review for Medicare Advantage Organizations and 1876 Cost Plans; *Use:* CMS regulations at 42 CFR 417.414, 417.416, 422.112(a)(1)(i), and 422.114(a)(3)(ii) require that all Medicare Advantage organizations (MAOs) offering coordinated care plans, network-based private fee-for-service (PFFS) plans, and as well as section 1876 cost organizations, maintain a network of appropriate providers that is sufficient to provide adequate access to covered services to meet the needs of the population served. To enforce this requirement, CMS developed network adequacy criteria which set forth the minimum number of providers and maximum travel time and distance from enrollees to providers, for required provider specialty types in each county in the United States and its territories. Organizations must be in compliance with the current CMS network adequacy criteria guidance, which is updated and published annually on CMS's website. Additional network policy guidance is also located in chapter 4 of the Medicare Managed Care Manual. This collection of information is essential to appropriate and timely compliance monitoring by CMS, in order to ensure that all active contracts offering network-based plans maintain an adequate network.

CMS verifies that organizations are compliant with the CMS network adequacy criteria by performing a contract-level network review, which occurs when CMS requests an organization upload provider and facility Health Service Delivery (HSD) tables for a given contract to the Health Plan Management System (HPMS). CMS reviews networks on a three-year cycle, unless there is an event that triggers an intermediate full network review, thus resetting the organization's triennial review. The triennial review cycle will help ensure a consistent process for network oversight and monitoring.

Once CMS staff reviews the ACC reports and any Exception Requests and/or Partial County Justifications, CMS then makes its final determination on whether the organization is operating in compliance with current CMS network adequacy criteria. If the organization passes its network review for a given contract, then CMS will take no further action. If the organization fails its network review for a given contract, then CMS will take appropriate compliance actions. CMS has developed a compliance methodology for network adequacy reviews that will ensure a consistent approach across all organizations. *Form Number:* CMS–10636 (OMB control number: 0938–1346); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 140; *Total Annual Responses:* 1,416; *Total Annual Hours:* 12,772. (For policy questions regarding this collection contact Amber Casserly at 410–786–5530.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; *Use:* Section 1321(a) requires HHS to issue regulations setting standards for meeting the requirements under Title I of the Affordable Care Act including the offering of Qualified Health Plans (QHPs) through the Exchanges. On March 27, 2012, HHS published the rule CMS–9989–F: Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers. The Exchange rule contains provisions that

mandate reporting and data collections necessary to ensure that health insurance issuers are meeting the requirements of the Affordable Care Act. These information collection requirements are set forth in 45 CFR part 156.

Information collected by the Exchanges or Medicaid and CHIP agencies will be used to determine eligibility for coverage through the Exchange and insurance affordability programs (*i.e.,* Medicaid, CHIP, and advance payment of the premium tax credits); evaluate how CMS can best communicate eligibility and enrollment updates to issuers; and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who may be eligible for coverage through any of these programs. *Form Number:* CMS–10592 (OMB control number: 0938–1341); *Frequency:* Annually, Monthly, Occasionally; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 250; *Total Annual Responses:* 250; *Total Annual Hours:* 131,750. (For policy questions regarding this collection contact Anne Pesto at 443–844–9966.)

Dated: April 1, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–07185 Filed 4–6–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0016]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Records Access Requirements for Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our recordkeeping and records access requirements for food facilities.

DATES: Submit either electronic or written comments on the collection of information by June 8, 2020.

ADDRESSES: 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 8, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 8, 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–2011–N–0016 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Records Access Requirements for Food Facilities.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three

White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping and Records Access Requirements for Food Facilities—21 CFR 1.337, 1.345, and 1.352

OMB Control Number 0910–0560—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 added section 414 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350c), which requires that persons who manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food. Sections 1.326 through 1.363 of our regulations (21 CFR 1.326 through 1.363) set forth the requirements for recordkeeping and records access. The requirement to establish and maintain records improves our ability to respond to, and further contain, threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

Information maintained under these regulations helps us identify and quickly locate contaminated or potentially contaminated food and inform the appropriate individuals and food facilities of specific terrorist threats. Our regulations require that records for non-transporters include the name and full contact information of sources, recipients, and transporters; an adequate description of the food, including the quantity and packaging; and the receipt and shipping dates (§§ 1.337 and 1.345). Required records for transporters include the names of consignor and consignee, points of origin and destination, date of shipment, number of packages, description of freight, route of movement and name of each carrier participating in the transportation, and transfer points through which shipment moved (§ 1.352). Existing records may be used if they contain all the required information and are retained for the required time period.

Section 101 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) amended section 414(a) of the FD&C Act and expanded our access to records. Specifically, FSMA expanded our access to records beyond records relating to the specific suspect article of food to records relating to any other article of food that we reasonably believe is likely to be affected in a similar manner. In addition, we can access records if we believe that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that we reasonably believe is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. To gain access to these records, our officer or employee must present appropriate credentials and a written notice, at reasonable times and within reasonable limits and in a reasonable manner.

The information collection provisions of § 1.361 are exempt from OMB review under 44 U.S.C. 3518(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities. The regulations at 5 CFR 1320.3(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit, or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the request to access records under § 1.361. Accordingly, we have not included an estimate of burden hours associated with § 1.361 in table 1.

Description of Respondents: Respondents to this collection of information are persons that manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States who are required to establish and maintain records, including persons that engage in both interstate and intrastate commerce.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.337, 1.345, and 1.352 (Records maintenance)	379,493	1	379,493	6.61	2,508,449
1.337, 1.345, and 1.352 (Learning for new firms)	18,975	1	18,975	4.5	85,388
Total					2,593,837

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made adjustments to our burden estimate to account for advances in information and communication technology that have occurred in the last decade. Because the transition from paper-based to electronic records systems is widespread, we estimate that the average burden per recordkeeping has decreased by 50 percent. With regards to records maintenance, we estimate that approximately 379,493 facilities each spend half the amount of time from the 13.228 hours previously reported to 6.61 hours collecting, recording, and checking for accuracy of the limited amount of additional information required by the regulations, for a total of 2,508,449 hours annually. In addition, we estimate that new firms entering the affected businesses incur a burden from learning the regulatory requirements and understanding the records required for compliance. In this regard, we estimate the number of new firms entering the affected businesses is 5 percent of 379,493, or 18,975 firms. Thus, we estimate that approximately 18,975 facilities each spend, on average, 4.5 hours learning about the recordkeeping and records access requirements, for a total of 85,388 hours annually. This estimate reflects a reduction from 4.79 to 4.5 average hours per facility to account for the increase in facilities using internet, which increased from 71 to 99 percent. We estimate that approximately the same number of firms (18,975) exit the group of affected businesses in any given year, resulting in no growth in the number of total firms reported on line 1 of table 1.

Dated: April 1, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07275 Filed 4–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0626]

Pulmonary-Allergy Drugs Advisory Committee; Postponed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Pulmonary-Allergy Drugs Advisory Committee (PADAC) scheduled for April 21, 2020, is postponed. The Food and Drug Administration (FDA), like other government agencies, is taking the necessary steps to ensure the Agency is prepared to continue our vital public health mission in the event that our day-to-day operations are impacted by the COVID–19 public health emergency. Therefore, we are canceling or postponing all non-essential meetings through the month of April. We will reassess on an ongoing basis for future months. Therefore, this meeting is being postponed. The meeting was announced in the **Federal Register** on February 20, 2020.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting, which was announced in the **Federal Register** of February 20, 2020 (85 FR 9780).

Dated: April 1, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07262 Filed 4–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5550]

Elite Laboratories, Inc., et al.; Withdrawal of Approval of 23 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on January 8, 2020. The document announced the withdrawal of approval of 23 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of February 7, 2020. The document indicated that FDA was withdrawing approval of the following seven ANDAs after receiving a withdrawal request from CASI Pharmaceuticals, Inc., c/o Target Health, Inc., 261 Madison Ave., 24th Floor, New York, NY 10016: ANDA 073191, Triamterene and Hydrochlorothiazide Capsules USP, 50 milligrams (mg)/25 mg; ANDA 076075, Econazole Nitrate Cream, 1%; ANDA 076192, Ribavirin Capsules USP, 200 mg; ANDA 076514, Midodrine Hydrochloride (HCl) Tablets USP, 2.5 mg, 5 mg, and 10 mg; ANDA 086809, Spironolactone Tablets USP, 25 mg; ANDA 090288, Naratriptan Tablets USP, Equivalent to (EQ) 1 mg base and EQ 2.5 mg base; and ANDA 203384, Epinastine HCl Ophthalmic Solution, 0.05%. Before FDA withdrew the approval of these ANDAs, CASI Pharmaceuticals, Inc., informed FDA that it did not want the approval of the ANDAs withdrawn. Because CASI Pharmaceuticals, Inc., timely requested that approval of these ANDAs not be withdrawn, the approval of ANDAs 073191, 076075, 076192, 076514, 086809, 090288, and 203384 is still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Wednesday, January 8, 2020 (85 FR 909), in FR Doc. 2020–00076, on page 909, the following correction is made:

1. On pages 909 and 910, in the table, the entries for ANDAs 073191, 076075, 076192, 076514, 086809, 090288, and 203384 are removed.

Dated: April 1, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07265 Filed 4–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Part F; AIDS Education and Training Centers; National HIV Curriculum e-Learning Platform: Technology Operations and Maintenance Project

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental award.

SUMMARY: HRSA's HIV/AIDS Bureau will award $100,000 in supplemental funding to the University of Washington to support the AIDS Education and Training Centers' (AETC) National HIV

Curriculum (NHC) e-Learning Platform: Technology Operations and Maintenance project in Fiscal Year (FY) 2020 and, pending the availability of funds, in each succeeding year of the project's period of performance. This supplemental funding will enable the recipient to implement technological enhancements to the NHC eLearning Platform to increase access and improve efficiency of new online training modules and learning activities that respond to specific needs, as identified, by Ending the HIV Epidemic: A Plan for America (EHE) initiative jurisdictions. These system enhancements will help increase the number of health professionals that have access to state of the art HIV treatment interventions and protocols.

FOR FURTHER INFORMATION CONTACT: Sherrillyn Crooks, Chief, HIV Education Branch, Office of Training and Capacity Development, HRSA, 5600 Fishers Lane, Room 9N110, Rockville, MD 20857, by email at *scrooks@hrsa.gov* or by phone at (301) 443–7662.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The University of Washington, AIDS Education and Training.

Centers National HIV Curriculum e-Learning Platform: Technology Operations and Maintenance project.

Amount of Award: $100,000 is available in FY 2020.

Project Period: March 1, 2020–August 31, 2022.

CFDA Number: 93.145.

Authority: 42 U.S.C. 300ff–111(a) (section 2692(a) of the Public Health Service (PHS) Act), 42 U.S.C. 300ff–121 (section 2693 of the PHS Act), and Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

Justification: The University of Washington currently manages the e-Learning platform, which hosts the AETC's web-based NHC. The NHC e-Learning Platform provides state of the art HIV care training and resources to providers nation-wide. With additional supplemental funding, the University of Washington will strengthen the existing capacity of the e-Learning platform to ensure that additional, up-to-date HIV treatment resources and information are available, with a special focus on jurisdictions targeted by the EHE initiative.

The supplemental award will enable the recipient to leverage its existing infrastructure to meet the learning needs of the HIV workforce in EHE designated areas. The recipient will be able to enhance and maintain an e-Learning Platform that provides a valuable and accessible tool designed to strengthen the skills and knowledge base of professionals that care for people with or at risk for HIV. In addition, supplemental funding will allow this recipient to ensure that providers in EHE target areas are aware of the National HIV Curriculum and know how to access and use it. Expanding the availability of state-of-the-art HIV care and treatment training resources will help prepare for the projected increase in demand for well-trained HIV care professionals as a result of the EHE rollout. This award recipient has the demonstrated expertise and scalable experience required to swiftly address these time-sensitive training and technical assistance needs.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–07314 Filed 4–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rescheduling National Advisory Council on Migrant Health Meeting

AGENCY: Health Resources and Services Administration (HRSA); Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: This is to notify the public that the National Advisory Council on Migrant Health (NACMH) meeting, originally scheduled for May 5–6, 2020, is re-scheduled to July 29–30, 2020. The May 5–6, 2020, NACMH meeting was announced in the **Federal Register**, Vol. 85, No. 41, on Monday, March 2, 2020 (FR Doc. 2020–04169 Filed 2–28–20). The decision to re-schedule the NACMH meeting has been made after carefully examining the Centers for Disease Control and Prevention's recommendations to restrict all non-essential travel, and the widespread health risks posed by COVID–19 to the American public. The location and agenda for the re-scheduled NACMH meeting remains as posted in the **Federal Register**, Vol. 85, No. 41, on Monday, March 2, 2020. For calendar year 2020 meetings, agenda items may include, but are not limited to, topics and issues related to migratory and seasonal agricultural worker health. Refer to the NACMH website listed below for all current and updated information concerning the calendar year 2020 NACMH meetings, including draft agendas and meeting materials, which will be posted 30 calendar days before the meeting.

DATES: July 29–30, 2020; 9:00 a.m. to 5:00 p.m. Mountain Time (MT).

ADDRESSES: The meeting will be held in-person at Courtyard Boulder Longmont, 1410 Dry Creek Drive, Longmont, Colorado 80503.

Instructions for joining the meeting in-person will be posted on the NACMH website 30 business days before the date of the meeting. For meeting information updates, go to the NACMH website at: *https://bphc.hrsa.gov/quality improvement/strategicpartnerships/ nacmh/index.html.*

FOR FURTHER INFORMATION CONTACT: Esther Paul, NACMH Designated Federal Officer (DFO), Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–594–4300; or *epaul@ hrsa.gov.*

Correction: The NACMH meeting originally scheduled to take place on May 5–6, 2020, is re-scheduled to July 29–30, 2020.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–07204 Filed 4–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Part F Regional AIDS Education and Training Centers

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental award.

SUMMARY: HRSA's HIV/AIDS Bureau will award supplemental funding to the eight current recipients of the Ryan White HIV/AIDS Program Part F Regional AIDS Education and Training Centers (AETC) in Fiscal Year (FY) 2020 and pending the availability of funds, in each succeeding fiscal year of their periods of performance. The recipients will use this supplement funding to provide critical expertise and resources to respond to the specific workforce development needs of novice and experienced health professionals who care for people with or at risk for HIV in Ending the HIV Epidemic focus areas.

TABLE 1—AWARD RECIPIENTS AND AMOUNTS

Grant No.	Award recipient	FY20 supplemental award	Estimated out-year supplemental amount
U1OHA29294	University of Massachusetts	$90,290	FY21—$316,016 FY22—316,016 FY23—316,016 FY24—316,016
U1OHA29295	University of Pittsburgh	187,735	FY21—657,074 FY22—657,074 FY23—657,074 FY24—657,074
U1OHA29291	The Trustees of Columbia University in the City of New York.	240,112	FY21—840,392 FY22—840,392 FY23—840,392 FY24—840,392
U1OHA30535	Vanderbilt University Medical Center	700,020	FY21—2,450,068 FY22—2,450,068 FY23—2,450,068 FY24—2,450,068
U1OHA33225	University of New Mexico	395,061	FY21—1,382,714 FY22—1,382,714 FY23—1,382,714 FY24—1,382,714
U1OHA29293	University of Illinois	363,864	FY21—1,273,524 FY22—1,273,524 FY23—1,273,524 FY24—1,273,524
U1OHA29292	University of California San Francisco	336,021	FY21—1,176,074 FY22—1,176,074 FY23—1,176,074 FY24—1,176,074
U1OHA29296	The University of Washington	86,897	FY21—304,139 FY22—304,139 FY23—304,139 FY24—304,139

Regional AETCs Funding Levels in FY 2020 and throughout the period of performance. Funding beyond FY 2020 is subject to the availability of appropriated funds, satisfactory recipient performance, and a decision that continued funding is in the best interest of the federal government.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Regional AIDS Education and Training Centers as listed on TABLE 1.

Amount of Award: $2,400,000 available in FY 2020. See TABLE 1 for award amounts in each subsequent year of each regional AETC's period of performance.

CFDA Number: 93.145.

Project Period: March 1, 2020– June 30, 2024.

Authority: 42 U.S.C. 300ff–111(a) (section 2692(a) of the Public Health Service (PHS) Act), 42 U.S.C. 300ff–121 (section 2693 of the PHS Act), and Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

Justification: The award recipients will provide specialized HIV focused training and technical assistance (T/TA) to providers in geographic areas with the highest HIV burden, targeted as Ending the HIV Epidemic: A Plan for America (EHE) jurisdictions, which are 48 counties; Washington, DC; San Juan, Puerto Rico; and seven states that have a substantial rural HIV burden. Since the AETC regional centers operate in all U.S. states and territories, the target areas of the EHE are already encompassed in their service areas. This geographic coverage offers HRSA a strategic opportunity to leverage the existing AETC infrastructure and their established networks of health care providers and professional training institutions to provide critical, time-sensitive training and technical assistance in EHE jurisdictions. Further, since the goals of the AETC program directly align with the goals of the EHE initiative, regional AETCs are uniquely positioned to immediately begin delivering targeted, multidisciplinary education and training to new and experienced health care professionals to enable them to provide quality HIV care and treatment in the EHE jurisdictions. Supplemental funds are necessary to support timely implementation of critical training and technical assistance to providers in geographic locations identified by the EHE initiative. The award recipients have the demonstrated expertise and scalable experience required to address these time-sensitive training and technical assistance needs.

FOR FURTHER INFORMATION CONTACT: Sherrillyn Crooks, Chief, HIV Education Branch, Office of Training and Capacity Development, HRSA, 5600 Fishers Lane, Room 9N110, Rockville, MD 20857, by email at *scrooks@hrsa.gov* or by phone at (301) 443–7662.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–07205 Filed 4–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Part F; AIDS Education and Training Centers; Enhancement and Update of the National HIV Curriculum e-Learning Platform

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental award.

SUMMARY: HRSA's HIV/AIDS Bureau will award $100,000 in supplemental funding to the University of Washington. This award is to support the Ryan White HIV/AIDS Program Part F AIDS Education and Training Centers (AETC) Enhancement and Update of the National HIV Curriculum e-Learning Platform project in Fiscal Year (FY) 2020 and in each succeeding year of their periods of performance, pending the availability of funds. This supplemental funding will enable the University of Washington to make critical content enhancements to the National HIV Curriculum e-Learning Platform that respond to the specific training and technical assistance needs of HIV treatment professionals located in the jurisdictions targeted by the Ending the HIV Epidemic: A Plan for America (EHE) initiative. Further, it will ensure that more health professionals in EHE jurisdictions have access to the most up-to-date HIV treatment interventions and protocols, thus increasing their competency to provide high-quality care for people with HIV and in so doing, advance the goals of the EHE.

FOR FURTHER INFORMATION CONTACT: Sherrillyn Crooks, Chief, HIV Education Branch, Office of Training and Capacity Development, HRSA, 5600 Fishers Lane, Room 9N110, Rockville, MD 20857, by email at *scrooks@hrsa.gov* or by phone at (301) 443–7662.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The University of Washington, AETC Enhancement and Update of the National HIV Curriculum e-Learning Platform project.

Amount of Award: $100,000 available in FY 2020.

Project Period: March 1, 2020–August 31, 2022.

CFDA Number: 93.145.

Authority: 42 U.S.C. 300ff–111(a) (section 2692(a) of the Public Health Service (PHS) Act), 42 U.S.C. 300ff–121 (section 2693 of the PHS Act), and Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

Justification: The University of Washington currently manages the AETC's web-based National HIV Curriculum-e-Learning Platform. The National HIV Curriculum e-Learning Platform provides virtual state of the art training and resources to HIV treatment and care professionals. The recipient will use this supplement award to enhance the quality and relevance of the of training and technical assistance resources offered through the National HIV Curriculum e-Learning Platform and expand its focus to include the specific educational needs of HIV care and treatment providers in EHE designated areas. The supplemental funds will enable the University of Washington to deploy more robust outreach efforts that target EHE jurisdictions to ensure that they are aware of and can use this valuable web-based resource. Engaging new and experienced HIV providers and health professions training institutions in EHE regions will allow the University of Washington to better discern and directly respond to any training needs or gaps these providers and institutions may identify. Expanding the availability of state-of-the-art HIV care and treatment training resources will help prepare for the projected increase in demand for well-trained HIV care professionals as a result of the EHE rollout. This award recipient has the demonstrated expertise and scalable experience required to address these time-sensitive technical and training assistance.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–07214 Filed 4–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; AIDS Drug Assistance Program Data Report ADR, OMB No. 0915–0345—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than May 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: AIDS Drug Assistance Program Data Report (ADAP) OMB No. 0915–0345—Revisions.

Abstract: HRSA's Ryan White HIV/AIDS Program AIDS Drug Assistance Program (RWHAP ADAP) is authorized under Part B of the RWHAP legislation, codified in sections 2611 *et seq.* of the Public Health Service Act, which provides grants to U.S. states and territories. HRSA's RWHAP ADAP is a state and territory-administered program that provides Food and Drug Administration-approved medications to low-income people with HIV who have limited or no health coverage from private insurance, Medicaid, or Medicare. HRSA's RWHAP ADAP funds may also be used to purchase health insurance for eligible clients and for services that enhance access, adherence, and monitoring of drug treatments.

All 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the five U.S. Pacific Territories or Associated Jurisdictions receive RWHAP Part B grant awards including funds for RWHAP ADAP. RWHAP Part B reporting requirements include the annual submission of an ADAP Data Report (ADR), including a Recipient Report and a Client Report. The Recipient Report is a collection of basic information about grant recipient characteristics and policies including program administration, purchasing mechanisms, funding, and expenditures. The Client Report is a collection of client-level records (one record for each client enrolled in the RWHAP ADAP), which includes the client's encrypted unique identifier, basic demographic data, enrollment information, services received and clinical data.

HRSA is proposing several changes to the ADR Recipient and Client Reports to improve question clarity, delete obsolete data elements, combine related data elements, add new data elements, and improve response options to reflect program practices and support HRSA's analysis and understanding of program impact. In addition, a new initiative,

Ending the HIV Epidemic: A Plan for America (EHE), began in Fiscal Year 2020 and some of its data collection requirements will be incorporated in existing annual data collections, including the ADR, in order to limit recipient burden. Specifically, the Recipient Report includes the following proposed changes:

- Addition of two new ''Yes/No'' questions
- addition of one new follow-up question that requests the number of new clients enrolled
- addition of one question on funding to monitor the use of funds provided to ADAPs for the EHE initiative
- clarification on two existing questions
- revision to one existing question that requests program income and manufacturer rebates reinvested in ADAP, and
- deletion of six obsolete data elements.

The Client Report includes the following proposed changes:

- Revision to reporting of RWHAP ADAP-funded medications to include all medications rather than a subset of medications;
- revision to one existing question that requests reporting of all RWHAP ADAP-funded medications using the National Drug Code from the Drug Identification Code (d-codes);
- revision to reporting of clinical data for clients to include all clients rather than a subset of clients; and
- deletion of three data elements that were combined with other existing data elements.

New and revised data elements require reporting of information that should already be collected by recipients to meet legislative or programmatic requirements for the proper oversight and administration of the program.

A 60-day notice was published in the **Federal Register** on December 3, 2019, vol. 84, No. 232; pp. 66202–03. There were two public comments. Both comments were requests to clarify the data reporting changes, which included requests for a copy of the ADR instrument.

Need and Proposed Use of the Information: HRSA's RWHAP requires the submission of annual reports by the Secretary of Department of Health and Human Services to the appropriate committees of Congress. HRSA uses the ADR to evaluate the national impact of the HRSA RWHAP ADAP by providing client-level data on individuals being served, services being delivered, and costs associated with these services. The client-level data is used to monitor health outcomes of people with HIV receiving care and treatment through the HRSA RWHAP ADAP, to monitor the use of HRSA RWHAP ADAP funds in addressing the HIV epidemic and its impact on vulnerable communities, and to track progress toward achieving the goals identified in the National HIV/AIDS Strategy.

Likely Respondents: State ADAPs of RWHAP Part B recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Recipient Report	54	1	54	6	324
Client-Level Report	54	1	54	81	4,374
Total	*54		54		4,698

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–07247 Filed 4–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel NIDCR Secondary and Genomic Data Analysis Application Review Meeting.

Date: July 1, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 1, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07192 Filed 4–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0010; OMB No. 1660–0033]

Agency Information Collection Activities: Proposed Collection; Comment Request; Residential Basement Floodproofing Certification

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for eligible properties insured under the National Flood Insurance Program (NFIP) policies to certify the floodproofing of residential basements.

DATES: Comments must be submitted on or before June 8, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0010. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via the link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, 202–212–4716. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973) and requires that the Federal Emergency Management Agency (FEMA) provide flood insurance. FEMA delineates flood zones on a Flood Insurance Rate Map to identify Special Flood Hazard Areas (SFHAs) in a community. Title 44 CFR 60.3(c)(2) requires that all new construction and substantial improvements of residential structures within SFHA Zones A1–30, AE and AH zones have the lowest floor, including the basement, elevated to or above the base flood level unless an exception is granted. Title 44 CFR 60.6(a)(7) and 44 CFR 60.6(b)(1) allow communities to apply for an exception when circumstances present a hardship that would not allow for adherence to the requirement for elevation above the base flood level. This exception must meet the conditions set forth in 44 CFR 60.6(c). When owners of residential structures in these zones are seeking flood insurance, they must be certified that the structural design is floodproof.

Collection of Information

Title: Residential Basement Floodproofing Certification.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0033.

FEMA Forms: FEMA Form 086–0–24, Residential Basement Floodproofing Certification.

Abstract: The Residential Basement Floodproofing Certification, completed by a registered professional surveyor, engineer, or architect, is required to certify that floodproofing of a structure meets at least minimal floodproofing specifications. Residential structures that receive this certification are granted reduced rates on flood insurance premiums.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Total Annual Burden Hours: 32.5.

Estimated Total Annual Respondent Cost: $2,138.

Estimated Respondents' Operation and Maintenance Costs: $5,000.

Estimated Respondents' Capital and Start-Up Costs: 0.

Estimated Total Annual Cost to the Federal Government: $44.59.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–07270 Filed 4–6–20; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians During the Period of Extended Wind-Down of Deferred Enforced Departure

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security.

ACTION: Notice.

SUMMARY: On March 30, 2020, President Trump issued a memorandum to the Acting Secretary of Homeland Security (Secretary) directing him to extend the Deferred Enforced Departure (DED) wind-down period for eligible Liberians, and to provide for continued work authorization through January 10, 2021, after which date the DED wind-down period will end. Furthermore, Liberians who apply for adjustment of status under the Liberian Refugee Immigration Fairness (LRIF) provision of the National Defense Authorization Act for Fiscal Year 2020 on or before December 20, 2020 may immediately apply for

employment authorization consistent with that provision. During this extended DED wind down period and the LRIF application period, Liberians covered under DED may remain in the United States. Liberians covered under DED who also qualify to apply for permanent resident status under LRIF may experience a gap in employment authorization after the March 30, 2020 expiration of their current DED-based employment authorization documents (EADs). Therefore, the President directed that aliens who remain covered under DED be authorized employment for the duration of the extended DED wind-down period. This notice extends through January 10, 2021 employment authorization for Liberians (and persons without nationality who last habitually resided in Liberia) covered under DED who would like to apply for an EAD and also automatically extends DED-related EADs for those who already have an EAD with a printed expiration date of March 30, 2020.

DATES: The DED wind-down period and employment authorization for aliens covered under DED for Liberians is extended through January 10, 2021. Automatically extended DED-related EADs, as specified in this notice, expire after January 10, 2021.

FOR FURTHER INFORMATION CONTACT:

- You may contact Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060.
- For further information on DED, including additional information on eligibility, please visit the USCIS DED web page at *www.uscis.gov/humanitarian/temporary-protected-status/deferred-enforced-departure.* You can find specific information about DED for Liberians by selecting ''DED Granted Country: Liberia'' from the menu on the left of the DED web page. For further information on Liberian Refugee Immigration Fairness (LRIF), including additional information on eligibility, please visit the USCIS LRIF web page *www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness.*
- If you have additional questions about DED or LRIF, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR—Code of Federal Regulations
DED—Deferred Enforced Departure
DHS—U.S. Department of Homeland Security
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–485—Application to Register Permanent Residence or Adjust Status
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
LRIF—Liberian Refugee Immigration Fairness
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action

Pursuant to the President's constitutional authority to conduct the foreign relations of the United States, President Trump has concluded that foreign policy considerations warrant a further extension of the wind-down period of DED for Liberians through January 10, 2021.[1] Through this notice, as directed by the President, DHS is extending the DED wind-down period and employment authorization for covered Liberians and automatically extending the validity of current DED-related EADs through January 10, 2021. The President authorized the extension of the DED wind-down period to allow for continued employment authorization for aliens covered under DED. Liberians who apply for adjustment of status under the LRIF provision of the National Defense Authorization Act for Fiscal Year 2020 on or before December 20, 2020 may immediately apply for employment authorization consistent with that provision. *See* National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92 (Dec. 20, 2019), Section 7611, *available at www.congress.gov/116/bills/s1790/BILLS-116s1790enr.pdf.* But because LRIF did not specifically automatically extend existing DED-related employment authorization, Liberians covered under DED who apply for permanent resident status under LRIF may experience a gap in employment authorization upon the March 30, 2020 expiration of their current DED-based EADs. Therefore, the President directed that aliens who remain covered under DED be authorized employment for the duration of the current DED wind-down period, through January 10, 2021. *See* Presidential Memorandum on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians, March 30, 2020, *available at www.whitehouse.gov/presidential-actions/memorandum-extending-wind-period-deferred-enforced-departure-liberians/.* This notice also explains how Liberians covered under DED and their employers may determine which EADs are automatically extended and how this impacts the Employment Eligibility Verification (Form I–9), E-Verify, and USCIS Systematic Alien Verification for Entitlements Program (SAVE) processes. Note that DED only applies to aliens who have continuously resided in the United States since October 1, 2002, and who held Temporary Protected Status (TPS) on September 30, 2007, under the TPS designation for Liberia, which terminated on that date. *Id.; see also* 71 FR 55000 (Sept. 20, 2006) (termination of TPS Liberia notice).

Employment Authorization and Eligibility

How will I know if I am eligible for employment authorization under the Presidential Memorandum that extended the DED wind-down period for eligible Liberians?

The procedures for employment authorization in this notice apply only to aliens who are Liberian nationals (and persons without nationality who last habitually resided in Liberia) who:

[1] *See* Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Extending Deferred Enforced Departure for Liberians March 30, 2020, *available at www.whitehouse.gov/presidential-actions/memorandum-extending-wind-period-deferred-enforced-departure-liberians/.* Note: Aliens covered by the presidential DED memorandum include certain Liberians as well as persons without nationality who last habitually resided in Liberia who held Temporary Protected Status on September 30, 2007 and who meet all other criteria in the memorandum for DED. Hereinafter, ''DED for Liberians'' also includes such persons without nationality.

- Have continuously resided in the United States since October 1, 2002;
- Held TPS on September 30, 2007, the termination date of a former TPS designation for Liberia; and
- Currently remain covered under DED for Liberians.

This DED extension does not include any alien:

- Who would be ineligible for TPS for the reasons set forth in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);
- Who sought or seek LPR status under the LRIF provision but whose applications have been or are denied by the Secretary;
- Whose removal the Secretary determines is in the interest of the United States, subject to the LRIF provision and other applicable law;
- Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;
- Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States beyond the timeframe specified in subsection (c) of the LRIF provision;
- Who was deported, excluded, or removed prior to March 30, 2020; or
- Who is subject to extradition.

Does this **Federal Register** *notice automatically extend my current EAD through January 10, 2021?*

If you are a national of Liberia (or a person having no nationality who last habitually resided in Liberia), you are currently covered under DED for Liberians, and you are within the class of aliens approved for DED by the President, this notice automatically extends your DED-based EAD with a marked expiration date of March 30, 2020, bearing the notation A–11 on the face of the card under Category, though January 10, 2021. This means that your EAD is valid through January 10, 2021, even though its marked expiration date has passed.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on the third page of Form I–9 as well as the Acceptable Documents web page at *www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within 3 days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD has an expiration date of March 30, 2020, and states A–11 under Category, it has been extended automatically consistent with the President's directive and the issuance of this **Federal Register**notice, and you may choose to present this EAD to your employer as proof of identity and employment eligibility for Form I–9 through January 10, 2021. To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** notice confirming the extension of your employment authorization through January 10, 2021. *See* the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' for further information. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or an acceptable receipt.

What documentation may I present to my employer for Form I–9 if I am already employed but my current DED-related EAD is set to expire?

Even though your EAD has been automatically extended, your employer is required by law to ask you about your continued employment authorization, and you will need to present your employer with evidence that you are still authorized to work. Once presented, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section ''What corrections should my current employer make to Form I–9 if my employment authorization has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through January 10, 2021. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of your EAD when you initially presented it.

The last day of the automatic extension for your EAD is January 10, 2021. Before you start work on January 11, 2021, your employer is required by law to reverify your employment authorization in Section 3 of Form I–9. At that time, you must present any document from List A or any document from List C on Form I–9, Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 Instructions, to reverify your employment authorization.

If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9, and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I-9Central* for the most current version of Form I–9.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can I obtain a new EAD?

Yes, if you remain eligible for DED, you can obtain a new EAD; however, you do not need to apply for a new EAD to benefit from this automatic extension. If you are currently covered under DED and want to obtain a new DED-based EAD valid through January 10, 2021, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee. If you are currently covered under DED and are eligible for permanent resident status under LRIF, you may file Form I–765 concurrently with or after you file Form I–485, Application to Register Permanent Residence or Adjust Status. You may be eligible for a fee waiver, if you meet the eligibility criteria. *See* Form I–912, Request for Fee Waiver.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Liberian citizenship?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the

Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers do not need to reverify List B identity documents. Employers may not request documentation that does not appear on the Lists of Acceptable Documents. Therefore, employers may not request proof of Liberian citizenship when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with an EAD that has been automatically extended, employers should accept such document as a valid List A document, as long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after January 10, 2021, for purposes of employment authorization?

After January 10, 2021, employers may no longer accept EADs issued under the previous DED extension of Liberia that this **Federal Register** notice automatically extended.

What can I do to adjust status based on LRIF and continue working in the United States after January 10, 2021?

Aliens who are eligible for permanent resident status under LRIF and who wish to prevent a gap in employment authorization should submit their completed Form I–485 and associated Form I–765 as early as possible. Liberian nationals applying to adjust status under LRIF must properly file Form I–485, and USCIS must receive Form I–485, by December 20, 2020.

How do my employer and I complete Form I–9 using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job on or before January 10, 2021, for Section 1, you should:

a. Check ''An alien authorized to work until'' and enter January 10, 2021 as the expiration date; and

b. Enter your USCIS Number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS Number is the same as your A-Number without the A prefix).

For Section 2, your employer should:

a. Determine if the EAD is auto-extended by ensuring it is in Category A–11 and has a Card Expires date of March 30, 2020;

b. Write in the document title;

c. Enter the issuing authority;

d. Enter either the employee's A-Number or USCIS number from the EAD in the Document Number field on Form I–9; and

e. Write January 10, 2021 as the expiration date.

Before the start of work on January 11, 2021, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a DED-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to reinspect your current EAD if your employer does not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–11 and has a Card Expires date of March 30, 2020. If your employer determines that your EAD has been automatically extended, your employer should update Section 2 of your previously completed Form I–9 as follows:

a. Write EAD Ext. and January 10, 2021 as the expiration date in the Additional Information field; and

b. Initial and date the correction.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either this notice's automatic extension of EADs has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By January 11, 2021, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3. If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9 and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I-9Central* for the most current version of Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by providing the employee's A-Number or USCIS number from Form I–9 in the Document Number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify has automated the verification process for DED-related EADs that are automatically extended. If you have employees who provided a DED-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about the expire. Before this employee starts work on January 11, 2021, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline

provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A ''Final Nonconfirmation'' (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *www.justice.gov/ier* and the USCIS and E-verify websites at *www.uscis.gov/i-9-central* and *www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, individuals covered under DED for Liberians presenting an EAD referenced in this **Federal Register** notice do not need to show any other document, such as an I–797, Notice of Action, to prove that they qualify for this extension. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under DED and/or show you are authorized to work based on DED. Examples of such documents are:

- Your current EAD;
- Your automatically extended EAD with a copy of this **Federal Register** notice, providing an automatic extension of your EAD;
- A copy of the notice of approval of your past Application for Temporary Protected Status Form I–797, Notice of Action, if you received one from USCIS, coupled with a copy of the March 30, 2020, Presidential Memorandum extending DED for Liberians; and/or
- A print-out from the USCIS DED website that provides information on the automatic extension. Such a print-out could be coupled with your EAD or with the Presidential Memorandum and your USCIS notice of approval showing that you had TPS as of September 30, 2007.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an individual has DED, each agency's procedures govern whether they will accept an automatically extended DED-related EAD. You should:

a. Present the agency with a copy of this **Federal Register** notice showing the extension of DED and of your DED-related EAD with your alien number;

b. Explain that SAVE will be able to verify the continuation of your DED using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response confirming your DED.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of your DED-related EAD. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *save.uscis.gov/casecheck/*, then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *www.uscis.gov/save.*

Joseph Edlow,

Deputy Director for Policy, U.S. Citizenship and Immigration Services.

[FR Doc. 2020–07355 Filed 4–3–20; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Memorandum on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

A ''Memorandum on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians'' was issued by President Trump on March 30, 2020. The President determined that it is in the foreign policy interests of the United States to extend the Deferred Enforced Departure (DED) wind-down period for Liberians through January 10, 2021. The President directed the Secretary of Homeland Security to extend the DED wind-down period for eligible Liberians currently covered under DED and to provide for continued work authorization through January 10, 2021. The President further authorized and directed the Secretary of Homeland Security to publish this memorandum

in the **Federal Register**. The text of the memorandum is set out below.

Joseph Edlow,

Deputy Director for Policy, U.S. Citizenship and Immigration Services.

Memorandum on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians

Since March 1991, certain Liberian nationals and persons without nationality who last habitually resided in Liberia (collectively, ''Liberians'') have been eligible for either Temporary Protected Status (TPS) or Deferred Enforced Departure (DED), allowing them to remain in the United States when they would otherwise be removable.

In a memorandum dated March 27, 2018, I determined that although conditions in Liberia had improved and no longer warranted a further extension of DED, the foreign policy interests of the United States warranted affording an orderly transition (''wind-down'') period to Liberian DED beneficiaries. In a memorandum dated March 28, 2019, I determined that an additional 12-month wind-down period was appropriate. By the terms of my memorandum, the wind-down period expires on March 30, 2020. In making my determination, I noted that there were efforts underway by Members of Congress to provide legislative relief for Liberian DED beneficiaries, and that extending the wind-down period would give the Congress time to consider the propriety of enacting such legislation.

On December 20, 2019, I signed the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) (NDAA), which included as section 7611, the Liberian Refugee Immigration Fairness (LRIF) provision. The LRIF provision provides certain Liberians, including those who have been continuously present in the United States since November 20, 2014, as well as their spouses and children who meet the criteria of the provision, the ability to apply to adjust their status to that of United States lawful permanent resident (LPR). Eligible Liberian nationals have until December 20, 2020, to apply for adjustment of status under the LRIF provision.

The LRIF provision, however, did not provide for continued employment authorization past the expiration of the existing DED wind-down period. Once the DED wind-down period expires, most covered Liberians will have no basis upon which to renew or maintain employment authorization before applying to adjust their status.

I have, therefore, determined that it is in the foreign policy interests of the United States to extend the DED wind-down period for current Liberian DED beneficiaries through January 10, 2021, to facilitate uninterrupted work authorization for those currently in the United States under DED who are eligible to apply for LPR status under the LRIF provision.

The relationship between the United States and Liberia is unique. Former African-American slaves were among those who founded the modern state of Liberia in 1847. Since that date, the United States has sought to honor, through bilateral diplomatic partnership, the sacrifices of individuals who suffered grievous wrongs in the United States, but who were determined to build a modern African democracy mirroring America's representative political institutions. As President, I am conscious of this special bond. Providing those Liberians for whom we have long authorized temporary status or deferred enforced departure in the United States, and for whom the Congress has now provided the ability to adjust status to that of lawful permanent resident, with the ability to continue to work to support themselves while they complete the process to adjust their status, honors the historic, close relationship between our two countries and is in the foreign policy interests of the United States.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I hereby direct the Secretary of Homeland Security to take appropriate measures to accomplish the following:

(1) A continuation of the DED wind down period through January 10, 2021, during which current Liberian DED beneficiaries who satisfy the description below may remain in the United States; and

(2) As part of that wind-down, continued authorization for employment through January 10, 2021, for current Liberian DED beneficiaries who satisfy the description below.

This further extension of the wind-down of DED and continued authorization for employment through January 10, 2021, shall apply to any current Liberian DED beneficiary, but shall not apply to Liberians in the following categories:

(1) Individuals who would be ineligible for TPS for reasons set forth in section 244(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B));

(2) Individuals who sought or seek LPR status under the LRIF provision but whose applications have been or are denied by the Secretary of Homeland Security;

(3) Individuals whose removal the Secretary of Homeland Security determines to be in the interest of the United States, subject to the LRIF provision;

(4) Individuals whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

(5) Individuals who have voluntarily returned to Liberia or their country of last habitual residence outside the United States beyond the timeframe specified in subsection (c) of the LRIF provision;

(6) Individuals who were deported, excluded, or removed before the date of this memorandum; or

(7) Individuals who are subject to extradition.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the **Federal Register**.

Donald J. Trump

[FR Doc. 2020–07356 Filed 4–3–20; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0121]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice; correction.

SUMMARY: The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) published a document in the **Federal Register** of April 1, 2020 requesting public comments in connection with the collection of information titled Generic Clearance of Qualitative Feedback on Agency Service Delivery in accordance with the Paperwork Reduction Act of 1995. USCIS incorrectly identified both the Docket Identification (Docket ID) and the Office of Management and Budget Control Number in the **ADDRESS** section of the original Notice.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 1, 2020, in FR Doc. 85–18254, in the first column, correct the **DATES** and **ADDRESS** captions to read:

DATES: Comments are encouraged and will be accepted for 60 days until June 8, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0121 in the body of the letter, the agency name and Docket ID USCIS–2014–0008. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2014–0008. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

Dated: April 1, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–07246 Filed 4–6–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–13]

30-Day Notice of Proposed Information Collection: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; OMB Control No. 2506–0087

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* May 7, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/StartPrintedPage15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 6, 2020 at 85 FR 519.

A. Overview of Information Collection

Title of Information Collection: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

OMB Approval Number: 2506–0087.

Type of Request: Extension of currently approved collection.

Form Number: HUD–7015.15.

Description of the need for the information and proposed use: The RROF/C is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	18,785.00	1.00	18,785.00	.60	11,271.00	36.65	413,082.15

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.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 31, 2020.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–07257 Filed 4–6–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201D0102DR/DS5A300000/DR.5A311.IA000118]

National Tribal Broadband Grant; Solicitation of Proposals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Indian Affairs published a document in the **Federal Register** of February 10, 2020, that contained an incorrect CFDA Number. This notice corrects the CDFA Number to be 15.032.

FOR FURTHER INFORMATION CONTACT: Mr. James R. West, National Tribal Broadband Grant (NTBG) Manager, Office of Indian Energy and Economic Development, Room 6049–B, 12220 Sunrise Valley Drive, Reston, Virginia 20191; telephone: (202) 595–4766; email: *jamesr.west@bia.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 10, 2020, in FR Doc. 2020–02616, on page 7581, in the second column, correct the CFDA number to be 15.032, so that the text reads ''Item 11: CFDA Title box—Type in the numbers: 15.032.''

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–07248 Filed 4–6–20; 8:45 am]

BILLING CODE 4337–10–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Preliminary)]

Mattresses From Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam, provided for in subheadings 9404.21.00, 9404.29.10, 9404.29.90, 9401.40.00, and 9401.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and by reason of imports of mattresses from China alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach preliminary determinations in antidumping and countervailing duty investigations in 45 days, or in this case by May 15, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by May 22, 2020.

DATES: March 31, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on March 31, 2020, by Brooklyn Bedding (Phoenix, Arizona), Corsicana Mattress Company (Dallas, Texas), Elite Comfort Solutions (Newnan, Georgia), FXI, Inc. (Media, Pennsylvania), Innocor, Inc. (Media, Pennsylvania), Kolcraft Enterprises, Inc. (Chicago, Illinois), Leggett & Platt, Incorporated (Carthage, Missouri), the International Brotherhood of Teamsters (Washington, DC), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (Washington, DC).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—As the Commission proceeds with alternative solutions during the COVID–19 pandemic, the Commission is not holding in-person Title VII (antidumping and countervailing duty) preliminary phase staff conferences at the U.S. International Trade Commission Building. It is providing an opportunity for parties to provide opening remarks and witness testimony by April 17, 2020, and responses to staff questions through written submissions by April 27, 2020. Commission staff will issue public written questions to parties participating in the written proceedings on April 21, 2020. Requests to participate in these written proceedings should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before April 17, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement on or before April 27, 2020.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-

based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.— Parties that have requested to participate in the written proceedings held in lieu of an in-person staff conference may submit opening remarks limited to five pages and witness testimony (in the form of certified affidavits) limited to 50 pages no later than April 17, 2020. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 27, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations, including responses to staff questions. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–07207 Filed 4–6–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–619]

Bulk Manufacturer of Controlled Substances Application: American Radiolabeled Chem

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 8, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 7, 2020, American Radiolabeled Chem, 101 Arc Drive, Saint Louis, Missouri 63146, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxy-butyric Acid.	2010	I
Ibogaine	7260	I
Lysergic acid diethylamide.	7315	I
Tetrahydrocannabinols.	7370	I
Dimethyltryptamine	7435	I
1-[1-(2-Thienyl)cyclohexyl]piperidine.	7470	I
Dihydromorphine	9145	I
Heroin	9200	I
Normorphine	9313	I
Amphetamine	1100	II
Methamphetamine	1105	II
Amobarbital	2125	II
Phencyclidine	7471	II
Phenylacetone	8501	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Meperidine	9230	II
Metazocine	9240	II
Methadone	9250	II
Dextropropoxyphene, bulk (non-dosage forms).	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Phenazocine	9715	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to manufacture small quantities of the above-listed controlled substances as radiolabeled compounds for biochemical research. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–07277 Filed 4–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–618]

Importer of Controlled Substances Application: Almac Clinical Services Incorp (ACSI)

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 7, 2020. Such persons may also file a written request for a hearing on the application on or before May 7, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug

Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 6, 2020, Almac Clinical Services Incorp, (ACSI) 25 Fretz Road, Souderton, Pennsylvania, 18964, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Oxycodone	9143	II
Hydromorphone	9150	II
Morphine	9300	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in dosage form to conduct clinical trials.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–07273 Filed 4–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–620]

Bulk Manufacturer of Controlled Substances Application: Benuvia Therapeutics Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 8, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 4, 2019, Benuvia Therapeutics Inc., 2700 Oakmont Drive, Round Rock, Texas 78665 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to manufacture the above-listed controlled substances in bulk to produce finished dosage forms and conduct research to develop new drug products and for clinical studies. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–07279 Filed 4–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Disaster Unemployment Assistance Activities Report''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 8, 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 by contacting David King by telephone at (202) 693–2698 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *king.david.h@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, ETA, Office of Unemployment Insurance, DUA Program, Room S–4520, 202 Constitution Ave. NW, Washington, DC 20210; by email: *king.david.h@dol.gov;* or by fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: David King by telephone at (202) 693–2698 (this is not a toll-free number) or by email at *king.david.h@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR seeks to extend PRA authority for the Disaster Unemployment Assistance Activities Report information collection. Sections 410 and 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act provide for Disaster Unemployment Assistance (DUA) to eligible applicants who are unemployed as a direct result of a major disaster. State Workforce Agencies, through individual agreements with the Secretary of Labor, act as agents of the Federal government in providing DUA. Form ETA 902 is a monthly report that a State submits on DUA program activities once the President declares a disaster. The Social Security Act section 303(a)(6) authorizes this information collection. *See* 42 U.S.C. 503(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive

consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control 1205–0051.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Disaster Unemployment Assistance Activities Report.

Form: ETA 902, Disaster Unemployment Assistance Activities.

OMB Control Number: 1205–0051.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 30.

Frequency: Monthly.

Total Estimated Annual Responses: 210.

Estimated Average Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 210 hours.

Total Estimated Annual Other Cost Burden: $10,237.50.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–07300 Filed 4–6–20; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Notice of Funding Availability and Request for Proposals for Calendar Year 2021 Basic Field Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Notice of funding availability.

SUMMARY: The Legal Services Corporation (LSC) is a federally established and funded organization that funds civil legal aid organizations across the country and in the U.S. territories. Its mission is to expand access to justice by funding high-quality legal representation for low-income people in civil matters. In anticipation of a congressional appropriation to LSC for Fiscal Year 2021, LSC hereby announces the availability of funding for basic field grants with terms commencing in January 2021. LSC will publish a Request for Proposals (RFP) and seeks applications from interested parties who are qualified to provide effective, efficient, and high-quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The availability and the exact amount of congressionally appropriated funds, as well as the date, terms, and conditions of funds available for grants for calendar year 2021, have not yet been determined.

DATES: See Supplementary Information section for grant application dates.

ADDRESSES: By email to *lscgrants@lsc.gov* or by other correspondence to Legal Services Corporation—Basic Field Grant Awards, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: The Office of Program Performance by phone at 202–295–1518 or email at *lscgrants@lsc.gov,* or visit the LSC website at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) hereby announces the availability of funding for basic field grants with terms beginning in January 2021. LSC seeks grant proposals from interested parties who are qualified to provide effective, efficient, and high-quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. Interested potential applicants must first file a Pre-application (formerly Notice of Intent to Compete). After approval by LSC of the Pre-application, an applicant can submit an application in response to the RFP, which contains the grant proposal guidelines, proposal content requirements, and selection criteria. The Pre-application, RFP, and additional information will be available at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant* on or around May 13, 2020.

The listing of all key dates for the LSC 2021 basic field grants process, including the deadlines for filing grant proposals is available at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/basic-field-grant-key-dates.*

LSC seeks proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The service areas for which LSC is requesting grant proposals for 2021 are listed below. LSC provides grants for three types of service areas: Basic Field-General, Basic Field-Native American, and Basic Field-Agricultural Worker. For example, the state of Idaho has three basic field service areas: ID–1 (General), NID–1 (Native American), and MID (Agricultural Worker). Service area descriptions are available at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas.* LSC will post all updates and changes to this notice at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant.* Interested parties can visit *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant* for updates on the LSC grants process.

State or territory	Service area(s)
Alaska	AK–1, NAK–1.
Arizona	AZ–2, NAZ–5.
California	CA–31, MCA, CA–14.
Connecticut	NCT–1.
Delaware	DE–1.
Guam	GU–1.
Iowa	IA–3, MIA.
Idaho	ID–1, MID, NID–1.
Kansas	KS–1.
Kentucky	KY–5.
Maine	ME–1, MMX–1, NME–1.
Michigan	MI–13, MI–14.
Minnesota	NMN–1.
Micronesia	MP–1.
Nebraska	MNE, NE–4, NNE–1.
Nevada	NNV–1; NV–1.
New Hampshire	NH–1.
New Jersey	NJ–17, NJ–8, NJ–15, NJ–18, MNJ, NJ–20.
New Mexico	NM–1, NNM–2.
Ohio	OH–24.
Oregon	MOR, NOR–1, OR–6.
Pennsylvania	PA–25.

State or territory	Service area(s)
Rhode Island	RI–1.
South Dakota	NSD–1, SD–4.
Texas	TX–14.
Utah	MUT, NUT–1, UT–1.
Virginia	MVA, VA–18, VA–16, VA–15.
Vermont	VT–1.
Virgin Islands	VI–1.
Washington	MWA, NWA–1, WA–1.
Wisconsin	NWI–1, WI–2.

Dated: April 1, 2020.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2020–07178 Filed 4–6–20; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME & DATE: Friday, April 10, 2020, from 3:00–4:00 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link at least 24 hours prior to the teleconference. The email address for the request is given below.

STATUS: Open.

MATTERS TO BE CONSIDERED: Acting Committee Chair's opening remarks; approval of Executive Committee minutes of January 10, 2020; approval of Executive Committee annual report; and discuss issues and topics for an agenda of the NSB meetings scheduled for May 5–6, 2020.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. Members of the public must contact the National Science Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine*. Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–07349 Filed 4–3–20; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0084]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all amendments issued, or proposed to be issued, from approximately March 10, 2020, to March 23, 2020. The last biweekly notice was published on March 24, 2020.

DATES: Comments must be filed by May 7, 2020. A request for a hearing or petitions for leave to intervene must be filed by June 8, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0084. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, telephone: 301–415–1927, email: *lynn.ronewicz@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0084, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0084.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2020–0084, facility name, unit number(s), docket number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the

comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensee's analyses provided, consistent with title 10 of the *Code of Federal Regulations* (10 CFR) section 50.91 is sufficient to support the proposed determination that these amendment requests involve No Significant Hazards Consideration (NSHC). Under the Commission's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take action on an amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party

under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *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 must 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/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *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 stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose

of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 1—LICENSE AMENDMENT REQUEST(S)

Energy Northwest; Columbia Generating Station; Benton County, WA	
Application Date	January 27, 2020.
ADAMS Accession No.	ML20030C062.
Location in Application of NSHC	Page 3 of Attachment 1.
Brief Description of Amendments	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–566, ''Revise Actions for Inoperable RHR [Residual Heat Removal] Shutdown Cooling Subsystems,'' and would revise the applicability of Technical Specification actions when an RHR shutdown cooling subsystem is inoperable.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathleen Galioto, Assistant General Counsel, Energy Northwest, MD PE13, P.O. Box 968, Richland, WA 99352.
Docket Nos.	50–397.
NRC Project Manager, Telephone Number	L. John Klos, 301–415–5136.
Energy Northwest; Columbia Generating Station; Benton County, WA	
Application Date	January 27, 2020.
ADAMS Accession No.	ML20027D541.
Location in Application of NSHC	Page 2 of Enclosure 1.
Brief Description of Amendments	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–564, ''Safety Limit MCPR [Minimum Power Critical Ratio],'' Revision 2, which would revise the Technical Specification safety limit on MCPR and reduce the need for cycle-specific changes to that value while maintaining compliance with the regulatory requirements for safety limits.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathleen Galioto, Assistant General Counsel, Energy Northwest, MD PE13, P.O. Box 968, Richland, WA 99352.
Docket Nos.	50–397.
NRC Project Manager, Telephone Number	L. John Klos, 301–415–5136.
Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS, Entergy Louisiana, LLC and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA	
Application Date	February 26, 2020.
ADAMS Accession No.	ML20057G004.
Location in Application of NSHC	Page 3 of the Enclosure.
Brief Description of Amendments	The proposed amendments would revise the Technical Specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–501, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control,'' Revision 1 (ADAMS Accession Nos. ML090510686 and ML100850094), for Grand Gulf Nuclear Station, Unit 1 (Grand Gulf), and River Bend Station, Unit 1 (River Bend). The amendments would revise Grand Gulf and River Bend TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by removing the current stored diesel fuel oil and lube oil numerical volume requirements from the TSs and placing them in the TS Bases so that they may be modified under licensee control. The TSs would also be revised such that the stored diesel fuel oil and lube oil inventory would require that a 7-day supply be available for each diesel generator at Grand Gulf and River Bend. Corresponding surveillance requirements and TS Bases would also be revised to reflect the above changes.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.
Docket Nos.	50–416, 50–458.
NRC Project Manager, Telephone Number	Siva Lingam, 301–415–1564.
Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS	
Application Date	February 19, 2020.
ADAMS Accession No.	ML20050R656.
Location in Application of NSHC	Pages 111–113 of the Enclosure.
Brief Description of Amendments	The proposed amendment would revise Technical Specification (TS) 5.5.12, ''10 CFR 50, Appendix J, Testing Program,'' to allow for the permanent extension of the Type A integrated leak rate testing. The amendment also proposes to make administrative changes to TS 5.5.12 to delete the already performed Type A test, and TS Surveillance Requirement (SR) 3.6.5.1.1 to delete the already performed drywell bypass leak rate test. In addition, the amendment would revise SRs 3.6.1.1.1 and 3.6.1.2.1, and TS 5.5.12 to align with NUREG-1434, Volume 1, Revision 4, ''Standard Technical Specifications General Electric BWR/6 Plants.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.
Docket Nos.	50–416.
NRC Project Manager, Telephone Number	Siva Lingam, 301–415–1564.

TABLE 1—LICENSE AMENDMENT REQUEST(S)—Continued

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL	
Application Date	October 21, 2019.
ADAMS Accession No.	ML19294A304.
Location in Application of NSHC	Attachment 1, Pages 24–26.
Brief Description of Amendments	The proposed amendments would alter Technical Specification 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' and Surveillance Requirement 3.6.1.3.10 by revising the combined main steam isolation valve leakage rate limits. These proposed changes are based on a revision of the alternate source term analysis of the radiological consequences of the design-basis loss-of-coolant accident. The proposed change is consistent with Technical Specifications Task Force Traveler (TSTF)-551, ''Revise Secondary Containment Surveillance Requirements,'' Revision 3, which was approved by the NRC on September 21, 2017.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Docket Nos.	50–237, 50–249.
NRC Project Manager, Telephone Number	Russell Haskell, 301–415–1129.
Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL	
Application Date	January 31, 2020.
ADAMS Accession No.	ML20035E577.
Location in Application of NSHC	Pages 5 and 6 of Attachment 1.
Brief Description of Amendments	The proposed amendments would modify Technical Specification requirements to permit the use of risk-informed completion times in accordance with Technical Specifications Task Force Traveler (TSTF)-505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Docket Nos.	50–373, 50–374.
NRC Project Manager, Telephone Number	Bhalchandra Vaidya, 301–415–3308.
Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL	
Application Date	January 31, 2020.
ADAMS Accession No.	ML20031E699.
Location in Application of NSHC	Enclosure, Pages 26 and 27.
Brief Description of Amendments	The proposed amendments would modify the licensing basis by the addition of a license condition to allow for the implementation of the provisions of 10 CFR Section 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Docket Nos.	50–373, 50–374.
NRC Project Manager, Telephone Number	Bhalchandra Vaidya, 301–415–3308.
Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN; Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN	
Application Date	February 27, 2020.
ADAMS Accession No.	ML20058F943.
Location in Application of NSHC	Attachment 1, Pages 3 and 4.
Brief Description of Amendments	The proposed amendment would modify Technical Specification requirements in Section 1.3 and Section 3.0 regarding Limiting Condition for Operation and Surveillance Requirement usage. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules,'' Revision 4.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
Docket Nos.	50–263, 50–282, 50–306.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN	
Application Date	February 24, 2020.
ADAMS Accession No.	ML20056C857.
Location in Application of NSHC	Page 24 of the Enclosure.
Brief Description of Amendments	The proposed amendments would modify the Technical Specifications to reduce the steam generator tube inspection frequency.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
Docket Nos.	50–327.
NRC Project Manager, Telephone Number	Perry Buckberg, 301–415–1383.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the application for amendment; (2) the amendment; and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 2—LICENSE AMENDMENT ISSUANCE(S)

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1; Fairfield County, SC	
Date Issued	3/6/2020
ADAMS Accession No.	ML19305A005
Amendment Nos.	217
Brief Description of Amendments	The amendment revised license conditions and approved changes to plant modifications evaluated using fire probabilistic risk assessment. The amendment also approved performance-based alternatives to National Fire Protection Association (NFPA) 805, Section 3.3.4, ''Insulation Materials,'' and Section 3.3.5.1, ''Wiring above Suspended Ceilings.''
Docket Nos.	50–395.
Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC	
Date Issued	March 6, 2020.
ADAMS Accession No.	ML20073F186.
Amendment Nos.	299 (Unit 1) and 327 (Unit 2).
Brief Description of Amendments	The amendments allow application of the Framatome analysis methodologies necessary to support a planned transition to ATRIUM 11 fuel under the currently licensed Maximum Extended Load Line Limit Analysis Plus (MELLLA+) operating domain.
Docket Nos.	50–325, 50–324.
Energy Northwest; Columbia Generating Station; Benton County, WA	
Date Issued	3/10/2020.
ADAMS Accession No.	ML20037A733.
Amendment Nos.	256.
Brief Description of Amendments	The amendment removed License Condition 2.C.(11), ''Shield Wall Deferral (Section 12.3.2, SSER #4, License Amendment #7),'' and its related Attachment 3, ''List of Shield Walls,'' from the renewed facility operating license because these items are outdated and not applicable to Columbia's operation.
Docket Nos.	50–397.
Entergy Operations, Inc.; Arkansas Nuclear One, Unit 1; Pope County, AR	
Date Issued	March 16, 2020.
ADAMS Accession No.	ML20034E874.
Amendment Nos.	268.
Brief Description of Amendments	The amendment adopted Technical Specifications Task Force (TSTF) Traveler TSTF–439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation].''
Docket Nos.	50–313.
Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant, LLC; Oswego County, NY	
Date Issued	March 2, 2020.
ADAMS Accession No.	ML20024C661.
Amendment Nos.	332.
Brief Description of Amendments	The amendment adopted Technical Specifications Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise Applicability of BWR [Boiling Water Reactor]/4 TS [Technical Specification] 3.6.2.5 and TS 3.6.3.2,'' using the Consolidated Line Item Improvement Process. Specifically, the amendment revised FitzPatrick TS 3.6.2.4, ''Drywell-to-Suppression Chamber Differential Pressure,'' and TS 3.6.3.1, ''Primary Containment Oxygen Concentration,'' and presents the requirements in a manner more consistent with the Standard Technical Specifications format and content.
Docket Nos.	50–333.
Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2; Will County, IL; Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 and 2, Ogle County, IL; Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Calvert County, MD; Exelon Generation Company, LLC, Clinton Power Station, Unit No. 1, DeWitt County, IL; Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL; Exelon Generation Company, LLC and Exelon FitzPatrick, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY; Exelon Generation Company, LLC, LaSalle County Station, Units 1 and 2; LaSalle County, IL; Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA; Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Oswego County, NY; Exelon Generation Company, LLC and PSEG Nuclear LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York and Lancaster Counties, PA; Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL; Exelon Generation Company, LLC; R. E. Ginna Nuclear Power Plant; Wayne County, NY	
Date Issued	March 12, 2020.
ADAMS Accession No.	ML20034G546.
Amendment Nos.	Braidwood (207/207), Byron (213/213), Calvert Cliffs (334/312), Clinton (229), Dresden (266/259), FitzPatrick (333), LaSalle (242/228), Limerick (243/206), Nine Mile Point (241/179), Peach Bottom (332/335), Quad Cities (279/274), and R. E. Ginna (138).

TABLE 2—LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendments	The amendments revised the instrument testing and calibration definitions in the technical specifications for each facility to incorporate the surveillance frequency control program. The amendments are based on Technical Specifications Task Force (TSTF) Traveler TSTF–563, Revision 0, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program'' (ADAMS Accession No. ML17130A819).
Docket Nos.	50–456, 50–457, 50–454, 50–455, 50–317, 50–318, 50–461, 50–237, 50–249, 50–333, 50–373, 50–374, 50–352, 50–353, 50–220, 50–410, 50–277, 50–278, 50–254, 50–265, 50–244.
Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA	
Date Issued	March 11, 2020.
ADAMS Accession No.	ML19345D984.
Amendment Nos.	242 (Unit 1) and 205 (Unit 2).
Brief Description of Amendments	The amendments removed Technical Specification (TS) ¾.3.7.8.1, ''Chlorine Detection System''; TS ¾.3.7.8.2, ''Toxic Gas Detection System''; and Surveillance Requirement 4.7.2.1.e.2, which require verification of realignment of the control room emergency fresh air supply system upon detection of chorine or toxic gases.
Docket Nos.	50–352, 50–353.
Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA	
Date Issued	March 11, 2020.
ADAMS Accession No.	ML19351E376.
Amendment Nos.	241 (Unit 1) and 204 (Unit 2).
Brief Description of Amendments	The amendments revised Technical Specification (TS) 6.8.4.g, ''Primary Containment Leakage Rate Testing Program,'' to adopt Nuclear Energy Institute (NEI) 94–01, Revisions 2–A and 3–A. Specifically, the amendments allowed the maximum interval for the integrated leakage rate test, also known as Type A test, to be extended permanently from once in 10 years to once in 15 years, and made an administrative change to remove the exception under TS 6.8.4.g regarding the performance of the next Units 1 and 2 Type A test no later than May 15, 2013, and May 21, 2014, respectively, as these Type A tests have already occurred.
Docket Nos.	50–352, 50–353.
PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ	
Date Issued	3/12/2020.
ADAMS Accession No.	ML20042F101.
Amendment Nos.	334 (Unit No. 1) and 315 (Unit No. 2).
Brief Description of Amendments	The amendments relocated Salem, Unit Nos. 1 and 2, Technical Specifications ¾.9.3, ''Decay Time,'' and ¾.9.12, ''Fuel Handling Area Ventilation System,'' to the Salem Technical Requirements Manual.
Docket Nos.	50–272, 50–311.
R. E. Ginna Nuclear Power Plant, LLC and Exelon Generation Company, LLC; R. E. Ginna Nuclear Power Plant; Wayne County, NY	
Date Issued	March 11, 2020.
ADAMS Accession No.	ML20044D072.
Amendment Nos.	137.
Brief Description of Amendments	The amendment revised Technical Specification 3.7.1, ''Main Steam Safety Valves (MSSVs),'' Surveillance Requirement 3.7.1.1 to increase the allowable as-found main steam safety valves lift setpoint tolerance from +1 percent, −3 percent to +1.4 percent, −4 percent for valve numbers 3508, 3509, 3510, 3511, 3512, and 3515.
Docket Nos.	50–244.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of NSHC. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so

stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves NSHC. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, including the applicable notice period, see the individual notice in the **Federal Register** on the day and page cited.

TABLE 4—LICENSE AMENDMENT REQUEST(S)—REPEAT OF INDIVIDUAL FEDERAL REGISTER NOTICE

Exelon Generation Company, LLC; R.E. Ginna Nuclear Power Plant; Wayne County, NY	
Application Date	February 25, 2020.
ADAMS Accession No.	ML20056E958.
Brief Description of Amendment	The amendment revised Technical Specifications 3.4.7, ''RCS [Reactor Coolant System] Loops—MODE 5, Loops Filled''; 3.4.8, ''RCS Loops—MODE 5, Loops Not Filled''; 3.9.4, ''Residual Heat Removal (RHR) and Coolant Circulation—Water Level ≥23 Ft''; and 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—Water Level <23 Ft,'' to add an asterisk to allow the use of alternative means for residual heat removal. This one-time change was requested to support Ginna in the shutdown of the reactor during the upcoming refueling outage scheduled to start in April 2020.
Date & Cite of **Federal Register** Individual Notice	3/2/2020; 85 FR 12349.
Expiration Dates for Public Comments & Hearing Requests.	4/1/2020 (comments); 5/1/2020 (petitions).
Docket Nos.	50–244.

Dated at Rockville, Maryland, this 25th day of March, 2020.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–06624 Filed 4–6–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0154]

Release of Patients Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 8.39, ''Release of Patients Administered Radioactive Material.'' This RG (Revision 1) provides licensees with more detailed instructions to provide to patients before and after they have been administered radioactive material than was in Revision 0. In addition, the guide includes a new section on ''Death of a Patient Following Radiopharmaceutical or Implants Administrations,'' as well as requirements for recordkeeping. Also, Table 3, ''Activities of Radiopharmaceuticals That Require Instructions and Records When Administered to Patients Who Are Breastfeeding an Infant or Child,'' has been revised.

DATES: Revision 1 to RG 8.39 is available on April 7, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0154 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document, using the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0154. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges, telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the 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 Document 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 in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 to RG 8.39 may be found in ADAMS under Accession No. ML19232A081.
- *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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Vered Shaffer, Office of Nuclear Regulatory Research, telephone: 630–829–9862, email: *Vered.Shaffer@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods and techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 8.39 described methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations. Specifically, the RG provides licensees with instructions for patients before and after they receive medical procedures involving the administration of radioactive material, as well as requirements for recordkeeping. The RG also lists activities and dose rates that may be used by licensees for the release of patients in order to meet NRC regulatory requirements.

This revision of the guide (Revision 1) provides licensees with more detailed instructions to provide to patients before and after they have been administered radioactive material than was in Revision 0. In addition, the guide includes a new section on ''Death of a Patient Following Radiopharmaceutical or Implants Administrations,'' as well as additional guidance for requirements for recordkeeping. Also, Table 3, ''Activities of Radiopharmaceuticals that Require Instructions and Records when Administered to Patients who are Breastfeeding an Infant or Child,'' has been revised to provide information for the recommended duration of interruption of breastfeeding to ensure that the dose to an infant or child meets the NRC's regulatory requirements.

II. Additional Information

Proposed revision 1 of RG 8.39 was issued with a temporary identification of Draft Regulatory Guide, (DG)–8057. The NRC published a notice of the availability of DG–8057 in the **Federal Register** on July 29, 2019 (84 FR 36127) for a 30-day public comment period. The public comment period was extended for another 30 days (84 FR 39383; August 9, 2019). The public comment period closed on September 26, 2019. Public comments on DG–8057 and the staff responses to the public comments are available under ADAMS under Accession No. ML19353B203.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 1 of RG 8.39 does not constitute backfitting as defined in title 10 of the *Code of Federal Regulations* (10 CFR) section 50.109, ''Backfitting'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants;'' or constitute forward fitting as that term is defined and described in MD 8.4. 10 CFR part 35, ''Medical Use of Byproduct Material,'' does not include backfitting or issue finality provisions and the forward fitting policy in MD 8.4 does not apply to these licensees. In addition, licensees will not be required to comply with the positions set forth in this RG.

Dated: April 2, 2020.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–07307 Filed 4–6–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–302 and 72–1035; NRC–2020–0077]

In the Matter of Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Plant and Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the transfer to ADP CR3, LLC (ADP CR3) of the licensed authority of Duke Energy Florida, LLC (DEF) under Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant (CR–3) and the general license for the CR–3 independent spent fuel storage installation (ISFSI) to possess, maintain, and decommission CR–3 and its ISFSI. The order also approves a draft conforming administrative license amendment to reflect the transfer from DEF to ADP CR3. The NRC determined that ADP CR3 is qualified to hold the licenses to the extent proposed, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition described in the order. The order became effective on April 1, 2020.

DATES: The order was issued on April 1, 2020 and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2020–0077 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–2020–0077. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the 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.

FOR FURTHER INFORMATION CONTACT: John B. Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017; email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: April 2, 2020.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Approving Transfer of Licensed Authority and Draft Conforming Administrative License Amendment

United States of America

Nuclear Regulatory Commission

In the Matter of Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Plant and its generally licensed ISFSI

Docket Nos. 50–302 and 72–1035

License No. DPR–72

Order Approving Transfer of Licensed Authority and Draft Conforming Administrative License Amendment (EA–20–045)

I

Duke Energy Florida, LLC (DEF) is the holder of Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant (CR–3) and the general license for the CR–3 independent spent fuel storage installation (ISFSI) (collectively, the licenses). DEF is authorized to possess, maintain, and decommission CR–3 and the CR–3 ISFSI (collectively, the CR–3 facility), which are located in Crystal River, Florida. The CR–3 facility is located on the Gulf coast of Florida approximately 80 miles north of Tampa, Florida, within the Crystal River Energy Complex (CREC).

CR–3 was a 2,609 megawatts thermal single-unit pressurized light-water reactor supplied by Babcock & Wilcox that was issued an operating license on January 28, 1977. By letter dated February 20, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13056A005), pursuant to Section 50.82(a)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), DEF notified the U.S. Nuclear Regulatory Commission (NRC, the Commission) that CR–3 had been permanently shut down and that all fuel had been permanently removed from the reactor vessel. Accordingly, pursuant to 10 CFR 50.82(a)(2), the 10 CFR part 50 license for CR–3 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

II

By letter dated June 14, 2019 (ADAMS Accession No. ML19170A209), as supplemented by letters dated January 17, 2020 (ADAMS Accession No. ML20017A216), and March 5, 2020 (ADAMS Accession No. ML20065K737), DEF requested, on behalf of itself and ADP CR3, LLC (ADP CR3) (collectively, the Applicants), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, ''Transfer of licenses,'' and 10 CFR 72.50, ''Transfer of license,'' that the NRC consent to the transfer to ADP CR3 of DEF's licensed authority under the licenses. Specifically, DEF intends to transfer its NRC-licensed possession, maintenance, and decommissioning authorities to ADP CR3 for the purpose of completing the decommissioning of the CR–3 facility. The application proposed no physical or operational changes to the CR–3 facility.

The NRC published a notice, ''Crystal River Unit 3 Nuclear Generating Plant; Duke Energy Florida, LLC; Consideration of Approval of Transfer of License and Conforming Amendment,'' in the **Federal Register** (FR) on October 11, 2019 (84 FR 54932). The NRC did not receive any comments or hearing requests on the application.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application for license transfer, as supplemented, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ADP CR3 is qualified to hold the licenses to the extent proposed, and that the transfer, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the information in the application for a conforming administrative license amendment, as supplemented, the NRC staff has determined that:

(1) The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.

(2) The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission.

(3) There is reasonable assurance that the activities authorized by the amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.

(4) The issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

(5) The issuance of the amendment is in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC staff safety evaluation dated April 1, 2020, which is available at ADAMS Accession No. ML20069A027.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, *it is hereby ordered* that the application for license transfer, as described herein, is approved, subject to the following condition:

Prior to the closing of the license transfer, DEF and ADP CR3 shall provide the Director of the NRC's Office of Nuclear Material Safety and Safeguards satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.11(a)(4) and 10 CFR 50.54(w), consistent with the exemptions issued for CR–3 on April 27, 2015, and March 31, 2016.

It is further ordered that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the letter transmitting this Order, to reflect the subject license transfer, is approved. The amendment shall be issued and made effective at the time the proposed transfer actions are completed.

It is further ordered that after receipt of all required regulatory approvals of the proposed transfer actions, ADP CR3 shall inform the Director of the NRC Office of Nuclear Material Safety and Safeguards in writing of such receipt, and of the date of the closing of the transfer, no later than 5 business days before the date of the closing of the transfer. Should the proposed transfer not be completed within 1 year of the date of this Order, this Order shall become null and void, provided,

however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated June 14, 2019 (ADAMS Accession No. ML19170A209), the supplemental letters dated January 17, 2020 (ADAMS Accession No. ML20017A216), and March 5, 2020 (ADAMS Accession No. ML20065K737), and the NRC staff's safety evaluation dated April 1, 2020 (ADAMS Accession No. ML20069A027), which are available for public inspection at the NRC's Public Document Room located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of April, 2020.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–07261 Filed 4–6–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0138, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9.

DATES: Comments are encouraged and will be accepted until June 8, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0138). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former annuitants of their right to request reconsideration. It also specifies the conditions to be met and the documentation that must be submitted with a request for reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity (RI 30–9).

OMB Number: 3206–0138.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 200.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 200 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–07236 Filed 4–6–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0143, Request to Disability Annuitant for Information on Physical Condition and Employment, RI 30–1

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Request to Disability Annuitant for Information on Physical Condition and Employment, RI 30–1.

DATES: Comments are encouraged and will be accepted until June 8, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0143). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving a disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request to Disability Annuitant for Information on Physical Condition and Employment (RI 30–1).

OMB Number: 3206–0143.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 8,000.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 8,000 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–07235 Filed 4–6–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0194, Annuity Supplement Earnings Report, RI 92–22

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Annuity Supplement Earnings Report, RI 92–22.

DATES: Comments are encouraged and will be accepted until June 8, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0194). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 92–22, Annuity Supplement Earnings Report, is used each year to obtain the earned income of Federal Employees Retirement System (FERS) annuitants who are not retired on disability and are not yet age 62. The supplement approximates the portion of a full career Social Security benefit earned while under FERS and ends at age 62. Like Social Security benefits, the annuity supplement is subject to an earnings limitation.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Annuity Supplement Earnings Report (RI 92–22).

OMB Number: 3206–0194.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 13,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 3,250 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–07238 Filed 4–6–20; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88534; File No. SR–NYSEArca–2019–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust Under Proposed NYSE Arca Rule 8.601–E

April 1, 2020.

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the following under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF (''Funds'').[3] The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[7] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF. This Amendment No. 2 to SR–NYSEArca–2019–96 replaces SR–NYSEArca–2019–96 as originally filed and supersedes such filing in its entirety. The Exchange has withdrawn Amendment No. 1 to SR–NYSEArca–2019–96.

The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has proposed to add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[9] Proposed Commentary 02 to Rule 8.601–E would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of Active Proxy Portfolio Shares of the American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF (each a ''Fund'' and, collectively, the ''Funds'') under proposed Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E [10] and for which a ''Disclosed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.602–E to permit the Exchange to list and trade Actively Managed Solution Shares, and to list and trade shares of the Funds under proposed Exchange Rule 8.602–E. In Amendment No. 2, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.602–E and revised the proposal to seek to list and trade shares of the Funds under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 2, *infra* note 7. *See also* Amendment 2 to SR–NYSEArca–2019–95 (proposing to adopt NYSE Arca Rule 8.601–E to list and trade Active Proxy Portfolio Shares, available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995.htm).*

[4] *See* Securities Exchange Act Release No. 87867 (Dec. 30, 2019), 85 FR 394 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88198, 85 FR 9833 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Amendment No. 1 to the proposed rule change was filed on March 26, 2020 and subsequently withdrawn on March 31, 2020. Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Amendment 2 to SR–NYSEArca–2019–95, relating to listing and trading on the Exchange of shares of the Natixis ETF Trust, filed on March 31, 2020. *See also,* Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357 (January 3, 2020) (SR–NYSEArca–2019–95). Proposed Rule 8.601–E(c)(1) provides that the term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for a transfer of the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[10] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF);

Continued

Portfolio'' is required to be disseminated at least once daily,[11] the portfolio for an issue of Active Proxy Portfolio Shares will be disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.[12] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV.

A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

In this regard, with respect to the Funds, the Funds will utilize a proxy portfolio methodology—the ''NYSE Proxy Portfolio Methodology''— that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.[13] The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.

The Exchange, after consulting with various Lead Market Makers that trade exchange-traded funds (''ETFs'') on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the NAV in light of the daily Proxy Portfolio dissemination. Market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[14] These techniques should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to manage a market maker's quoting risk in connection with trading shares of a fund. Market makers can then conduct statistical arbitrage between Proxy Portfolio and shares of a fund, buying and selling one against the other over the course of the trading day. They will evaluate how the Proxy Portfolio performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to provide a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around NAV of a fund's shares. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

The Funds will be series of the American Century ETF Trust (''Trust''), which will be registered with the Commission as an open-end management investment company.[15]

63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[11] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[12] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a Fund's fiscal quarter will be made publicly available 60 days after the end of a Fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's statement of additional information (''SAI'') and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[13] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Funds. NYSE Group, Inc. is not affiliated with the Funds, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

[14] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index.

[15] The Trust is registered under the 1940 Act. On January 24, 2020, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act for the Funds (File Nos. 333–221045 and 811–23305) (''Registration Statement''). The Trust also filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15082), dated December 11, 2019 (''American Century Application'' or ''Application''). The Shares will not be listed on the Exchange until an order (''American Century Exemptive Order'') under the 1940 Act has been issued by the Commission with respect to the Application. The American Century Application states that the exemptive relief requested by the Trust will apply to funds of the Trust that comply with the terms and conditions of the American Century Exemptive Order and the order issued to Natixis ETF Trust II. With respect to the Natixis ETF Trust II, *see* Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14870) (October 21, 2019 (''Natixis Application''); the Commission notice regarding the Natixis Application (Investment Company Release No. 33684 (File No. 812–14870) November 14, 2019); and the Commission order under the 1940 Act granting the exemptions requested in the Natixis Application (Investment Company Act Release No. 33711 (December 10, 2019)) (''Natixis Exemptive Order''). The American Century Application incorporates the Natixis Exemptive Order by reference. Investments made by the Funds will comply with the conditions set forth in the American Century Application, American Century Exemptive Order and Natixis Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement and the American Century Application.

American Century Investment Management, Inc. (''Adviser'') will be the investment adviser to the Funds. Foreside Fund Services, LLC will act as the distributor and principal underwriter (''Distributor'') for the Funds.

Proposed Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or changes thereto or the Proxy Portfolio must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or changes thereto or the Proxy Portfolio.[16]

Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .03(a) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[17] Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's portfolio.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Funds

According to the Application, the Funds may hold only ''Permissible Investments.'' In this regard, the Funds will utilize a proxy portfolio methodology—the ''NYSE Proxy Portfolio Methodology''—that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares of a Fund by investors in the secondary market at prices that do not vary materially from their NAV.[18] The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.

American Century Mid Cap Growth Impact ETF

The Fund will seek long-term capital growth. The Fund's holdings will conform to the permissible investments as set forth in the American Century Application and the holdings will be consistent with all requirements in the American Century Application and American Century Exemptive Order.[19]

American Century Sustainable Equity ETF

The Fund will seek long-term capital growth, with income as a secondary objective. The Fund's holdings will conform to the permissible investments as set forth in the American Century Application and the holdings will be consistent with all requirements in the American Century Application and American Century Exemptive Order.[20]

Creations and Redemptions of Shares

According to the Application, the Creation Basket will be based on the Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating a Fund's NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of such Fund, as calculated in accordance with the policies and procedures set forth in its Registration Statement.

As with the Proxy Portfolio, the Creation Basket will mask a Fund's Actual Portfolio from full disclosure while at the same time maximizing benefits of the ETF structure to shareholders. In particular, the Adviser believes that the ability of a Fund to take deposits and make redemptions in-kind may aid in achieving a Fund's

[16] The text of proposed Commentary .04 to NYSE Arca Rule 8.601–E is included in Amendment 2 to SR–NYSEArca–2019–95. *See* note 9, *supra.*

[17] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[18] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Fund. NYSE Group, Inc. is not affiliated with the Fund, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

[19] Pursuant to the American Century Application, the permissible investments for a Fund are the ''Permissible Investments'' set forth in the Natixis Application and Natixis Exemptive Order which are the following: Exchange-traded funds (''ETFs''), exchange-traded notes (''ETNs''), exchange-traded common stocks, common stocks listed on a foreign exchange (''foreign common stocks'') that trade on such exchange contemporaneously with the exchange-traded Shares, preferred stocks, exchange-traded American Depositary Receipts (''ADRs''), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts and exchange-traded futures that trade contemporaneously with Fund Shares, as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements).

[20] *See* note 19, *supra.*

investment objectives by allowing it to be more fully invested, minimizing cash drag, and reducing flow-related trading costs. In-kind transactions may also increase a Fund's tax efficiency and promote efficient secondary market trading in Shares.

According to the Application, the Trust will offer, issue and sell Shares of each Fund to investors only in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of each Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Trust will sell and redeem Creation Units of each Fund only on a Business Day. Creation Units of the Funds may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') will be the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of baskets in compliance with the terms and conditions of the American Century Exemptive Order and that are in the best interests of a Fund and its shareholders, including the process for any revisions to or deviations from those parameters.

A Fund that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, the Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash. Each Business Day, before the open of trading on the Exchange, a Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) A ''participating party'' (*i.e.,* a broker or other participant), in the Continuous Net Settlement (''CNS'') System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (''NAV Calculation Time''), generally 4:00 p.m. E.T. on the date the order is placed (''Transmittal Date'') in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date. In the case of custom orders, the order must be received by the Distributor sufficiently in advance of the NAV Calculation Time in order to help ensure that the Fund has an opportunity to purchase the missing securities with the cash in lieu amounts or to sell securities to generate the cash in lieu amounts prior to the NAV Calculation Time. On days when the Exchange closes earlier than normal, a Fund may require custom orders to be placed earlier in the day.

Availability of Information

The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price, and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.[21] Each Fund's website also will disclose the information required under proposed Rule 8.601–E (c)(3).[22]

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis. [23] Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis.

Investors can obtain a Fund's prospectus, statement of additional information (''SAI''), Shareholder Reports, Form N–CSR, N–PORT and Form N–CEN filed with the Commission. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Updated price information for U.S. exchange-listed equity securities is available through major market data

[21] The ''premium/discount'' refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day. The ''Closing Price'' of Shares is the official closing price of the Shares on the Fund's Exchange. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of such Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor.

[22] *See* note 9, *supra.* Proposed Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

[23] *See* note 12, *supra.*

vendors or securities exchanges trading such securities. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the Consolidated Tape Association (''CTA'') high-speed line. Price information for cash equivalents is available through major market data vendors

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under proposed Rule 8.601–E. The Funds' holdings will be limited to and consistent with Permissible Investments as described above.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[24] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to proposed NYSE Arca Rule 8.601–E(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The issuer has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.

The Exchange deems the Shares to be equity securities, thus rendering trading n the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, exchange-traded equity securities, and E-mini S&P 500 futures contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[26]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to

[24] *See* NYSE Arca Rule 7.12–E.

[25] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[26] For a list of the current members of ISG, *see www.isgportal.org.*

represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the Proxy Portfolio will be disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that a Fund is subject to various fees and expenses described in the applicable registration statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in proposed NYSE Arca Rule 8.601–E. The Funds' investments will be consistent with its investment objective and will not be used to enhance leverage.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, exchange-traded equity securities, and E-mini S&P 500 futures contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various Lead Market Makers that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the NAV, and that market makers have knowledge of a fund's means of achieving its investment objective even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products.[29] This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Active Proxy Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as Proxy Portfolio to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between the Proxy Portfolio and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how the Proxy Portfolio performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to provide a more efficient hedge.

The Lead Market Makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by Lead Market Makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size.

The Funds will utilize the NYSE Proxy Portfolio Methodology that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* note 14, *supra*.

they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [30] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. Investors can obtain a fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT and Form N–CEN. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to each Fund, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The website for the Funds will include a form of the prospectus for each Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.[31]

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2019–96, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [32] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[33] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [34]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an

[30] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[31] *See* Amendment 2 to SR–NYSEArca–2019–95, referenced in note 9, *supra*.

[32] 15 U.S.C. 78s(b)(2)(B).

[33] *Id.*

[34] 15 U.S.C. 78f(b)(5).

opportunity to make an oral presentation.[35]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by April 28, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 12, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2,[36] and any other issues raised by the proposed rule change, as modified by Amendment No. 2, under the Exchange Act. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposed rule to list and trade Active Proxy Portfolio Shares, which are actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions as they relate to foreign securities are adequate to prevent fraud and manipulation. In addition, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions are adequate to prevent the use and dissemination of material non-public information relating to the Funds.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–96. 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–NYSEArca–2019–96 and should be submitted on or before April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07227 Filed 4–6–20; 8:45 am]

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[35] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[36] *See supra* note 7.

[37] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88533; File No. SR–NYSEArca–2019–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis ETF Under Proposed NYSE Arca Rule 8.601–E

April 1, 2020.

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) adopt proposed NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Active Proxy Portfolio Shares,[3] which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules; and (2) list and trade the following Active Proxy Portfolio Shares under proposed NYSE Arca Rule 8.601–E: Natixis ETF. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.602–E to permit the Exchange to list and trade Actively Managed Solution Shares. In Amendment No. 2, the Exchange renumbered and renamed the Exchange rule proposed to be adopted to NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 2, *infra* note 7.

[4] *See* Securities Exchange Act Release No. 87866 (Dec. 30, 2019), 85 FR 357 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88199, 85 FR 9888 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

change as originally filed.[7] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to adopt new NYSE Arca Rule 8.601–E to permit it to list and trade Active Proxy Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601–E: Natixis ETF. This Amendment No. 2 to SR–NYSEArca-2019–95 replaces SR–NYSEArca–2019–95 as originally filed and supersedes such filing in its entirety. The Exchange has withdrawn Amendment No. 1 to SR–NYSEArca–2019–95.

The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. The Exchange also proposes to list and trade shares (''Shares'') of the following under proposed NYSE Arca Rule 8.601–E: Natixis ETF (the ''Fund'').

Proposed Listing Rules

Proposed Rule 8.601–E (a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601–E.

Proposed Rule 8.601–E (b) provides that Rule 8.601–E is applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601–E, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601–E (b) provides further that Active Proxy Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601–E(c)(1) defines the term ''Active Proxy Portfolio Share'' as a security that (a) is issued by a registered investment company (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for a transfer of the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601–E(c)(2) defines the term ''Actual Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.

Proposed Rule 8.601–E(c)(3) defines the term ''Proxy Portfolio'' as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;
(ii) CUSIP or other identifier;
(iii) Description of holding;
(iv) Quantity of each security or other asset held; and
(v) Percentage weighting of the holding in the portfolio.[9]

Proposed Rule 8.601–E(c)(4) defines the term ''Creation Unit'' as a specified minimum number of Active Proxy Portfolio Shares issued by an Investment Company in return for a deposit by the purchaser of the Proxy Portfolio and/or cash.

Proposed Rule 8.601–E(c)(5) defines the term ''Reporting Authority'' in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or

[7] Amendment No. 1 to the proposed rule change was filed on March 26, 2020 and subsequently withdrawn on March 31, 2020. Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995.htm.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] The information required in proposed Rule 8.601–E(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c–11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c–11. *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release''). The Exchange believes it is appropriate to require such information, rather than all information required under Rule 8.600–E(c)(2), in order to provide consistency in website dissemination among various ETF issuers. In adopting this requirement for funds operating in compliance with Rule 6c–11, the Commission stated that ''a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c–11 will require an ETF to post a subset of the information required by the listing exchanges' current generic listing standards for actively managed ETFs.'' The Commission stated further that ''this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.'' See Rule 6c–11 Release, notes 249–260 and accompanying text.

by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV; the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.601–E(c)(6) defines the term ''normal market conditions'' as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 8.601–E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601–E(d)(1) provides that each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 8.601–E(d)(2) provides that each series of Active Proxy Portfolio Shares shall be listed and traded subject to application of the following continued listing criteria: The Actual Portfolio shall be disseminated at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time (proposed Rule 8.601–E(d)(2)(A)(i)), and the Proxy Portfolio will be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and will be made available to all market participants at the same time (proposed Rule 8.601–E(d)(2)(B)(i)).

Proposed Rule 8.601–E(d)(2)(C) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5–E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) If any of the continued listing requirements set forth in Rule 8.601–E are not continuously maintained;

(ii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iii) if the Exchange is notified, or otherwise becomes aware, that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(iv) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

(v) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 8.601–E(d)(2)(D) (Trading Halt) provides that (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (ii) If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18–E(d)(1); and (iii) Upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Proposed Rule 8.601–E(d)(2)(E) provides that, upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.601–E(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.601–E(e) (Limitation of Exchange Liability) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, when the Exchange is acting in the capacity of a Reporting Authority, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Commentary .01 to Rule 8.601–E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of

Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .02 provides that transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34–E(a).

Proposed Commentary .03 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or changes thereto or the Proxy Portfolio must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or changes thereto or the Proxy Portfolio.[10]

The Exchange also proposes non-substantive amendments to include Active Proxy Portfolio Shares in other Exchange rules. Specifically, the Exchange proposes to amend Rule 5.3–E, concerning Corporate Governance and Disclosure Policies, and Rule 5.3–E(e), concerning Shareholder/Annual Meetings, to add Active Proxy Portfolio Shares to the enumerated derivative and special purpose securities that are subject to the respective Rules. Thus, Active Proxy Portfolio Shares would be subject to corporate governance, disclosure and shareholder/annual meeting requirements that are consistent with other derivative and special purpose securities enumerated in those Rules.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[11] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[12] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.[13] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange, after consulting with various Lead Market Makers that trade exchange-traded funds (''ETFs'') on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the NAV in light of the daily Proxy Portfolio dissemination Market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[14] These techniques should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares

[10] The Exchange will propose applicable NYSE Arca listing fees for Active Proxy Portfolio Shares in the NYSE Arca Equities Schedule of Fees and Charges via a separate proposed rule change.

[11] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[12] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[13] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a Fund's fiscal quarter will be made publicly available 60 days after the end of a Fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's statement of additional information (''SAI'') and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[14] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index.

without precise knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, together with the Proxy Portfolio to manage a market maker's quoting risk in connection with trading shares of a fund. Market makers can then conduct statistical arbitrage between Proxy Portfolio and shares of a fund, buying and selling one against the other over the course of the trading day. They will evaluate how the Proxy Portfolio performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to provide a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around NAV of a fund's shares. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Fund and the Trust

The Fund will be a series of Natixis ETF Trust II (''Trust''), which will be registered with the Commission as an open-end management investment company.[15]

Natixis Advisors, L.P. (''Adviser'') will be the investment adviser to the Fund. ALPS Distributors, Inc. will act as the distributor and principal underwriter (''Distributor'') for the Fund.

As noted above, proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's Actual Portfolio or changes thereto must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[16] Proposed Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's portfolio.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Natixis ETF

According to the Application, the Adviser believes the Fund would allow for efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect the Fund's performance-seeking strategies. Even though the Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the secondary market at prices that are close to their NAV.

In this regard, the Fund will utilize a proxy portfolio methodology— the ''NYSE Proxy Portfolio Methodology''— that would allow market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.[17] The NYSE

[15] The Trust is registered under the 1940 Act. On December 12, 2019, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–235466 and 811–23500) (the ''Registration Statement''). The Trust and NYSE Group, Inc. filed a Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14870), dated October 21, 2019 (''Application''). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812–14870). On December 10, 2019, the Commission issued an order (''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33711 (December 10, 2019)). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement and the Application.

[16] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[17] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Fund. NYSE Group, Inc. is not affiliated with the Fund, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.[18]

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[19]

According to the Registration Statement, the Fund will invest only in together, the ''Permissible Investments'').[20] The Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures. The Fund will not borrow for investment purposes.

Under normal market conditions,[21] the Fund will primarily invest in U.S. exchange-traded common stocks of U.S. companies. The Fund generally will invest in securities of larger capitalization companies in any industry.

Creations and Redemptions of Shares

According to the Application, the ''Creation Basket'' (as defined below) for the Fund's Shares will be based on the Fund's Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating the Fund's NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of the Fund, as calculated in accordance with the policies and procedures set forth in the Registration Statement.

According to the Application, the Trust will offer, issue and sell Shares of the Fund to investors only in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of the Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Trust will sell and redeem Creation Units of the Fund only on a Business Day. Creation Units of the Fund may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for the Fund (collectively, the ''Creation Basket'') will be the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

While the Fund normally will issue and redeem Shares in kind, the Fund may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, the Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. The Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash. Each Business Day, before the open of trading on the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) A ''participating party'' (*i.e.,* a broker or other participant), in the Continuous Net Settlement (''CNS'') System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (''NAV Calculation Time''), generally 4:00 p.m. E.T. on the date the order is placed (''Transmittal Date'') in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date. In the case of custom orders, the order must be received by the Distributor sufficiently in advance of the NAV Calculation Time in order to help ensure that the Fund has an opportunity to purchase the missing securities with the cash in lieu amounts or to sell securities to generate the cash in lieu amounts prior to the NAV Calculation Time. On days when the Exchange closes earlier than normal, the Fund may require custom orders to be placed earlier in the day.

Availability of Information for the Fund's Shares

The Fund's website (*www.im.natixis.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund, (1) daily trading volume, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,''[22]

[18] With respect to the Fund, the Fund will have in place policies and procedures regarding the construction and composition of its Proxy Portfolio. Such policies and procedures will be covered by the Fund's compliance program and other requirements under Rule 38a–1 under the 1940 Act.

[19] Pursuant to the Application and Exemptive Order, the permissible investments include only the following instruments: Exchange traded funds (''ETFs'') traded on a U.S. exchange; exchange-traded notes (''ETNs'') traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time (''E.T.'')); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (''ADRs''); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with Fund Shares. In addition, the Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements).

[20] For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

[21] The term ''normal market conditions'' is defined in proposed Rule 8.6018.601–E(c)(6).

[22] The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The

Continued

and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV[23], and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website and information will be publicly available at no charge.

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.[24] Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund's SAI, Shareholder Reports, Form N–CSR, N–PORT and Form N–CEN. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, equity securities and ETFs will be available via the Consolidated Tape Association (''CTA'') high-speed line.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under proposed Rule 8.601–E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Exemptive Application.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The issuer has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place

''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[23] The ''premium/discount'' refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

[24] *See* note 13, *supra*.

[25] *See* NYSE Arca Rule 7.12–E.

[26] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

a comprehensive surveillance sharing agreement.[27]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Proxy Portfolio will be disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the requirement that the Fund's portfolio holdings will be disclosed quarterly, and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 8.601–E is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Active Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities.

Proposed Rule 8.601–E(d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601–E(d)(1)(A) provides that, for each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601–E(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601–E(d)(2) provides that each series of Active Proxy Portfolio Shares will be listed and traded subject to application of specified continued listing criteria, as set forth above.

Proposed Rule 8.601–E(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 8.601–E(d)(2)(D)(iii) provides that, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time,

[27] For a list of the current members of ISG, *see www.isgportal.org.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Proposed Commentary .01 to NYSE Arca Rule 8.601–E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or changes thereto or the Proxy Portfolio must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or changes thereto or to the Proxy Portfolio.

The proposed addition of Active Proxy Portfolio Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3–E (Corporate Governance and Disclosure Policies) and Rule 5.3–E(e) (Shareholder/Annual Meetings) would subject Active Proxy Portfolio Shares to the same requirements currently applicable to other 1940 Act-registered investment company securities (*i.e.,* Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts).

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E. All exchange-listed equity securities held by the Fund will be listed on U.S. national securities exchanges. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Fund will primarily hold U.S.-listed equity securities and shares issued by other U.S.-listed ETFs. The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, exchange-traded equity securities, and futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various Lead Market Makers that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the NAV, and that market makers have knowledge of a fund's means of achieving its investment objective even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Active Proxy Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between the Proxy Portfolio and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how the Proxy Portfolio performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to provide a more efficient hedge.

The Lead Market Makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by Lead Market Makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size.

The real-time dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as

part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [30] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Fund and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Fund, as Active Proxy Portfolio Shares, proposes to allow for efficient trading of Shares through an effective Fund portfolio transparency substitute—Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting the Fund from the potential for front-running of portfolio transactions and the potential for free-riding on Fund portfolio strategies, each of which could adversely impact the performance of the Fund.

The Fund will utilize the NYSE Proxy Portfolio Methodology, allowing market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

The Adviser represents that investors will also benefit because the Fund's operating costs, such as transfer agency costs, are generally lower in ETFs than in mutual funds. The Fund will have access to the identical clearing and settlement procedures now used by U.S. domiciled ETFs, and therefore, should experience many of the operational and cost efficiencies benefitting current ETF investors.

The Adviser represents further that in-kind Share creation/redemption orders will allow the Fund to enjoy overall transaction costs lower than those experienced by mutual funds. The Fund's in-kind Share creation and redemption process will facilitate and enhance active management strategies by generally limiting the portfolio manager's need to transact in a large volume of trades in order to maintain desired investment exposures. In addition, the Adviser represents that the Fund will receive tax efficiency benefits of the ETF structure because of in-kind Share creation and redemption activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of a series of Active Proxy Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT and Form N–CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E (d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading

[30] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2019–95, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [31] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [33]

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[34]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by April 28, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 12, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2,[35] and any other issues raised by the proposed rule change, as modified by Amendment No. 2, under the Exchange Act. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposed rule to list and trade Active Proxy Portfolio Shares, which are actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions as they relate to foreign securities are adequate to prevent fraud and manipulation. In addition, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions are adequate to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and the Proxy Portfolio and changes thereto.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–95. 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–NYSEArca–2019–95 and should be submitted on or before April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5).

[34] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[35] *See supra* note 7.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88536; File No. SR–BOX–2019–37]

Self-Regulatory Organizations; BOX Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change in Connection With the Proposed Commencement of Operations of the Boston Security Token Exchange LLC as a Facility of the Exchange

April 1, 2020.

On December 18, 2019, BOX Exchange LLC (''Exchange'' or ''BOX'') 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 in connection with the proposed commencement of operations of the Boston Security Token Exchange LLC (''BSTX'') as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3] On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received comment letters on the proposed rule change.[6] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in the Notice,[8] the Exchange proposes to adopt the Amended and Restated Limited Liability Company Agreement of BSTX (the ''BSTX LLC Agreement'') for BSTX as a facility of the Exchange.[9] BSTX proposes to operate a fully automated, price-time priority execution system to list and trade NMS stocks that meet BSTX listing standards and for which ancillary records of ownership reflecting certain end-of-day security token balances as reported by market participants would be created and maintained using distributed ledger technology (such securities to be referred to as ''security tokens'').[10]

According to the Exchange, BSTX is (1) 50% owned by BOX Digital Markets LLC (''BOX Digital''), which is 98% owned by BOX Holdings Group LLC (''BOX Holdings'') and 2% owned by Lisa Fall; [11] and (2) 50% owned by tZERO Group, Inc. (''tZERO''), which is 80.07% owned by Medici Ventures, Inc. (''Medici''), a wholly owned subsidiary of a publicly held corporation, Overstock.com, Inc. (''Overstock''), and 19.93% owned by individuals and companies.[12] BOX Holdings is (1) 41.33% owned by MX US 2, Inc., which is 100% owned by MX US 1, Inc., a wholly owned subsidiary of Bourse de Montreal, Inc., which in turn is a wholly owned subsidiary of TMX Group Limited (''TMX''); (2) 22.01% owned by IB Exchange Corp.; and (3) 36.66% owned by seven separate, unaffiliated owners.[13] The Exchange also states that BSTX is an affiliate of the Exchange and will be subject to regulatory oversight by the Exchange,[14] and that tZERO and BSTX are affiliates of Overstock.[15]

The Exchange states that BOX Holdings wholly owns BOX Options Market LLC (''BOX Options''), which is a facility of the Exchange [16] and the only facility that the Exchange currently operates.[17] The Exchange notes that the BSTX LLC Agreement provisions are generally the same as provisions of the BOX Options LLC Agreement or the BOX Holdings LLC Agreement, with certain exceptions.[18] The Exchange states that it will enter into a facility agreement with BSTX (''Facility Agreement'') pursuant to which the Exchange will exercise regulatory oversight over BSTX.[19] Furthermore, the Exchange has entered into an IP License and Services Agreement (''LSA'') with tZERO,[20] under which tZERO will provide BSTX and the Exchange with a license to use its intellectual property that comprises the BSTX trading system and services related to, among other things, implementing and maintain the trading system.[21]

Currently, BOX Digital and tZERO are the only holders of the limited liability company interests of BSTX (''LLC Members'').[22] The Exchange proposes that a person would become an additional or substitute LLC Member of BSTX only upon that person's execution of a counterpart of the BSTX LLC Agreement to evidence that person's written acceptance of the terms and

[36] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345 (January 3, 2020) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88206 (February 13, 2020), 85 FR 9824 (February 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] All comments on the proposed rule change are available on the Commission's website at *https://www.sec.gov/comments/sr-box-2019-37/srbox201937.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, *supra* note 3.

[9] *See id.,* 85 FR at 345. The proposed Boston Security Token Exchange LLC, Amended and Restated Limited Liability Company Agreement, dated as of January 29, 2019 (''BSTX LLC Agreement'') is attached as Exhibit 5A to the Form 19b–4 for SR–BOX–2019–37 (available on the Commission's website at *https://www.sec.gov/rules/sro/box/2019/34-87868-ex5a.pdf*).

[10] *See* Notice, *supra* note 3, 85 FR at 345. The Exchange has separately filed with the Commission a proposed rule change regarding the listing and trading rules for the BSTX facility. *See* Securities Exchange Act Release No. 88300 (February 28, 2020), 85 FR 13242 (March 6, 2020) (''BSTX Trading Rules Proposal'').

The Commission also published an order instituting proceedings to determine whether to approve or disapprove the BSTX Trading Rules Proposal. *See* Securities Exchange Act Release No. 88002 (January 16, 2020), 85 FR 4040 (January 23, 2020) (SR–BOX–2019–19) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC).

[11] Lisa Fall is the Chief Executive Officer of BSTX, and President of the Exchange. *See* BSTX LLC Agreement, *supra* note 9, Signature Page.

[12] *See* Notice, *supra* note 3, 85 FR at 346. One individual holds 7.53% of the outstanding shares of tZERO, and Newer Ventures LLC, SpeedRoute Technologies Inc., Dinosaur Financial, and 28 individuals each own less than 3% of the outstanding shares of tZERO. *See id.*

[13] *See id.* The following entities each hold less than 17% of the outstanding units of BOX Holdings: Citadel Securities Principal Investments LLC, Citigroup Financial Products Inc., UBS Americas Inc., CSFB Next Fund Inc., LabMorgan Corp., Wolverine Trading, LLC, and Aragon Solutions Ltd. *See id.*

[14] *See id.* at 345.

[15] *See id.* at 346.

[16] *See id.* at 345.

[17] *See id.* at 345, n.4.

[18] *See id.* at 345, n.8 and accompanying text.

[19] *See id.* at 345. The Exchange will also provide certain business services to BSTX pursuant to an administrative services agreement. *See id.*

[20] *See id.* at 347.

[21] *See id.* at 352. The Facility Agreement, administrative services agreement, and LSA were not provided as exhibits to the proposal.

[22] *See id.* at 346; BSTX LLC Agreement, *supra* note 9. ''LLC Members'' are duly admitted holders of limited liability company interests in BSTX and would include any person later admitted to BSTX as an additional or substitute LLC Member as provided by the BSTX LLC Agreement. *See* Notice, *supra* note 3, 85 FR at 346; BSTX LLC Agreement, *supra* note 9, Section 1.1.

provisions of the BSTX LLC Agreement.[23] According to the Exchange, the Commission would be notified if an LLC Member's ownership interest in BSTX, alone or together with any related person of that LLC Member, meets or exceeds 5%, 10%, or 15%, and the BSTX LLC Agreement provides that any ''Transfer'' that results in the acquisition and holding by any person, alone or together with its related persons, of an ownership interest that meets or crosses 20% or any subsequent 5% increment, would be subject to the rule filing process pursuant to Section 19 of the Act.[24]

Pursuant to the BSTX LLC Agreement, a Controlling Person that establishes a Controlling Interest [25] in an LLC Member that holds equal to or greater than a 20% ownership interest in BSTX will be required to become a party to the BSTX LLC Agreement, by executing an instrument of accession, and abide by its provisions to the same extent as if they were LLC Members.[26] The Exchange also states that these amendments to the BSTX LLC Agreement will be subject to the rule filing process pursuant to Section 19 of the Act.[27] The Exchange further proposes that any BSTX Participant that directly or indirectly with Related Persons holds more than 20% of BSTX would have its voting power capped at 20%.[28] According to the Exchange, this limitation is designed to prevent a market participant from exerting undue influence on an Exchange facility.[29]

The Exchange states that the BSTX LLC Agreement includes provisions that ensure that the Exchange has full regulatory control over BSTX and these provisions are designed to prevent any owner of BSTX from having undue influence over regulatory actions.[30] The BSTX LLC Agreement provides that BSTX's board of directors (''Board'') will consist of six directors, comprised of (1) two directors appointed by each of BOX Digital and tZERO (the ''Member Directors''); (2) one director appointed by the unanimous vote of the Member Directors (the ''Independent Director''); and (3) one non-voting director appointed by the Exchange (''the ''Regulatory Director'').[31] The Exchange states that BSTX will have an Independent Director to avoid either BOX Digital or tZERO from controlling or creating deadlock on the Board.[32] The Exchange also states that BSTX's Board structure differs from that of BOX Options because BOX Options, as a wholly-owned subsidiary of BOX Holdings, has the same directors as BOX Holdings, and BOX Holdings, unlike BSTX, has no owners with 50% or greater ownership.[33]

Generally, actions by the Board will be considered effective only if approved by at least a majority of the votes entitled to vote on that action.[34] The Board must approve, by an affirmative vote of the Member Directors, any ''major action,'' which will include, among other things, changes to operating the BSTX Market using any software system other than the BSTX trading system, except as otherwise provided in the LSA or to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange.[35] The BSTX LLC Agreement also provides that the Exchange shall receive notice of planned or proposed changes to BSTX, with the exception of certain changes not related to the operation of the market, or to the BSTX Market, and that such changes will require affirmative approval by the Exchange before implementation.[36] If the Exchange determines that planned or proposed changes could cause a regulatory deficiency, the Exchange may direct BSTX, subject to Board approval, to modify the proposal as necessary.[37]

The Exchange also proposes how regulatory funds may be allocated. The Exchange states that, pursuant to the Facility Agreement, the Exchange will have the right to receive all fees, fines, and disgorgements imposed upon BSTX Participants with respect to BSTX's trading system (''Regulatory Funds'') and all other market data fees, tape, and other revenue (''Non-regulatory

[23] *See* Notice, *supra* note 3, 85 FR at 352–53; BSTX LLC Agreement, *supra* note 9, Section 7.1(b).

[24] *See* Notice, *supra* note 3, 85 FR at 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(e) and (f). The term ''Transfer'' is defined in Section 7.1(a) of the BSTX LLC Agreement, and excludes ''(i) transfers among [LLC] Members, (ii) transfers to any Person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of and equity beneficial interests in such [LLC] Member, or (iii) any Person that is a wholly owned Affiliate of such [LLC] Member.'' *See* BSTX LLC Agreement, *supra* note 9, Section 7.1(a); Notice, *supra* note 3, 85 FR at 352.

[25] ''Controlling Person'' is defined as ''a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in [an LLC] Member.'' ''Controlling Interest'' is defined as ''the direct or indirect ownership of 25% or more of the total voting power of all equity securities of [an LLC] Member . . . by any Person, alone or together with any Related Persons of such Person.'' *See* BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(v)(A)–(B). ''Related Person'' is defined as ''with respect to any Person: (A) Any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Interests; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BSTX Participant who is at the same time a broker-dealer, any Person that is associated with the BSTX Participant (as determined using the definition of 'person associated with a member' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BSTX Participant, any broker or dealer that is also a BSTX Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.'' *See* BSTX LLC Agreement, *supra* note 9, Section 1.1.

''BSTX Participant'' is defined as ''a firm or organization that is registered with the Exchange pursuant to Exchange Rules for purposes of participating in Trading on the BSTX Market as an order flow provider or market maker.'' *See id.*

[26] *See* Notice, *supra* note 3, 85 FR at 346, 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(g). The proposed Form of Instrument of Accession to Boston Security Token Exchange LLC, Amended and Restated Limited Liability Company Agreement is attached as Exhibit 5B to the Form 19b–4 for SR–BOX–2019–37 (available on the Commission's website at *https://www.sec.gov/rules/sro/box/2019/34-87868-ex5b.pdf*). The Exchange specifically notes that Medici, Overstock, BOX Digital, BOX Holdings, MX US 1, Inc., MX US 2, Inc., Bourse de Montreal, Inc., and TMX would be required to execute an instrument of accession substantially in the form attached as Exhibit 5B. *See* Notice, *supra* note 3, 85 FR at 346.

Pursuant to Section 7.4(g)(iii) of the BSTX LLC Agreement, ''a Person shall not be required to execute an amendment to [the BSTX LLC Agreement] . . . if such Person does not, directly or indirectly, hold any interest in [an LLC] Member.'' BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(iii).

[27] *See* Notice, *supra* note 3, 85 FR at 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(iv).

[28] *See* Notice, *supra* note 3, 85 FR at 346, 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(h).

[29] *See* Notice, *supra* note 3, 85 FR at 346.

[30] *See id.* at 348.

[31] *See id.;* BSTX LLC Agreement, *supra* note 9, Section 4.1(a). The Exchange states that the Regulatory Director must be a member of senior management of the regulation staff of the Exchange. *See* Notice, *supra* note 3, 85 FR at 348. *See also* BSTX LLC Agreement, *supra* note 9, Section 1.1.

[32] *See* Notice, *supra* note 3, 85 FR at 348.

[33] *See id.*

[34] *See id.;* BSTX LLC Agreement, *supra* note 9, Section 4.3.

[35] *See* Notice, *supra* note 3, 85 FR at 348–49; BSTX LLC Agreement, *supra* note 9, Section 4.4(a). ''BSTX Market'' is defined as the market operated by the Exchange pursuant to Section 3.1 of the BSTX LLC Agreement. *See* BSTX LLC Agreement, *supra* note 9, Section 1.1.

[36] *See* Notice, *supra* note 3, 85 FR at 350; BSTX LLC Agreement, *supra* note 9, Section 3.2(a)(ii).

[37] *See* Notice, *supra* note 3, 85 FR at 350; BSTX LLC Agreement, *supra* note 9, Section 3.2(a)(iii).

Funds''), and all Regulatory Funds and Non-regulatory Funds collected in respect to BSTX may be used by the Exchange, at its sole discretion, for regulatory purposes.[38] Furthermore, all Regulatory Funds collected by the Exchange will be retained by the Exchange and not transferred to BSTX; however, Non-regulatory Funds collected may be transferred to BSTX after the Exchange has made adequate provisions for all regulatory purposes.[39]

The proposal includes provisions regarding capital contributions and distributions. The BSTX LLC Agreement provides for an initial capital contribution from both BOX Digital and tZERO, with tZERO providing an initial cash contribution of $10 million and BOX Digital providing the ''[r]ight to seek approval to become a facility of SRO'' and ''[r]egulatory expertise.''[40] The BSTX LLC Agreement also includes provisions regarding determinations of capital needs by the Board, including, among others, the requirement that at least one Member Director appointed by each LLC Member affirmatively vote to raise capital;[41] potential cash distributions;[42] and allocation of profits, losses, and credits for each fiscal year to LLC Members at least once annually on a pro rata basis.[43]

The proposal also includes provisions regarding the regulation of BSTX and regulatory jurisdiction over LLC Members of BSTX.[44] Specifically, the BSTX LLC Agreement provides that the Exchange has the authority to act as the self-regulatory organization (''SRO'') for BSTX, will provide the regulatory framework for the BSTX Market, and will have regulatory responsibility for the activities of the BSTX Market.[45] Additionally, the BSTX LLC Agreement includes provisions, which the Exchange states are substantively similar to provisions in the BOX Options LLC Agreement, that address the handling of confidential information, both pertaining to regulatory matters and otherwise.[46] The BSTX LLC Agreement also contains provisions, which the Exchange states are substantially similar to those of the BOX Options LLC Agreement, related to regulatory jurisdiction over LLC Members;[47] the maintenance of books and records;[48] and the independence of the self-regulatory function of the Exchange and compliance with federal securities laws.[49]

The Exchange also states that it is submitting a separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX as well as BOX Options.[50] According to the Exchange, BSTX Participants will have the same representation, rights, and responsibilities as BOX Options Participants.[51]

II. Summary of the Comment Letters Received

To date the Commission has received two comment letters on the proposal.[52] One commenter notes that the proposal was only recently brought to its attention because it did not anticipate that a filing by an options exchange to create a facility could impact the U.S. equities markets.[53] This commenter expresses concern that the approval of the proposal ''could be a significant change for the equities market.''[54] This commenter requests an extension of the comment period to consider the proposal.[55] Another commenter notes that the tZERO token is affiliated with certain owners of the Exchange, Overstock, and other entities related to the Exchange.[56] This commenter also notes that the price of the tZERO token is down by over 85% since issuance less than two years ago.[57] This commenter believes that the Commission should disclose and study further details on the relationships between the aforementioned entities.[58]

III. Proceedings To Determine Whether To Approve or Disapprove SR–BOX–2019–37 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[59] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[60] the Commission is providing

[38] *See* Notice, *supra* note 3, 85 FR at 350–51. If BSTX incurs costs and expenses for regulatory purposes, the Exchange may reimburse BSTX using Regulatory Funds. *See id.* at 351. In the event that the Exchange does not hold sufficient funds to meet all regulatory purposes, BSTX will reimburse the Exchange for any such additional costs and expenses. *See id.* The BSTX LLC Agreement does not include provisions regarding Regulatory Funds.

[39] *See id.*

[40] *See id.;* BSTX LLC Agreement, *supra* note 9, Section 6.1 & Schedule A. tZERO will also provide ''consideration provided pursuant to the LSA.'' BSTX LLC Agreement, *supra* note 9, Schedule A.

[41] *See* Notice, *supra* note 3, 85 FR at 351; BSTX LLC Agreement, *supra* note 9, Section 6.2. The Exchange states that the requirement concerning the affirmative vote of one Member Director appointed by each LLC Member is not present in the BOX Options LLC Agreement, but that the Exchange believes that this provision promotes commercial fairness and is necessary due to the differing ownership structure of BSTX. *See* Notice, *supra* note 3, 85 FR at 351.

[42] *See* BSTX LLC Agreement, *supra* note 9, Section 8.1.

[43] *See id.,* Section 9.1.

[44] *See* Notice, *supra* note 3, 85 FR at 354–55.

[45] *See id.* at 354; BSTX LLC Agreement, *supra* note 9, Section 3.2. The Exchange states that Section 3.2 of the BSTX LLC Agreement ensures that the Exchange has full regulatory control over BSTX and is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of BSTX. *See* Notice, *supra* note 3, 85 FR at 354.

[46] *See* Notice, *supra* note 3, 85 FR at 354–55; BSTX LLC Agreement, *supra* note 9, Article 15. The BSTX LLC Agreement contains additional language to make it clear that the Commission can access and examine confidential information pursuant to federal securities laws and rules. *See* Notice, *supra* note 3, 85 FR at 354–55; BSTX LLC Agreement, *supra* note 9, Section 15.5.

[47] *See* Notice, *supra* note 3, 85 FR at 355; BSTX LLC Agreement, *supra* note 9, Sections 11.1, 18.6(a), 18.6(c).

[48] *See* Notice, *supra* note 3, 85 FR at 355; BSTX LLC Agreement, *supra* note 9, Section 11.1.

[49] *See* Notice, *supra* note 3, 85 FR at 348, 350; BSTX LLC Agreement, *supra* note 9, Section 4.12.

[50] *See* Notice, *supra* note 3, 85 FR at 345.

[51] *See id. See also* Securities Exchange Act Release No. 88236 (February 19, 2020), 85 FR 10768 (February 25, 2020) (SR–BOX–2020–04) (''Exchange Governance Amendment Proposal''). The Commission notes that the Exchange Governance Amendment Proposal proposes to amend the Exchange's LLC Agreement and Bylaws to provide flexibility for the Exchange to regulate multiple facilities.

[52] *See supra* note 6.

[53] *See* Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 13, 2020 (''SIFMA Letter''), at 2. *See also* Letter from David A. Schrader, Partner, Paykin Krieg & Adams, LLP, to Vanessa Countryman, Secretary, Commission, dated February 25, 2020 (''PKA Law Letter''), at 2 (stating that the proposal has had little dissemination among market participants, particularly the exchanges and designated market makers).

[54] *See* SIFMA Letter, *supra* note 53, at 2. This commenter's letter also references the BSTX Trading Rules Proposal. *See id.* at 1. *See also* PKA Law Letter, *supra* note 53, at 2 (stating that the proposal contains potentially significant changes to the operation and structure of the global equity trading markets).

[55] *See* SIFMA Letter, *supra* note 53, at 2. This commenter also requests more time to provide feedback on the BSTX Trading Rules Proposal. *See id.* at 2.

[56] *See* PKA Law Letter, *supra* note 53, at 2.

[57] *See id.*

[58] *See id.*

[59] 15 U.S.C. 78s(b)(2)(B).

[60] *Id.*

notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(1) of the Act, which requires that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.[61] In addition, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(3) of the Act, which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer;[62] and Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[63]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [64] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[65] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[66]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(1),[67] 6(b)(3),[68] and 6(b)(5)[69] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[70] any request for an opportunity to make an oral presentation.[71]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 28, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 12, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[72] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–37. 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–BOX–2019–37 and should be submitted by April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

J. Matthew DeLesDernier,

Assistant Secretary.

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[61] 15 U.S.C. 78f(b)(1).

[62] 15 U.S.C. 78f(b)(3).

[63] 15 U.S.C. 78f(b)(5).

[64] 17 CFR 201.700(b)(3).

[65] *See id.*

[66] *See id.*

[67] 15 U.S.C. 78f(b)(1).

[68] 15 U.S.C. 78f(b)(3).

[69] 15 U.S.C. 78f(b)(5).

[70] 17 CFR 240.19b–4.

[71] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[72] *See* Notice, *supra* note 3.

[73] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88538; File No. SR–NYSENAT–2020–05]

Self-Regulatory Organizations; NYSE National, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish Fees for the NYSE National Integrated Feed

April 1, 2020.

I. Introduction

On February 3, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for the NYSE National Integrated Feed. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on February 20, 2020.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) Temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

NYSE National proposes to establish fees for the NYSE National Integrated Feed, which became effective on February 3, 2020.[6] According to NYSE National, the NYSE National Integrated Feed is a NYSE National-only market data feed that provides vendors and subscribers on a real-time basis with a unified view of events, in sequence, as they appear on the NYSE National matching engine.[7] The NYSE National Integrated Feed includes depth-of-book order data, last sale data, security status updates (*e.g.,* trade corrections and trading halts), and stock summary messages.[8] It also includes information about NYSE National's best bid or offer at any given time.[9] NYSE National proposes the following fees for the NYSE National Integrated Feed:

- $2,500 per month access fee, which would be charged (once per firm) to any data recipient that receives a data feed of the NYSE National Integrated Feed; [10]
- $1,500 per month redistribution fee, which would be charged (once per redistributor account) to any redistributor [11] of the NYSE National Integrated Feed;
- $10 per month professional per user fee and $1 per month non-professional per user fee, which would apply to each display device that has access to the NYSE National Integrated Feed; [12]
- Non-display use [13] fees:
  - $5,000 per month category 1 non-display fee, which would apply when a data recipient's non-display use of real-time market data is on its own behalf;
  - $5,000 per month category 2 non-display fee, which would apply when a data recipient's non-display use of real-time market data is on behalf of its clients;
  - $5,000 per platform per month category 3 non-display fee (capped at $15,000), which would apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and on behalf of its clients; [14]
- $1,000 per month non-display use declaration late fee, which would apply to any data recipient that is paying an access fee for the NYSE National Integrated Feed and that fails to complete and submit the annual non-display use declaration by December 31 of the year, and would apply beginning January 1 and for each month thereafter until the data recipient has completed and submitted the annual non-display use declaration; [15] and
- $200 per month multiple data feed fee, which would apply to any data recipient that takes a data feed for a market data product in more than two locations, and would apply to each location, beyond the first two locations, where the data recipient receives a data feed.[16]

The access fees, professional user fees, and non-display fees would not apply to Federal agencies [17] that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (''Notice''). Comments received on the Notice are available on the Commission's website at *https://www.sec.gov/comments/sr-nysenat-2020-05/srnysenat202005.htm.* The Commission notes that, on December 4, 2019, NYSE National filed a proposed rule change to establish fees for the NYSE National Integrated Feed that are identical to the fees proposed in this filing. *See* Securities Exchange Act Release No. 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31). Comments received on SR–NYSENAT–2019–31 are available on the Commission's website at *https://www.sec.gov/comments/sr-nysenat-2019-31/srnysenat201931.htm.* On January 31, 2020, the Commission temporarily suspended SR–NYSENAT–2019–31 and instituted proceedings to determine whether to approve or disapprove that proposed rule change. *See* Securities Exchange Act Release No. 88109, 85 FR 6982 (February 6, 2020) (''SR–NYSENAT–2019–31 OIP''). On February 3, 2020, NYSE National withdrew SR–NYSENAT–2019–31. *See* Securities Exchange Act Release No. 88118 (February 4, 2020), 85 FR 7611 (February 10, 2020).

[5] 15 U.S.C. 78s(b)(3)(C).

[6] Prior to February 3, 2020, NYSE National did not charge any fees for the NYSE National Integrated Feed. *See* Notice, *supra* note 4, at 9847.

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] Data recipients that only use display devices to view NYSE National Integrated Feed data and do not separately receive a data feed would not be charged an access fee. *See id.* at 9848.

[11] A redistributor would be a vendor or person that provides a real-time NYSE National market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. *See id.*

[12] *See id.*

[13] Non-display use would mean accessing, processing, or consuming the NYSE National Integrated Feed, delivered directly or through a redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution. *See id.* As proposed, non-display use would include trading uses such as high frequency or algorithmic trading, as well as any trading in any asset class, automated order or quote generation and order pegging, price referencing for algorithmic trading or smart order routing, operations controls programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. *See id.* One, two, or three categories of non-display use may apply to a data recipient. *See id.* Moreover, data recipients that receive the NYSE National Integrated Feed for non-display use would be required to complete and submit a non-display use declaration before they would be authorized to receive the feed. *See id.* at 9849. In addition, if a data recipient's use of the NYSE National Integrated Feed data changes at any time after the data recipient submits a non-display use declaration, the data recipient must inform NYSE National of the change by completing and submitting an updated declaration reflecting the change of use at the time of the change. *See id.*

[14] According to NYSE National, category 3 non-display fees would apply to non-display use in trading platforms, such as, but not limited to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges, and systematic internalization systems. *See id.* at 9848–49.

[15] *See id.* at 9849.

[16] *See id.*

[17] The term ''Federal agencies'' as used in the proposed fee schedule would include all Federal agencies subject to the Federal Acquisition Regulation (''FAR''), as well as any Federal agency not subject to FAR that has promulgated its own procurement rules. *See id.* All Federal agencies that subscribe to the NYSE National real-time proprietary market data products would continue to be required to execute the appropriate subscriber agreement, which includes, among other things, provisions against the redistribution of data. *See id.*

subscribe to the products listed on the proposed fee schedule that includes such fees.[18]

Finally, first-time subscribers [19] would be eligible for a free trial by contacting NYSE National and would not be charged the access fee, the non-display fee, any applicable professional and non-professional user fee, and the redistribution fee for one calendar month for each of the products listed on the proposed fee schedule.[20] The free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to NYSE National market data.[21] As proposed, NYSE National would provide the one-month free trial for a particular product to each subscriber only once.[22]

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[23] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[24] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. The Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

NYSE National proposes to adopt fees for the NYSE National Integrated Feed and provides various arguments to support the proposal's consistency with the Act. With respect to whether the proposed fees are reasonable, NYSE National states that exchanges in general function as platforms between consumers of market data and consumers of trading services, and that overall competition between exchanges will limit their overall profitability.[25] In connection with these arguments, NYSE National also provides a report by Marc Rysman,[26] which finds that the introduction of the NYSE Integrated Feed in 2015 attracted more trading to NYSE by both subscribers and non-subscribers to the NYSE Integrated Feed,[27] and concludes that overall competition between exchanges will limit their overall profitability (not margins on any particular side of the platform).[28] According to NYSE National, given the conclusion in the Rysman Paper that exchanges are platforms for market data and transaction services, competition for order flow on the trading side of the platform acts to constrain the pricing of market data on the other side of the platform.[29]

In addition, NYSE National argues that, due to the ready availability of substitutes and the low cost to move order flow to the substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.[30] NYSE National argues that subscribing to the NYSE National Integrated Feed is optional, that its customers may choose to discontinue using the feed once the proposed fees are effective, and that any customers who choose to discontinue using the feed may choose to shift order flow away from NYSE National.[31] Similarly, NYSE National argues that its market data pricing is constrained by the availability of numerous substitute platforms offering competing proprietary market data products and trading services.[32]

In addition to its ''platform''-based arguments, NYSE National presents an alternative competition-based argument, asserting that the NYSE National Integrated Feed is sold in a competitive market.[33] NYSE National provides a report by Charles M. Jones,[34] which concludes that exchanges compete with each other in selling proprietary market data products, as well as with consolidated data feeds and with data provided by ATSs.[35] NYSE National also more specifically argues that NYSE National BBO (which includes best bid and offer information for NYSE National on a real-time basis), NYSE National Trades (which includes NYSE National last sale information on a real-time basis), and consolidated data feeds are substitutes for the NYSE National Integrated Feed and constrain NYSE National's ability to charge supracompetitive prices for the feed.[36] In addition, NYSE National states that, since the date of filing of SR–NYSENAT–2019–31 and before the proposed fees went into effect on February 3, 2020, five subscribers to the NYSE National Integrated Feed (*i.e.,* nearly nine percent of the prior subscriber base) have cancelled their subscriptions due to the imminent imposition of the fees.[37] Moreover, NYSE National states that a sixth customer informed NYSE National that if NYSE National is permitted to impose the fees, the customer would cancel its subscription to the NYSE National Integrated Feed and instead subscribe to the NYSE National BBO feed.[38]

With respect to the other requirements under the Act, NYSE National argues that the proposed fees are equitably allocated and are not unfairly discriminatory because they would apply on an equal basis to all data recipients that choose to subscribe to the data in a manner that is subject to an applicable fee and because any differences among categories of users are justified.[39] Specifically, NYSE National argues that the professional and non-professional user fee structure has long been used by NYSE National to reduce the price of data to non-professional users and make it more broadly available, and that the non-display fee structure results in

[18] The proposed fee schedule lists NYSE National BBO, NYSE National Trades, and NYSE National Integrated Feed, and specifies that there would be no fees for NYSE National BBO and NYSE National Trades.

[19] A first-time subscriber would be any firm that has not previously subscribed to a particular product listed on the proposed fee schedule. *See* Notice, *supra* note 4, at 9849.

[20] *See id.*

[21] *See id.* at 9849–50.

[22] *See id.* at 9850.

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 15 U.S.C. 78s(b)(1).

[25] *See* Notice, *supra* note 4, at 9852.

[26] *See* Marc Rysman, *Stock Exchanges as Platforms for Data and Trading* (December 2, 2019) (''Rysman Paper''), *available at https://www.sec.gov/rules/sro/nysenat/2020/34-88211-ex3b.pdf.*

[27] *See* Notice, *supra* note 4, at 9852. NYSE National also states that, since May 2018, when NYSE National relaunched trading, it has observed a direct correlation between the steady increase of subscribers to the NYSE National Integrated Feed and the increase in NYSE National's transaction market share volume over the same period. *See id.* at 9850. NYSE National states that, between May 2018 and October 2019, it has grown from 0% to nearly 2% market share of consolidated trading volume and, between May 2018 and November 2019, the number of NYSE National Integrated Feed subscribers increased from 12 to 57. *See id.* at 9847–48, 9852.

[28] *See id.* at 9852.

[29] *See id.* at 9853.

[30] *See id.*

[31] *See id.* at 9850, 9853.

[32] *See id.* at 9853.

[33] *See id.* at 9851.

[34] *See* Charles M. Jones, *Understanding the Market for U.S. Equity Market Data* (August 31, 2018) (''Jones Paper''), *available at https://www.sec.gov/rules/sro/nysenat/2020/34-88211-ex3a.pdf.*

[35] *See* Notice, *supra* note 4, at 9851. The Jones Paper also states that the market for order flow and the market for market data are closely linked, and that an exchange needs to consider the negative impact on its order flow if it raises the price of market data. *See id.*

[36] *See id.* at 9854.

[37] *See id.* at 9848.

[38] NYSE National states that six lost subscribers constitute 10.5 percent of the prior NYSE National Integrated Feed subscriber base. *See id.*

[39] *See id.* at 9856–58.

subscribers with greater uses of the data paying higher fees and subscribers with fewer uses of the data paying lower fees.[40] For similar reasons, and because it claims numerous substitute market data products are available, NYSE National argues that the proposed fees do not impose an unnecessary or inappropriate burden on competition.[41]

With respect to the redistribution fee, NYSE National argues that the proposed fee is reasonable because vendors that would be charged the proposed fee would profit by re-transmitting NYSE National's market data to their customers,[42] and that the proposed fee is equitable and not unfairly discriminatory because the fees would be charged on an equal basis to those vendors that choose to redistribute the feed.[43] Similarly, with respect to category 3 non-display fees, which would be charged to each trading platform on which the customer uses non-display data (capped at three platforms), NYSE National argues that the proposal is reasonable, equitable, and not unfairly discriminatory because such use of data is directly in competition with NYSE National and NYSE National should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible.[44]

Finally, with respect to the non-display use declaration late fee and the multiple data feed fee, NYSE National claims that these fees are reasonable, equitable, and not unfairly discriminatory because they would offset NYSE National's administrative burdens and costs associated with incorrect billing, late payments, and tracking data usage locations.[45]

The Commission received comment letters that express concerns regarding the proposed rule change. One commenter states that NYSE National fails to provide the necessary information for the Commission to determine whether the proposed fees meet the requirements of the Act.[46] This commenter argues that the NYSE National Integrated Feed is not subject to competitive forces because there are no available substitutes to NYSE National's depth-of-book product.[47] This commenter also argues that competition for order flow under the ''platform theory'' does not constrain the cost of market data, but instead results in supra-monopoly prices for market data products.[48] In addition, this commenter argues that NYSE National makes an unpersuasive attempt to show an elasticity of demand for the NYSE National Integrated Feed (*i.e.,* in response to the fee increase, 5 of the 57 subscribers notified NYSE National of their intent to cancel their subscriptions before the fees went into effect).[49] Moreover, this commenter argues that exchanges have yet to show an increase (or decrease) in trading volume after reducing (or increasing) a respective exchange's price of market data, and that NYSE National does not state the anticipated impact on order flow from losing subscribers to the NYSE National Integrated Feed.[50] Finally, the commenter argues that, because it believes competitive forces have not constrained the cost of market data, NYSE National should provide additional information on cost.[51]

Another commenter also states that the information provided by NYSE National is not adequate to establish that the proposed fees are consistent with the Act and Commission rules.[52] This commenter questions whether third parties can compete with NYSE National in offering data related to activity on NYSE National.[53] This commenter also questions NYSE National's assertion that market participants have a meaningful ability to choose whether or not to connect to the NYSE National Integrated Feed and believes instead that many market participants must buy the feed.[54] This commenter acknowledges that NYSE National provides the number of customers that discontinued using the NYSE National Integrated Feed in response to the proposed fees, but expresses concern that NYSE National has not provided any relevant information about these customers (*e.g.,* why they subscribed to the NYSE National Integrated Feed in the first place; whether they were proprietary trading firms, agency brokers, or data vendors; and whether and how often they sent orders to NYSE National).[55] This commenter also states that NYSE National should update and further elaborate on information about the remaining subscribers.[56]

Moreover, this commenter argues that NYSE National's discussions regarding the reasonableness of the proposed fees (*i.e.,* the comparison to similar fees charged by affiliated exchanges, the nature of the market for order flow, the availability of other data options, and the lack of a relation between the proposed fees and the costs of production) do not support a finding that the proposed fees are reasonable.[57] This commenter also states that NYSE National does not provide any information about the costs of production for the NYSE National Integrated Feed, the expected revenue NYSE National projects to generate from the proposed fees, the impact of the proposed fees on subscribers, the competition between subscribers and non-subscribers, and whether the proposed fees would be equitably allocated and would not impose any undue burden on competition.[58] In addition, the commenter states that NYSE National does not provide any information about the latency difference between the NYSE National Integrated Feed and the consolidated data feed or other methods of transmitting data.[59] Finally, this commenter objects to NYSE National's platform-based arguments, stating that the supply and demand

[40] *See id.* at 9856–57.

[41] *See id.* at 9858–59.

[42] *See id.* at 9854.

[43] *See id.* at 9856–57.

[44] *See id.* at 9855–58.

[45] *See id.*

[46] *See* letter from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated March 11, 2020 (''SIFMA Letter''). This commenter also refers to the comment letter it submitted on SR–NYSENAT–2019–31 in stating that the proposal does not meet the requirements of the Act. *See id.* at 2. *See also* SR–NYSENAT–2019–31 OIP, *supra* note 4, at 6984–85 (describing the commenter's letter on SR–NYSENAT–2019–31); letter from Robert Toomey, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 21, 2020, *available at https://www.sec.gov/comments/sr-nysenat-2019-31/srnysenat201931-6678406-204968.pdf.*

[47] *See* SIFMA Letter, *supra* note 46, at 2.

[48] *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] *See* letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Vanessa Countryman, Office of the Secretary, Commission, dated March 12, 2020 (''Healthy Markets Letter''). *See also* SR–NYSENAT–2019–31 OIP, *supra* note 4, at 6984 (describing the commenter's letter on SR–NYSENAT–2019–31); letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Vanessa Countryman, Office of the Secretary, Commission, dated January 16, 2020, *available at https://www.sec.gov/comments/sr-nysenat-2019-31/srnysenat201931-6663540-203934.pdf.*

[53] *See* Healthy Markets Letter, *supra* note 52, at 6–8. This commenter states that NYSE National controls who, under what terms, and when anyone other than NYSE National can obtain order-related information about NYSE National. *See id.* at 7.

[54] *See id.* at 4–5. According to this commenter, if one set of market participants has access to a faster, richer data set, then those without that information will not be as competitive and may not be able to quote or otherwise route orders in a manner that could effectively achieve best execution. *See id.* at 8.

[55] *See id.* at 5–6.

[56] *See id.* at 6.

[57] *See id.* at 8–9.

[58] *See id.* at 9.

[59] *See id.*

functions for order flow and market data are separate.[60]

When exchanges file their proposed rule changes with the Commission, including fee filings like NYSE National's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[61] The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [62]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [63] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [64] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

In temporarily suspending NYSE National's proposed rule change, the Commission intends to further consider whether the proposal to establish fees for the NYSE National Integrated Feed is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[66]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[67]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [68] and 19(b)(2)(B) of the Act [69] to determine whether NYSE National's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[70] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether NYSE National has demonstrated how its proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [71]
- Whether NYSE National has demonstrated how its proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [72] and
- Whether NYSE National has demonstrated how its proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [73]

As discussed in Section III above, NYSE National made various arguments in support of its proposal and the Commission received comment letters that expressed concerns regarding the proposal, including in particular that NYSE National did not provide sufficient information to establish that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [74] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[75] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[76]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[77]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by April 28, 2020. Rebuttal comments should be submitted by May 12, 2020. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and

[60] *See id.* at 9–10.

[61] *See* 17 CFR 240.19b-4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[62] *See id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78f(b)(8).

[66] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[67] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[68] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[69] 15 U.S.C. 78s(b)(2)(B).

[70] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[71] 15 U.S.C. 78f(b)(4).

[72] 15 U.S.C. 78f(b)(5).

[73] 15 U.S.C. 78f(b)(8).

[74] 17 CFR 201.700(b)(3).

[75] *See id.*

[76] *See id.*

[77] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[78]

The Commission asks that commenters address the sufficiency and merit of NYSE National's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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 No. SR–NYSENAT–2020–05 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 No. SR–NYSENAT–2020–05. The 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 NYSE National. 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 publicly available. All submissions should refer to File No. SR–NYSENAT–2020–05 and should be submitted on or before April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[79] that File No. SR–NYSENAT–2020–05, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07231 Filed 4–6–20; 8:45 am]

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[78] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[79] 15 U.S.C. 78s(b)(3)(C).

[80] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88532; File No. 4–443]

Joint Industry Plan; Order Approving Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Adopt a Penny Interval Program

April 1, 2020.

I. Introduction

On July 18, 2019, BOX Exchange LLC; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; Cboe EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX Emerald, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; NYSE American, LLC; NYSE Arca, Inc. (collectively, ''Exchanges''); and The Options Clearing Corporation (''OCC'') (together with the OCC, ''Plan Sponsors'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] a proposal to amend the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''Plan'').[3] Amendment No. 5 was published for comment in the **Federal Register** on December 17, 2019.[4]

The Commission received no comment letters regarding the Amendment. This order approves Amendment No. 5 to the Plan.

II. Description of the Amendment

A. Background

In January 2007, the Commission approved rules that allowed the six registered options exchanges that then existed to begin quoting certain multiply listed options classes overlying thirteen stocks and Exchange Traded Funds (''ETFs'') in penny increments pursuant to a six-month Penny Pilot

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from BOX Exchange LLC, CBOE BZX Exchange, Inc., CBOE Exchange, Inc., CBOE C2 Exchange, Inc, CBOE EDGX Exchange, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., NASDAQ GEMX, LLC, NASDAQ ISE, LLC, NASDAQ MRX, LLC, NASDAQ PHLX, LLC, The NASDAQ Stock Market LLC, NYSE American, LLC, NYSE Arca, Inc., and the OCC, to Vanessa Countryman, Secretary, Commission, dated July 18, 2019. (''Amendment No. 5''). On July 6, 2001, the Commission approved the Plan, which was proposed by the American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, OCC, Philadelphia Stock Exchange, Inc., and Pacific Exchange, Inc. *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). *See also* Securities Exchange Act Release Nos. 49199 (February 5, 2004), 69 FR 7030 (February 12, 2004) (adding Boston Stock Exchange, Inc. as a Plan Sponsor); 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008) (adding The Nasdaq Stock Market, LLC as a Plan Sponsor); 61528 (February 17, 2010), 75 FR 8415 (February 24, 2010) (adding BATS Exchange, Inc. as a Plan Sponsor); 63162 (October 22, 2010), 75 FR 66401 (October 28, 2010) (adding C2 Options Exchange Incorporated as a Plan Sponsor); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC as a Plan Sponsor); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. as a Plan Sponsor); 70765 (October 28, 2013), 78 FR 65739 (November 1, 2013) (adding Topaz Exchange, LLC as a Plan Sponsor); 70764 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding Miami International Securities Exchange, LLC as a Plan Sponsor); 76822 (January 1, 2016), 81 FR 1251 (January 11, 2016) (adding EDGX Exchange, Inc. as a Plan Sponsor); 77323 (March 8, 2016), 81 FR 13433 (March 14, 2016) (adding ISE Mercury, LLC as a Plan Sponsor); 79897 (January 30, 2017), 82 FR 9263 (February 3, 2017) (adding MIAX PEARL, LLC as a Plan Sponsor); and 85228 (March 1, 2019), 84 FR 8355 (March 7, 2019) (adding MIAX Emerald, LLC as a Plan Sponsor). The full text of the Plan is available at: *https://www.theocc.com/components/docs/clearing/services/options_listing_procedures_plan.pdf.*

[4] *See* Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (''Notice'').

Program (''Penny Pilot'').[5] The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant.

Following that initial approval, the Commission approved additional Exchange rules that expanded the number of options classes covered by the Penny Pilot.[6] In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 options classes, which are among the most actively traded, multiply listed options classes.[7] The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.[8]

B. Description of the Proposal

In light of the imminent expiration of the Penny Pilot, the Plan Sponsors now propose in Amendment No. 5 to the Plan to replace the Penny Pilot by instituting a permanent program (the ''Penny Program'') that would permit quoting in penny increments for certain classes of options. Under the terms of this proposal, designated options classes would continue to be quoted in $0.01 and $0.05 increments according to the same parameters for the Penny Pilot. In addition, the Penny Program would: (1) Establish an annual review process to add and/or remove options classes from the Penny Program; (2) allow an option class to be added to the Penny Program outside of the annual review process if it is a newly listed option class or a class that experiences significant growth in activity, provided such class meets certain objective criteria; (3) provide that if a corporate action involves one or more options classes in the Penny Program, all adjusted and unadjusted series of the option class would continue to be included in the Penny Program; (4) provide that any series in an option class participating in the Penny Program in which the underlying security has been delisted, or are identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the rules of the Penny Program until all such options have expired; and (5) establish voting provisions governing amendments to the Penny Program.[9]

1. Minimum Quoting Increments and Initial Selection of Options Classes for the Penny Program

The minimum quoting increment requirements that currently apply under the Penny Pilot would continue to apply for options classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be $0.01, regardless of price; (ii) options classes with a price of less than $3.00 would be quoted in $0.01 increments for all series; and (iii) options classes with a price of $3.00 or higher would be quoted in $0.05 increments for all series.[10]

The Penny Program would initially apply to the 363 most actively traded, multiply listed options classes[11] that (i) are currently included the Penny Pilot or, (ii) if not currently in the Penny Pilot, overlie securities priced below $200, or any index at an index level below $200.[12] As is the case today, the Exchanges will use the OCC rankings and apply these objective criteria to determine which classes are eligible for inclusion in the Penny Program. Once an option class is added to the Penny Program, it would remain in the Program subject to the annual review process described in further detail below.[13]

2. Annual Review Process

The Penny Program provides for an annual review process by which options classes can be added and removed from the Penny Program based on objective criteria. The annual review process is designed to ensure that the most active eligible issues are included in the Penny Program while also preventing a high rate of turnover for issues that are removed from the Penny Program. Specifically, on an annual basis (commencing in December 2020), the OCC would rank all multiply listed options classes based on National Cleared Volume from June 1 through November 30 to determine the most actively traded options classes.[14] Any option class not yet in the Penny Program that is among the 300 most actively traded, multiply listed options

[5] *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106); 55161 (January 24, 2007), 72 FR 4754 (January 24, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49).

[6] *See, e.g.,* Securities Act Release Nos. 56568 (September 27, 2007) (NYSEArca–2007–88); 57559 (March 26, 2008) (NYSEArca–2008–34); and 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (NYSEArca–2009–44).

[7] *See* Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR–ISE–2009–82); 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR–CBOE–2009–076); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91); 60886 (October 27, 2009), 74 FR 56897 (November 3, 2009) (SR–BX–2009–067); and 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (SR–NYSEAmex–2009–74).

[8] *See* Securities Exchange Act Release Nos. 87632 (November 26, 2019), 84 FR 66255 (December 3, 2019) (SR–BOX–2019–34); 87740 (December 13, 2019), 84 FR 69800 (December 19, 2019) (CboeBZX–2019–106); 87738 (December 13, 2019), 84 FR 69795 (December 19, 2019) (C2–2019–027); 87739 (December 13, 2019), 84 FR 69801 (December 19, 2019) (CBOE–2019–119); 87741 (December 13, 2019), 84 FR 69805 (December 19, 2019) (CboeEDGX–2019–074); 87606 (November 25, 2019), 84 FR 66030 (December 2, 2019) (MIAX–2019–47); 87608 (November 25, 2019), 84 FR 66046 (EMERALD–2019–36); 87609 (November 25, 2019), 84 FR 66032 (December 2, 2019) (PEARL–2019–34); 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (BX–2019–046); 87753 (December 16, 2019), 84 FR 70243 (December 20, 2019) (GEMX–2019–19); 87752 (December 16, 2019), 84 FR 70230 (December 20, 2019) (ISE–2019–33); 87766 (December 16, 2019), 84 FR 70214 (December 20, 2019) (MRX–2019–26); 87746 (December 13, 2019), 84 FR 69803 (December 19, 2019) (Phlx–2019–55); 87831 (December 20, 2019), 84 FR 72013 (December 30, 2019) (Nasdaq–2019–100); 87610 (November 25, 2019), 84 FR 66047 (December 2, 2019) (NYSEArca–2019–83); 87633 (November 26, 2019), 84 FR 66251 (December 3, 2019) (NYSEAmex–2019–51).

[9] Amendment No. 5 also proposes to make certain administrative changes to Section 4 of the Plan to replace references to ''the adjustment panel'' with references to ''the OCC'' to ensure that the language in the Plan is consistent with changes made in a separate filing. *See* Securities Exchange Act Release No. 84565 (November 9, 2018), 83 FR 57778 (November 16, 2018) (SR–ODD–2018–01). *See also* Securities Exchange Act Release No. 69977 (July 11, 2013), 78 FR 42815 (July 17, 2013) (SR–OCC–2013–05). In addition, Amendment No. 5 proposes to make non-substantive ministerial changes to Section 9 of the Plan to update the names and addresses of certain Plan Sponsors.

[10] *See* Proposed Section 3.1 of the Plan.

[11] This number is taken from the current number of the options classes in the Penny Pilot. *See* Notice, *supra* note 4 at 68961.

[12] OCC will rank all multiply listed options classes based on National Cleared Volume for the six-month period ending in the month that the Commission approves proposed Amendment No. 5 to determine whether an option class is among the 363 most activity traded. *See* Proposed Section 3.1(a) of the Plan. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly expiration Friday of the second full month following approval of the proposed Amendment. *See id.* Certain options classes that currently quote in penny increments pursuant to the Penny Pilot that are not among the 363 most actively traded multiply listed options classes at the time of the initial selection will no longer be eligible to quote in penny increments under the Penny Program. Any options classes that are currently in the Penny Pilot, but that are not selected for inclusion in the Penny Program following the initial selection process would be subject to the minimum trading increment as described in the rules of the Exchanges. *See* Notice, *supra* note 4, at 68961. Such changes would be effective on the first trading day of the third full calendar month following the Amendment's approval date. *See* Proposed Section 3.1(a) of the Plan.

[13] *See* Notice, *supra* note 4, at 68961.

[14] Proposed Section 3.1(b) of the Plan.

classes overlying securities priced below $200, or an index at an index level below $200, would be added to the Penny Program on the first trading day in January following the annual review.[15] In addition, based on the annual review, options classes that are ranked between the 300 most actively traded and the 425 most actively traded would continue to be included in the Penny Program,[16] but any option class that falls outside of the 425 most actively traded, multiply listed option class would be removed from the Penny Program and would be subject to the minimum quoting increment rules set forth in the Exchanges' rules, effective on the first day of trading in April.[17]

3. Changes to the Composition of the Penny Program Outside of the Annual Review Process

i. Newly Listed Options Classes and Options Classes With Significant Growth in Activity

The Penny Program would specify a process and parameters for including options classes in the Penny Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria for the Exchanges to add to the Penny Program new options classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new options classes based upon quotes expressed in finer trading increments.

First, Section 3.1(c) provides for certain newly listed options classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed options classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Such newly listed options classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.[18]

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Section 3.1(d) provides that an option class may be added to the Penny Program, provided that (i) it is among the 75 most actively traded, multiply listed options classes, as ranked by National Cleared Volume at OCC, for six full calendar months of trading, and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Options classes that are added to the Penny Program pursuant to Section 3.1(d) would remain in the Penny Program for the rest of the calendar year in which they are added and then would be subject to the annual review process.[19]

ii. Corporate Actions

Section 3.1(e) specifies a process to address options classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected options classes. Specifically, if a corporate action involves one or more options classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.[20] Furthermore, neither the trading volume threshold, nor the initial price test would apply to options classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

iii. Delisted or Ineligible Options Classes

Section 3.1(f) provides a mechanism to address options classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

4. Amendments to the Penny Program

Section 3.1(h) sets forth an amendment process applicable to changes to the Penny Program. Currently, amendments to the Plan (other than an amendment to add a new Plan Sponsor) must be approved unanimously by the Plan Sponsors.[21] A new and separate process would govern amendments to the Penny Program and any changes to Section 3.1. Under this new process, for the first 60 months following Commission approval of Amendment No. 5, any change to the Penny Program would require unanimous approval by the Plan Sponsors. For the period following the expiration of that initial 60-month period, any changes to the Penny Program would require a super-majority (⅔) vote of the Plan Sponsors. The Plan Sponsors structured the amendment process this way because they believe delaying the elimination of the unanimity requirement by 60 months would preserve the agreed upon provisions of the Penny Program, except in circumstances where all the Plan Sponsors agree a change is needed.

III. Discussion and Commission Findings

The Commission finds that Amendment No. 5 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, and as discussed in greater detail below, the Commission finds that Amendment No. 5 is consistent with Section 11A of the Act[22] and Rule 608 thereunder[23] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, the national market system to allow the Exchanges to continue to quote certain options classes in penny increments on a permanent basis pursuant to provisions established by Amendment No. 5.

In support of the proposal to establish the Penny Program, the Exchanges prepared a report that contained the results of their analysis of the Penny Pilot and its impact on several indicia of market quality (''Report'').[24] The

[15] Proposed Section 3.1(b)(1) of the Plan. After extensive discussion, the Plan Sponsors concluded that including the top 300 classes would ensure that the Penny Program always includes the most active issues. *See* Notice, *supra* note 4, at 68961–62 and n.14.

[16] Proposed Section 3.1(b) of the Plan. The Plan Sponsors determined that including the top 425 options classes would prevent high turnover rates of classes and thus provide the least disruptive means of implementing the annual rebalancing of the Penny Program. *See* Notice, *supra* note 4, at 68961–62 and n.14.

[17] Proposed Section 3.1(b)(2) of the Plan.

[18] *See* Proposed Section 3.1(c) of the Plan.

[19] *See* Proposed Section 3.1(d) of the Plan.

[20] For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year. *See* Notice, *supra* note 4, at 68963 n.19.

[21] *See* Section 7 of the Plan.

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 242.608.

[24] *See* Report on Activity in Options Classes Added to the Penny Pilot dated March 8, 2019 (''Report''), submitted as Exhibit A as part of Amendment No. 5. *See also* Notice, *supra* note 4, at 68966–83.

Report contains data and analysis on the impact of the Penny Pilot on spread width, liquidity, and quote message traffic and shows that spreads in options classes with a premium of less than $3.00 decreased upon inclusion in the Penny Pilot.[25] In addition, the Report shows that volume increased in Penny Pilot classes [26] and that while liquidity at the National Best Bid or Offer decreased, the size available was nonetheless greater than the size traded.[27] Further, the Exchanges represent that they and the Options Price Reporting Authority (''OPRA'') have demonstrated sufficient capacity to handle the increase in quotes resulting from quoting in penny increments during the Penny Pilot. The Exchanges also represent that the OPRA system and their own respective systems have sufficient quote capacity to accommodate the projected increase in quote message traffic that is likely to result from the Penny Program.[28]

In addition to reviewing the data and analysis provided by the Exchanges in their Report, the Commission reviewed an independent analysis of the impact of the Penny Pilot on market quality conducted by Cornerstone Research (''Cornerstone'').[29] Cornerstone's analysis used quoted and effective spreads as measures of market quality and concluded that the most liquid options classes included in the Penny Pilot experienced a significant decrease in effective and quoted spread. For less liquid options classes, however, the results did not suggest that allowing quoting in penny increments has a significant effect on market quality. The Exchanges state that the results of their analysis were consistent with Cornerstone's findings that inclusion in the Penny Pilot is associated with a decrease in quoted spreads.[30]

The Commission believes that the evidence contained in both the Exchanges' Report and the Cornerstone analysis demonstrates that the Penny Pilot has benefitted investors and other market participants in the form of narrower spreads while also having a minimal negative impact on the industry. The Commission believes that investors will benefit from the implementation of a permanent approach to allowing continued quoting in penny increments for certain options classes. The Penny Program is designed to facilitate a permanent environment where investors can continue to enjoy reduced spreads, and concomitantly potentially reduced costs, in portions of the options market where the greatest amount of options trading occurs (*i.e.,* the top 300 options classes). Further, although the Exchanges predict that the Penny Program will generate a significant increase in quote message traffic,[31] the Plan Sponsors have represented that the Exchange's respective systems and OPRA's system will maintain sufficient capacity to manage the increase in message traffic.

The Penny Program annual review process will help facilitate the maintenance of a fair and orderly market for trading options because it provides a framework, based upon objective criteria, that rebalances the composition of the Penny Program on an annual basis, thereby helping to ensure that the most actively traded options classes are included in the Penny Program. Further, the parameters of the annual review process are designed to prevent high turnover for options classes in the Penny Program by incorporating a buffer to help ensure that options classes that are actively traded are not prematurely removed from the Penny Program.

The Penny Program will also allow options classes to be added outside the annual review process provided certain objective criteria (trading volume thresholds and initial price tests) are satisfied. These procedures should facilitate the maintenance of a fair and orderly market by permitting options classes that reflect a certain level of trading interest (either because the class is newly listed or a class that experience a significant growth in investor interest) to quote in finer trading increments, which in turn should benefit market participants by reducing the cost of trading such options.

In addition, the process to address options classes in the Penny Program that undergo a corporate action will help to ensure continued liquidity in such options classes to the benefit of market participants and investors thereby helping to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest by providing clarity and uniformity among the Exchanges as to how such options classes will be treated.

Further, requiring that any series in an option class in the Penny Program in which the underlying security has been delisted, or are identified by OCC as ineligible for opening customer transactions, continue to quote pursuant to the rules of the Penny Program until all such options have expired, will promote the maintenance of fair and orderly markets by encouraging market participants to continue to provide liquidity in such options classes on a predictable and transparent time frame.

The Exchanges' proposal to permit amendments to be approved by a super-majority vote of the Exchanges, rather than by a unanimous vote, as the Plan otherwise requires, should promote the maintenance of fair and orderly markets and remove impediments by preventing a single Exchange from having an effective veto over modifications to the Penny Program that a super-majority of Exchanges support, thus potentially obstructing improvements to the Program and its operations. The Commission notes that the Exchanges' proposal to delay the elimination of the unanimity requirement by 60 months is designed to preserve the agreed upon provisions contained in Amendment No. 5, except in circumstances where all the Exchanges agree a change is needed, which in turn should allow the Penny Program to operate as proposed before lesser supported changes are proposed.

The Commission notes that no comments were received in opposition to continuing to allow the Exchanges to quote in penny increments or with respect to the specific provisions regarding how the Penny Program will operate.

For the reasons discussed above, the Commission finds that Amendment No. 5 is consistent with Section 11A of the Act [32] and Rule 608 thereunder.[33]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[34] and Rule 608 thereunder,[35] that Amendment No. 5 to the Plan (File No. 4–443) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

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[25] Specifically, the Report states, ''[t]he study found that the average spread width for issues in the Study Group was reduced during the Pilot period as compared to pre-Pilot period.'' *See* Notice, *supra* note 4, at 68967.

[26] *See id.* at 68976–77.

[27] *See id.* at 68967.

[28] *See id.* at 68965–66.

[29] *See* DERA Memorandum on Cornerstone Analysis, dated December 18, 2017 and July 3, 2017 Cornerstone Analysis, *available at: https://www.sec.gov/files/DERA_Memo_on_a_Cornerstone_Penny_Pilot_Analysis.pdf.*

[30] *See* Notice, *supra* note 4, at 68967.

[31] *See id.* at 68975–83.

[32] 15 U.S.C. 78k–1.

[33] 17 CFR 242.608.

[34] 15 U.S.C. 78k–1.

[35] 17 CFR 242.608.

[36] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88541; File No. SR–NYSENAT–2020–12]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add the Exchange's Supervision Rules to the List of Minor Rule Violations in Rule 10.9217

April 1, 2020.

On March 18, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add the Exchange's supervision rules to the list of minor rule violations in Rule 10.9217. On March 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety, and is described in Items I and II below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to add the Exchange's supervision rules to the list of minor rule violations in Rule 10.9217. This Amendment No. 1 to SR–NYSENat–2020–12 replaces SR–NYSENat–2020–12 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add the Exchange's supervision rules to the list of minor rule violations in Rule 10.9217. Rule 10.9217 sets forth the list of rules under which an ETP Holder or Associated Person may be subject to a fine under a minor rule violation plan as described in Rule 10.9216(b).

Proposed Rule Change

First, the Exchange proposes to add the following new paragraph (d) to Rule 10.9217:

> Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 10.9000 Series rather than under this Rule.

The language is based on NYSE Arca, Inc. (''NYSE Arca'') Rule 10.9217(d). Existing paragraphs (d) through (f) of Rule 9217 would become paragraphs (e), (f) and (g).

Second, the Exchange proposes to add Rules 11.3.2 (Violations Prohibited), 11.5.1 (Written Procedures) and 11.5.2 (Responsibility of ETP Holders) to the list of rules in Rule 10.9217 eligible for disposition pursuant to a fine under Rule 10.9216(b). Rules 11.3.2, 11.5.1 and 11.5.2 are the Exchange's supervision rules for equities trading.

Rule 11.3.2 provides that no ETP Holder shall engage in conduct in violation of the Exchange Act, the rules or regulations thereunder, the By-Laws, or Exchange Rules, and that every ETP Holder shall supervise persons associated with the ETP Holder as to assure compliance with those requirements.

Rule 11.5.1 governs written procedures and requires ETP Holders to establish, maintain, and enforce written procedures to supervise properly the activities of its Associated Persons and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange rules.

Rule 11.5.2 provides that final responsibility for proper supervision rests with the ETP Holder, and that the ETP Holder shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures.

Rules 11.3.2, 11.5.1 and 11.5.2 are substantially similar to certain provisions of the New York Stock Exchange LLC's (''NYSE'') supervision Rule 3110. Specifically, NYSE Rule 3110(a) requires, in part, that NYSE member organizations establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NYSE rules and that final responsibility for proper supervision rests with the member organization. NYSE Rule 3110(b)(1) requires NYSE member organizations to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NYSE rules. Both NYSE Rules 3110(a) and (b)(1) are separately eligible for a minor rule fine under the NYSE's version of Rule 9217.[4]

To effectuate this change, the Exchange proposes to add ''Failure to comply with the supervision requirements of Rules 11.3.2 and 11.5.1'' and ''Failure to comply with the supervision requirements of Rules 11.3.2 and Rule 11.5.2'' to the list of rule violations in current subparagraph (e) of Rule 9217 titled ''Record Keeping and Other Minor Rule Violations.'' As noted above, subparagraph (e) of Rule 9217 would become new subparagraph (f).

Similarly, the Exchange would add two new entries to the Fine Schedule in current Rule 9217(f)(2), which would become subparagraph (g)(2). First, the Exchange would add a new number 4 to the chart in subparagraph (f)(2) titled ''Failure to comply with the supervision requirements as set forth in Rules 11.3.2 and 11.5.1'' and corresponding proposed fine levels of $2,000 for a first level fine, $4,000 for a second level fine, and $5,000 for a third level fine. Second, the Exchange would add a new number 5 to the chart in subparagraph (f)(2) titled ''Failure to comply with the supervision requirements as set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified the relationship between its supervisory rules and those of its affiliate.

[4] *See* NYSE Rules 3110 (Supervision) & 9217.

Rules 11.3.2 and 11.5.2'' and corresponding proposed fine levels of $2,000 for a first level fine, $4,000 for a second level fine, and $5,000 for a third level fine.

The proposed fine levels are consistent with current Exchange fine levels and comparable to those in the NYSE fine schedule.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing supervision requirements in situations where either a cautionary action letter or a more formal disciplinary action may not be warranted or appropriate.

In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Rules 11.3.2, 11.5.1 and 11.5.2 are substantially similar to certain provisions of NYSE Rule 3110. NYSE Rule 3110(a) and (b)(1) are each separately eligible for a minor rule fine under NYSE Rule 9217.[8]

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,[9] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments on the Proposed Rule Change, as Modified by Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–NYSENAT–2020–12 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–NYSENAT–2020–12. 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–NYSENAT–2020–12 and should be submitted on or before April 28, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and

[5] *See* NYSE 9217. The Exchange notes that it must provide the Commission prompt notice of any violation with sanction over $2,500, in accordance with Securities Exchange Act Rule 19d–1(c). *See* 17 CFR 240.19d–1(c).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 4, *supra.*

[9] 15 U.S.C. 78f(b)(6).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [12] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal, as modified by Amendment 1, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[13] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the Exchange's supervision rules to the list of Minor Rule violations. Similar supervision rules are eligible for a minor rule fine under an affiliated exchange. The Commission believes that the proposed rule, as modified by Amendment No. 1, provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects, as suggested by the Exchange's proposed introduction to its Rule 10.9217, that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. The Commission further notes that, as before, the Exchange must give the Commission prompt notice of any violation with sanction over $2,500, in accordance with Securities Exchange Act Rule 19d–1(c).[14] Accordingly, the Commission believes the proposal, as modified by Amendment No. 1 raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds rules and language already in use at affiliated exchanges. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [16] and Rule 19d–1(c)(2) thereunder,[17] that the proposed rule change (SR–NYSENAT–2020–12), as modified by Amendment No. 1 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07234 Filed 4–6–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[13] 17 CFR 240.19d–1(c)(2).

[14] *See* 17 CFR 240.19d–1(c).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.19d–1(c)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88537; File No. SR–ICC–2020–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

April 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on March 26, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Rulebook (the ''Rules'') to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract (the ''EM Contract'') and additional Standard Western European Sovereign CDS contracts (collectively, the ''SWES Contracts'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. ICC proposes to make such changes effective following Commission approval of the proposed rule change. ICC believes the addition of these contracts will benefit the market for credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional EM Contract and the additional SWES Contracts (collectively, the ''EM and SWES Contracts'') will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (''Act'').

ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of the additional EM Contract, namely the Republic of Croatia. This additional EM Contract has terms consistent with the other EM Contracts approved for clearing at ICC and governed by Subchapter 26D of the Rules. Minor revisions to Subchapter 26D (Standard Emerging Market Sovereign (''SES'') Single Name) are made to provide for clearing the additional EM Contract. Specifically, in Rule 26D–102 (Definitions), ''Eligible SES Reference Entities'' is modified to include the Republic of Croatia in the list of specific Eligible SES Reference Entities to be cleared by ICC.

Additionally, ICC proposes amending Subchapter 26I of its Rules to provide for the clearance of the additional SWES Contracts, namely the Republic of Finland and the Hellenic Republic.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

These additional SWES Contracts have terms consistent with the other SWES Contracts approved for clearing at ICC and governed by Subchapter 26I of the Rules. Minor revisions to Subchapter 26I (Standard Western European Sovereign (''SWES'') Single Name) are made to provide for clearing the additional SWES Contracts. Specifically, in Rule 26I–102 (Definitions), ''Eligible SWES Reference Entities'' is modified to include the Republic of Finland and the Hellenic Republic in the list of specific Eligible SWES Reference Entities to be cleared by ICC.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. The additional EM and SWES Contracts proposed for clearing are similar to the EM and SWES Contracts currently cleared by ICC, and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the additional EM and SWES Contracts will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to clearing house rules. ICC believes that acceptance of the new EM and SWES Contracts, on the terms and conditions set out in the Rules, is consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[4]

Clearing of the additional EM and SWES Contracts will also satisfy the relevant requirements of Rule 17Ad–22,[5] as set forth in the following discussion.

Margin Requirements. Rule 17Ad–22(b)(2) [6] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. In terms of financial resources, ICC will apply its existing initial margin methodology to the new EM and SWES Contracts, which are similar to the EM and SWES Contracts currently cleared by ICC. ICC believes that this model will provide sufficient initial margin requirements to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad–22(b)(2).[7]

Financial Resources. Rule 17Ad–22(b)(3) [8] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. ICC believes its Guaranty Fund, under its existing methodology, will, together with the required initial margin, provide sufficient financial resources to support the clearing of the additional EM and SWES Contracts, consistent with the requirements of Rule 17Ad–22(b)(3).[9]

Operational Resources. Rule 17Ad–22(d)(4) [10] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls and procedures. ICC believes that its existing operational and managerial resources will be sufficient for clearing of the additional EM and SWES Contracts, consistent with the requirements of Rule 17Ad–22(d)(4),[11] as these new contracts are substantially the same from an operational perspective as existing contracts.

Settlement Procedures. Rule 17Ad–22(d)(5), (12) and (15) [12] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit ICC's settlement bank risks and require funds transfers to ICC to be final when effected; ensure that final settlement occurs no later than the end of the settlement day, and require that intraday or real-time finality be provided where necessary to reduce risks; and state to its participants ICC's obligations with respect to physical deliveries and identify and manage the risks from these obligations. ICC will use its existing settlement procedures and account structures for the new EM and SWES Contracts, which are similar to the EM and SWES Contracts currently cleared by ICC, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15) [13] as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures.

Governance Arrangements. Rule 17Ad–22(d)(8) [14] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act [15] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. ICC determined to accept the additional EM and SWES Contracts for clearing in accordance with its governance process, which included review of the contracts and related risk management considerations by the ICC Risk Committee and approval by its Board. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the ICC Board and committees is clearly detailed in the ICC Rules and policies and procedures, consistent with the requirements of Rule 17Ad–22(d)(8).[16]

Default Procedures. Rule 17Ad–22(d)(11) [17] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish default procedures that ensure that it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC will apply its existing default management policies and procedures for the additional EM and SWES Contracts. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(b)(2).

[7] *Id.*

[8] 17 CFR 240.17Ad–22(b)(3).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(d)(4).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(d)(8).

[15] 15 U.S.C. 78q–1.

[16] 17 CFR 240.17Ad–22(d)(8).

[17] 17 CFR 240.17Ad–22(d)(11).

defaults in respect of the additional single names, in accordance with Rule 17Ad–22(d)(11).[18]

(B) Clearing Agency's Statement on Burden on Competition

The additional EM and SWES Contracts will be available to all ICC participants for clearing. The clearing of these additional EM and SWES Contracts by ICC does not preclude the offering of the additional EM and SWES Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional EM and SWES Contracts will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2020–003 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2020–003 and should be submitted on or before April 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DesLesDernier,

Assistant Secretary.

[FR Doc. 2020–07230 Filed 4–6–20; 8:45 am]

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[18] *Id.*

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88539; File Nos. SR–NYSE–2020–05, SR–NYSECHX–2020–02, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSENAT–2020–03]

Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE Chicago, Inc., NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes To Establish a Schedule of Wireless Connectivity Fees and Charges With Wireless Connections Between the Mahwah, New Jersey Data Center and Other Data Centers

April 1, 2020

On January 30, 2020, New York Stock Exchange LLC, NYSE Chicago, Inc., NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a schedule of Wireless Connectivity Fees and Charges with wireless connections between the Mahwah, New Jersey data center and other data centers. The proposed rule changes were published for comment in the **Federal Register** on February 18, 2020.[3] The Commission has received comment letters on the proposed rule changes.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a propose rule change, or within such longer period up to 90 days as the Commission may designate if it find such longer period to be appropriate and published its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 88168 (February 11, 2020), 85 FR 8938 (February 18, 2020) (SR–NYSE–2020–05); 88172 (February 11, 2020), 85 FR 8923 (February 18, 2020) (SR–NYSECHX–2020–02); 88169 (February 11, 2020), 85 FR 8946 (February 18, 2020) (SR–NYSEAMER–2020–05); 88170 (February 11, 2020), 85 FR 8956 (February 18, 2020) (SR–NYSEArca–2020–08); and 88171 (February 11, 2020), 85 FR 8930 (February 18, 2020) (SR–NYSENAT–2020–03) (collectively, the ''Notices'').

[4] Comments received on the Notices are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2020–05/srnyse202005.htm.*

[5] 15 U.S.C. 78s(b)(2).

proposed rule change should be disapproved. The 45th day after publication of the Notices for these proposed rule changes is April 3, 2020. The Commission is extending this 45-day period.

The Commission find that it is appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider the proposed rule changes and the comment letters. Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates May 18, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule changes (File Nos. SR–NYSE–2020–05, SR–NYSECHX–2020–02, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSENAT–2020–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07232 Filed 4–6–20; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88535; File No. SR–NYSEArca–2019–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under Proposed NYSE Arca Rule 8.601–E

April 1, 2020.

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the following Active Proxy Portfolio Shares under proposed NYSE Arca Rule 8.601–E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF (''Funds'').[3] The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[7] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price Equity Income ETF. This Amendment No. 1 to SR–NYSEArca–2019–92 replaces SR–NYSEArca–2019–92 as originally filed and supersedes such filing in its entirety.

The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has proposed to add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[9] Proposed Commentary .02 to Rule 8.601–E would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of the T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Managed Portfolio Securities, and to list and trade shares of the Funds under proposed Exchange Rule 8.601–E (Managed Portfolio Securities). In Amendment No. 1, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.601–E (Managed Portfolio Securities) and revised the proposal to seek to list and trade shares of the Funds under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 1, *infra* note 7. *See also* Amendment 2 to SR–NYSEArca–2019–95 (proposing to adopt NYSE Arca Rule 8.601–E to list and trade Active Proxy Portfolio Shares, available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995.htm).*

[4] *See* Securities Exchange Act Release No. 87865 (Dec. 30, 2019), 85 FR 380 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88197, 85 FR 9887 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Amendment 2 to SR–NYSEArca–2019–95, filed on March 31, 2020. Proposed Rule 8.601–E(c)(1) provides that the term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a registered investment company (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for a transfer of the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Equity Income ETF (each a ''Fund'' and, collectively, the ''Funds'') under proposed Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares listed and traded under NYSE Arca Rule 8.600–E,[10] Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, for which a fund's ''Disclosed Portfolio'' is required to be disseminated at least once daily,[11] the full portfolio holdings for a series of Active Proxy Portfolio Shares will not be made available on a daily basis. Rather, a fund's ''Actual Portfolio'' [12] will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance and in compliance with the portfolio holdings disclosure requirements applicable to other registered open-end funds, including traditional mutual funds.[13] Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be in exchange for a fund's Proxy Portfolio and/or cash with a value equal to the next determined NAV. The Proxy Portfolio is designed to serve as a pricing signal for low-risk arbitrage trades in shares of Active Proxy Portfolio Shares generally.

Market makers have indicated to the Exchange that there will be sufficient data to engage in arbitrage trades in Active Proxy Portfolio Shares with accuracy and minimal risk. In addition, market makers have indicated that they are incented to engage in arbitrage trades when the risk of the trade is low. However, they cannot know with any certainty the precise risk of an arbitrage trade on the current or any future Business Day. Rather, they must use information from the past to evaluate the likely risk of an arbitrage trade executed today or in the future. More specifically, it is understood that they must use historical data about the performance of a fund whose shares are being arbitraged and the performance of the fund's Proxy Portfolio. From such data, arbitrageurs may be able to develop sufficient insight into the risk of an arbitrage trade to evaluate and price it into the trade.

Description of the Funds

The Shares of each Fund will be issued by T. Rowe Price Exchange-Traded Funds, Inc. (''Issuer''), a corporation organized under the laws of the State of Maryland, which may be comprised of multiple separate series, and registered with the Commission as an open-end management investment company.[14] The investment adviser for the Funds will be T. Rowe Price Associates, Inc. (''Adviser''). State Street Bank and Trust Co. will serve as the Funds' transfer agent, administrator and custodian (the ''Transfer Agent'', ''Administrator'', or ''Custodian''). T. Rowe Price Investment Services, Inc., a registered broker dealer and an affiliate of the Adviser, will serve as the distributor (''Distributor'') of the Shares.

Proposed Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or changes thereto or the Proxy Portfolio must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or changes thereto or the Proxy Portfolio.

Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .03(a) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[15]

[10] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 8.600–E. A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. See, *e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 76871 (January 11, 2016), 81 FR 2261 (January 15, 2016) (SR–NYSEArca–2015–114) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Market Vectors Dynamic Put Write ETF under NYSE Arca Equities Rule 8.600); 86636 (August 12, 2019), 84 FR 42030 (August 16, 2019) (SR–NYSEArca–2018–98) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, to List and Trade Shares of the iShares Commodity Multi-Strategy ETF under NYSE Arca Rule 8.600–E).

[11] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the Business Day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio be disseminated at least once daily and be made available to all market participants at the same time.

[12] Proposed Rule 8.601–E(c)(2) provides that term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.

[13] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act, and is required to file its complete portfolio schedules each month on Form N–PORT under the 1940 Act, within 60 days of the end of each month. Information reported on Form N–PORT for the third month of the Fund's fiscal quarter will be made publicly available 60 days after the end of the Fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's statement of additional information (''SAI'') and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[14] The Issuer is registered under the 1940 Act. On December 11, 2019, the Issuer filed a registration statement on Form N–1A under the Securities Act of 1933 Act (''1933 Act'') (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333–235450 and 811–23494) (the ''Registration Statement''). The Issuer filed a seventh amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14214), dated October 16, 2019 (''Application''). On December 10, 2019, the Commission issued an order (''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33713, December 10, 2019). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application.

[15] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be

Continued

Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Funds

According to the Application, for each Fund, the Adviser will identify its Proxy Portfolio, which could be a broad-based securities index (*e.g.,* the S&P 500) or a Fund's recently disclosed portfolio holdings. The Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of a Fund. Although the Adviser may change a Fund's Proxy Portfolio at any time, the Adviser currently does not expect to make such changes more frequently than quarterly (for example, in connection with the release of a Fund's portfolio holdings). The Adviser will publish a new Proxy Portfolio for a Fund only before the commencement of trading of such Fund's Shares on that ''Business Day,'' [16] and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio. For the reasons described herein, the Adviser believes that each Fund's Proxy Portfolio will be a high-quality hedging vehicle, the value of which will provide arbitrageurs with a high quality pricing signal.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order as described below in ''Other Characteristics of the Funds,'' and the holdings will be consistent with all requirements in the Application and Exemptive Order.

T. Rowe Price Blue Chip Growth ETF

The investment objective of the T. Rowe Price Blue Chip Growth ETF will be to seek to provide long-term capital growth. Income will be a secondary objective.

The Fund will normally invest at least 80% of its net assets in the common stocks of large and medium-sized blue-chip growth companies that are listed in the United States. These are companies that, in the Adviser's view, are well established in their industries and have the potential for above-average earnings growth. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

T. Rowe Price Dividend Growth ETF

The investment objective of the T. Rowe Price Dividend Growth ETF will be to seek dividend income and long-term capital growth.

The Fund normally will invest at least 65% of the Fund's total assets in stocks listed in the United States, with an emphasis on stocks that have a strong track record of paying dividends or that are expected to increase their dividends over time. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures cash, and cash equivalents.

T. Rowe Price Growth Stock ETF

The investment objective of the T. Rowe Price Growth Stock ETF will be to seek long-term capital growth.

The Fund will normally invest at least 80% of its net assets in the common stocks of a diversified group of growth companies. While it may invest in companies of any market capitalization, the Fund generally seeks investments in stocks of large-capitalization companies with one or more of the following characteristics: Strong cash flow and an above-average rate of earnings growth; the ability to sustain earnings momentum during economic downturns; and occupation of a lucrative niche in the economy and the ability to expand even during times of slow economic growth. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

T. Rowe Price Equity Income ETF

The investment objective of the T. Rowe Price Equity Income ETF will be to seek a high level of dividend income and long-term capital growth.

The Fund will normally invest at least 80% of its net assets in common stocks listed in the United States, with an emphasis on large-capitalization stocks that have a strong track record of paying dividends or that are believed to be undervalued. The Fund typically will employ a ''value'' approach in selecting investments. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

Other Characteristics of the Funds

With respect to the Funds, Shares will generally be issued and redeemed primarily on an in-kind basis, but may include cash under certain circumstances as described in the Application.[17]

With respect to the Funds, in order to provide a hedging vehicle whose performance reliably and highly correlates to the NAV of the relevant Fund, and that is liquid and trades synchronously (that is, during the hours of the Exchange's Core Trading Session, normally 9:30 a.m. to 4:00 p.m. E.T.) with the Shares of the Funds, a Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34–E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

Consistent with these representations, each Fund will only invest in exchange-traded common stocks, common stocks

subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[16] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when a Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

[17] *See* note 22, *infra.*

listed on a foreign exchange that trade on such exchange synchronously with the Shares (''foreign common stocks''), ETFs,[18] exchange-traded notes (''ETNs''),[19] exchange-traded preferred stocks, exchange-traded American Depositary Receipts (''ADRs''),[20] exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts and exchange-traded futures contracts[21] (collectively, ''exchange-traded instruments'') that trade synchronously with the Fund's Shares, as well as cash and cash equivalents. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

The Proxy Portfolio will not include any asset that is ineligible to be in the Actual Portfolio of the applicable Fund.

Investment Restrictions

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.601–E.

Each Fund's investments will be consistent with its investment objective and with the applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Issuer with respect to the Funds.

Purchases and Redemptions

The Issuer will offer, issue and sell Shares of each Fund to investors only in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of each Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Issuer will sell and redeem Creation Units of each Fund only on a Business Day. A Creation Unit will consist of at least 5,000 Shares.

Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') will be the same as a Fund's designated Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis, as described below.

If there is a difference between the net asset value attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of baskets that are in the best interests of a Fund, including the process for any revisions to or deviations from, those parameters.

A Fund that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely or in part on a cash basis.[22] In such an instance, the Fund will announce, before the open of trading on a given Business Day, that all purchases, all redemptions or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), to have the purchase or redemption, as applicable, be made entirely or in part in cash.

Each Business Day, before the open of trading on the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any) for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Proxy Portfolio will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is a member or participant of a clearing agency registered with the Commission, which has a written agreement with a Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase and redemption of Creation Units. Except as otherwise permitted, no promoter, principal underwriter (*e.g.,* the Distributor) or affiliated person of a Fund, or any affiliated person of such person, will be an Authorized Participant in Shares.

Validly submitted orders to purchase or redeem Creation Units on each Business Day will be accepted until the end of the Core Trading Session (the ''Order Cut-Off Time''), generally 4:00 p.m. E.T., on the Business Day that the order is placed (the ''Transmittal Date''). All Creation Unit orders must be received by the Distributor no later than the Order Cut-Off Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds' website, which will be publicly available at no charge prior to the public offering of Shares, will include a prospectus for each Fund that may be downloaded. In addition, the website will include the following:

• Quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the Closing Price[23] or Bid/Ask Price of Shares, and

[18] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Rule 5.2–E (j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[19] ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities). All ETNs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETNs.

[20] ADRs are issued by a U.S. financial institution (a ''depositary'') and evidence ownership in a security or pool of securities issued by a foreign issuer that have been deposited with the depositary. Each ADR is registered under the Securities Act of 1933 (''1933 Act'') (15 U.S.C. 77a) on Form F–6. ADRs in which a Fund may invest will trade on an exchange.

[21] Exchange-traded futures are U.S. listed futures contracts where the futures contract's reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly, such as an S&P 500 index futures contract. All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange.

[22] The Adviser represents that, to the extent the Issuer effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all ''Authorized Participants'' (as defined below).

[23] The ''Closing Price'' of Shares is the official closing price of Shares on the Exchange's Core Trading Session.

a calculation of the premium/discount of the Closing Price or Bid/Ask Price[24] against such NAV and any other information regarding premiums and discounts as may be required for other ETFs under rule 6c–11 under the 1940 Act. The website will also disclose any information regarding the bid-ask spread for each Fund as may be required for other ETFs under rule 6c–11 under the 1940 Act.

- Each Fund's Proxy Portfolio.
- Bid-ask spread information for each Fund.

Each Fund's website also will disclose the information required under proposed Rule 8.601–E (c)(3).[25]

Investors interested in a particular Fund can also obtain its prospectus, statement of additional information (''SAI''), shareholder reports, Form N–CSR and Form N–CEN. Investors may access complete portfolio schedules for the Funds on Form N–CSR and Form N–PORT. The prospectus, SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N–CSR and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *http://www.sec.gov*.

Information regarding the market price of Shares and trading volume in Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information may be published daily in the financial section of newspapers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[26] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

In addition, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The issuer has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[27] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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.

FINRA, on behalf of the Exchange, or the Exchange or both will communicate as needed regarding trading in the Shares, certain exchange-traded equities, ETFs, ETNs and futures with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, or the Exchange or both may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[28]

The Funds' Adviser will make available to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above on a confidential basis.

[24] The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based on the National Best Bid and Offer at the time that a Fund's NAV is calculated. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor.

[25] *See* note 9, *supra*. Proposed Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

[26] *See* NYSE Arca Rule 7.12–E.

[27] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[28] For a list of the current members of ISG, *see www.isgportal.org.*

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) that holdings of a Fund will not be disclosed daily; and (5) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated as of 4:00 p.m. E.T. each trading day.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Act,[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E. One-hundred percent of the value of a Fund's Actual Portfolio (except for cash, cash equivalents and Treasury securities) at the time of purchase will be listed on U.S. or foreign securities exchanges (or, in the limited case of futures contracts, U.S. futures exchanges). The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded equities, ETFs, ETNs and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the Funds, the Exchange believes that a Fund's Proxy Portfolio, as well as the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' bid/ask price and NAV.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will not generally rest on the ability of market participants to arbitrage between the Active Proxy Portfolio Shares and a fund's portfolio, but rather on the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in Active Proxy Portfolio Shares effectively. Professional traders will buy Active Proxy Portfolio Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Active Proxy Portfolio Shares they perceive to be trading at a price higher than that which will be available at a

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to series of Active Proxy Portfolio Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' Active Proxy Portfolio Shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [31] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities.

With respect to the Funds, disclosure of the Proxy Portfolio, a Fund's investment objective and principal investment strategies in its prospectus and SAI, should permit professional investors to engage readily in this type of hedging activity.[32]

It is expected that market participants will utilize the Proxy Portfolio as a pricing signal and high quality hedging vehicle and gain experience with how various market factors (*e.g.,* general market movements, sensitivity or correlations of the Proxy Portfolio to intraday movements in interest rates or commodity prices, other benchmarks, etc.) affect the value of the Proxy Portfolio in order to determine how best to hedge long or short positions taken in Shares in a manner that will permit them to provide a bid/ask price for Shares that is near to the value of the Proxy Portfolio throughout the day. The ability of market participants to accurately hedge their positions should serve to minimize any divergence between the secondary market price of the Shares and a Fund's NAV, as well as create liquidity in the Shares. With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the NAV is dependent upon their assessment that the value of the Proxy Portfolio is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the value of the Proxy Portfolio as a reliable, indicative real-time value because (1) the Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of the Fund, (2) the securities in which the Funds plan to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the value of the Proxy Portfolio at or near the close of trading is predictive of the actual NAV.

The disclosure of a Fund's Proxy Portfolio and the ability of Authorized Participants to create and redeem each Business Day at the NAV, will be crucial for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

With respect to Active Proxy Portfolio Shares generally, the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of an issue of Active Proxy Portfolio Shares that the NAV per share of such issue will be calculated daily and that the NAV and Actual Portfolio will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, shareholder reports, and its Form N–CSR and Form N–CEN. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N–CSR and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E.[33] In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. The website for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its ETP

[31] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. With the Proxy Portfolio identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of the Proxy Portfolio throughout the trade period, making corrections where warranted.

[32] With respect to trading in Shares of the Funds, market participants can manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the intra-day value of the Funds' holdings without taking undue risk by utilizing the Proxy Portfolio directly as a hedge, analyzing other data that may be disseminated by a Fund, gaining experience with how various market factors (*e.g.,* general market movements, sensitivity of the value of the Proxy Portfolio to intraday movements in interest rates or commodity prices, etc.) affect value of the Proxy Portfolio, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors.

[33] *Id.* [sic].

Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.

The components of a Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34–E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to improve the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, with respect to the Active Proxy Portfolio Shares generally, the Exchange has in place surveillance procedures relating to trading in such securities and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, with respect to the Funds, investors will have ready access to information regarding the Proxy Portfolio and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[34] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, including that the portfolio is disclosed at least once quarterly as opposed to daily, and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2019–92, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [35] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[36] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [37]

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[38]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by April 28, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 12, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[39] and any other issues raised by the proposed rule change, as modified by Amendment No. 1, under the Exchange Act. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposed rule to list and trade Active Proxy Portfolio Shares, which are actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions as they relate to foreign securities are adequate to prevent fraud and manipulation. In addition, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions are adequate to prevent the

[34] 15 U.S.C. 78f(b)(8).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] *Id.*

[37] 15 U.S.C. 78f(b)(5).

[38] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[39] *See supra* note 7.

use and dissemination of material non-public information relating to the Funds.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–92. 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–NYSEArca–2019–92 and should be submitted on or before April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07228 Filed 4–6–20; 8:45 am]

BILLING CODE 8011–01–P

[40] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88540; File Nos. SR–NYSE–2020–11, SR–NYSECHX–2020–05, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSENAT–2020–08]

Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE Chicago, Inc., NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

April 1, 2020.

On February 11, 2020, New York Stock Exchange LLC, NYSE Chicago, Inc., NYSE Arca, Inc., and NYSE National, Inc. each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the schedule of Wireless Connectivity Fees and Charges to add wireless connectivity services that transport the market data of the Exchanges. NYSE American LLC filed with the Commission a substantively identical filing on February 12, 2020.[3] The proposed rule changes were published for comment in the **Federal Register** on February 25, 2020.[4] The Commission has received comment letters on the proposed rule changes.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] New York Stock Exchange LLC, NYSE Chicago, Inc., NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. are collectively referred to herein as the ''Exchanges.''

[4] *See* Securities Exchange Act Release Nos. 88237 (February 19, 2020), 85 FR 10752 (February 25, 2020) (SR–NYSE–2020–11); 88240 (February 19, 2020), 85 FR 10795 (February 25, 2020) (SR–NYSECHX–2020–05); 88238 (February 19, 2020), 85 FR 10776 (February 25, 2020) (SR–NYSEAMER–2020–10); 88239 (February 19, 2020), 85 FR 10786 (February 25, 2020) (SR–NYSEArca–2020–15); and 88241 (February 19, 2020), 85 FR 10738 (February 25, 2020) (SR–NYSENAT–2020–08) (collectively, the ''Notices'').

[5] Comments received on the Notices are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2020-11/srnyse202011.htm.*

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a propose rule change, or within such longer period up to 90 days as the Commission may designate if it find such longer period to be appropriate and published its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notices for these proposed rule changes is April 10, 2020. The Commission is extending this 45-day period.

The Commission find that it is appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider the proposed rule changes and the comment letters. Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates May 25, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule changes (File Nos. SR–NYSE–2020–11, SR–NYSECHX–2020–05, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSENAT–2020–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07233 Filed 4–6–20; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16357 and #16358; SOUTH CAROLINA Disaster Number SC–00068]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4479–DR), dated 03/17/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/06/2020 through 02/13/2020.

DATES: Issued on 03/17/2020.

Physical Loan Application Deadline Date: 05/18/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 12/17/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/17/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Anderson, Chester, Greenville, Newberry, Oconee, Pickens, Spartanburg.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16357B and for economic injury is 163580.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administratorfor Disaster Assistance.

[FR Doc. 2020–07266 Filed 4–6–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0015]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0015].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 8, 2020. Individuals can obtain copies of the collection instrument by writing to the above email address.

Authorization to Obtain Earnings Data From the Social Security Administration—0960–0602. On occasion, public and private organizations and agencies need to obtain detailed earnings information about specific Social Security number (SSN) holding wage earners for business purposes (*e.g.* pension funds, State agencies, etc.). Respondents use Form SSA–581 to identify the SSN holder whose information they are requesting, and provide authorization from the SSN holder, when applicable. SSA uses the information provided on Form SSA–581 to: (1) Identify the wage earner; (2) establish the period of earnings information requested; (3) verify the wage earner authorized SSA to release this information to the requesting party; and (4) produce the Itemized Statement of Earnings (SSA–1826). The respondents are private businesses, state or local agencies, and other federal agencies. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–581	24,000	1	2	800	* $30.29	** $24,232

* We based this figure on average Compensation, Benefits, and Job Analysis Specialists hourly wage data from the BLS website. Since most respondents are from the private sector, and wages for private sector are comparable to those of the state and local governments, we did not differentiate between the two.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 7, 2020. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Request for Corrections of Earnings Record—20 CFR 404.820 and 20 CFR 422.125—0960–0029. Individuals alleging inaccurate earnings records in SSA's files use paper Form SSA–7008, or a personal interview during which SSA employees key their answers into our electronic Earnings Modernization Item Correction system, to provide the information SSA needs to check

earnings posted, and, as necessary, initiate development to resolve any inaccuracies. The respondents are individuals who request correction of earnings posted to their Social Security earnings record.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
SSA–7008	28,734	1	28	13,409	* $22.50	** $301,702	*** 24	** $540
In-person or telephone interview	337,500	1	10	56,250	* 22.50	** 1,265,625	*** 24	** 540
Totals	366,234			69,659		** 1,567,328		** 1,080

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

2. *Application for a Social Security Number Card, the Social Security Number Application Process (SSNAP), and internet SSN Replacement Card (iSSNRC) Application—20 CFR 422.103–422.110–0960–0066.* SSA collects information on the SS–5 (used in the United States) and SS–5–FS (used outside the United States) to issue original or replacement Social Security cards. SSA also enters the application data into the SSNAP application when issuing a card via telephone or in person. In addition, hospitals collect the same information on SSA's behalf for newborn children through the Enumeration-at-Birth process. In this process, parents of newborns provide hospital birth registration clerks with information required to register these newborns. Hospitals send this information to State Bureaus of Vital Statistics (BVS), and they send the information to SSA's National Computer Center. SSA then uploads the data to the SSA mainframe along with all other enumeration data, and we assign the newborn a Social Security number (SSN) and issue a Social Security card. Respondents can also use these modalities to request a change in their SSN records. In addition, the iSSNRC internet application collects information similar to the paper SS–5 for no-change replacement SSN cards for adult U.S. citizens. The iSSNRC modality allows certain applicants for SSN replacement cards to complete the internet application and submit the required evidence online rather than completing a paper Form SS–5. Finally, the new Online Social Security Number Application Process (oSSNAP) collects information similar to the paper SS–5 for no change, with the exception of name change, replacement SSN cards for U.S Citizens (adult and minor children). oSSNAP will allow certain applicants for SSN replacement cards to start the application process on-line, receive a list of evidentiary documents, and then submit the application data to SSA for further processing by SSA employees. Applicants will need to visit a local SSA office to complete the application process. The respondents for this collection are applicants for original and replacement Social Security cards, or individuals who wish to change information in their SSN records, who use any of the modalities described above.

Type of Request: Revision of an OMB-approved information collection.

Application scenario	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
Respondents who do not have to provide parents' SSNs	7,380,000	1	8.5	1,107,000	* $22.50	** $24,907,500	*** 24	** $540
Adult U.S. Citizens requesting a replacement card with no changes through the iSSNRC modality	1,350,000	1	5	112,500	* 22.50	** 2,531,250	*** 24	** 540
Adult U.S. Citizens providing information to receive a replacement card through the oSSNAP modality+	3,500,000	1	5	291,667	* 22.50	** 6,562,508	*** 24	** 540
Respondents whom we ask to provide parents' SSNs (when applying for original SSN cards for children under age 12)	190,000	1	9	28,500	*22.50	** 641,250	*** 24	** 540
Applicants age 12 or older who need to answer additional questions so SSA can determine whether we previously assigned an SSN	910,000	1	10	151,667	* 22.50	** 3,412,508	*** 24	** 540

Application scenario	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
Applicants asking for a replacement SSN card beyond the allowable limits (*i.e.,* who must provide additional documentation to accompany the application)	7,250	1	60	7,250	* 22.50	** 163,125	*** 24	** 540
Authorization to SSA to obtain personal information cover letter	500	1	15	125	* 22.50	** 2,813	*** 24	** 540
Authorization to SSA to obtain personal information follow-up cover letter	500	1	15	125	* 22.50	** 2,813	*** 24	** 540
Totals	13,338,250			1,698,834		** 38,223,767		** 4,320

* We based this figure on average U.S. worker's hourly wages (based on *BLS.gov* data).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*
*** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
+ The number of respondents for this modality is an estimate based on google analytics data for the SS–5 form downloads from *SSA.Gov.*

3. *Petition for Authorization to Charge and Collect a Fee for Services Before the Social Security Administration—20 CFR 404.1720–404.1730; 20 CFR 416.1520–416.1530—0960–0104.* A Social Security claimant's representative, whether an attorney or a non-attorney, uses Form SSA–1560 to petition SSA for authorization to charge and collect a fee for their services as a representative. In addition, the representatives indicate on the form if they have been disbarred or suspended from a court or bar to which they were previously admitted to practice as an attorney; or if they have been disqualified from appearing before a Federal program or agency. SSA must authorize a fee to the representative, if the representative requests to be paid from the expected past-due benefits of the claimant. The representative submits the SSA–1560 after a claim decision, or any time when the representation is terminated, to request authorization to charge and collect a fee under the fee petition process. Since this information is mandated by regulation, the form is mandatory for the representative to obtain authorization to charge and collect a fee. SSA collects the information on a claim-by-claim basis, if the individual representatives decide to use this option to receive authorization of a fee, and representatives must submit the documentation once per claim. SSA employees then evaluate and process the request for authorization of a fee. The respondents are representatives who use this form to request a fee via the fee petition process.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1560	24,153	1	30	12,077	* $72.21	$** 872,080

* We based this figure on average lawyer's salary (*https://www.bls.gov/oes/current/oes231011.htm*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. *Development of Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, 416.1321(d), 416.1331(a)–(b), and 416.1338, 416.1402—0960–0282.* State Disability Determination Services (DDS) determine if Social Security disability payment recipients whose disability ceased and who participate in vocational rehabilitation programs may continue to receive disability payments. To do this, DDSs need information about the recipients; the types of program participation; and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
SSA–4290–F5	3,000	1	15	750	* $17.22	** $12,915	*** 24	** $413

* We based this figure on average Social and Human Service Assistant's hourly salary, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

Dated: April 1, 2020.

Naomi Sipple,

Reports Clearance Officer,Social Security Administration.

[FR Doc. 2020–07183 Filed 4–6–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11022]

60-Day Notice of Proposed Information Collection: State Assistance Management System (SAMS) Domestic Results Monitoring Module and NEA/AC Online Performance Reporting System (ACPRS)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to June 8, 2020.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0001'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: EngelSM@state.gov.*
- *Regular Mail:* Send written comments to: Sarah Tajalli, Accenture Federal Services Contractor, Logistics Management, A/LM, 1800 N Kent Street, Arlington, VA 22209.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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, may be made to Sarah Tajalli, Accenture Federal Services Contractor, U.S. Department of State, Bureau of Administration, Office of Logistics Management (A/LM), Suite 3150, 1800 N Kent Street, Arlington, VA. She may be reached by phone at (571) 551–4511 or by email at *EngelSM@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* State Assistance Management System (SAMS) Domestic Results Monitoring Module.
- *OMB Control Number:* 1405–0183.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of Logistic Management (A/LM).
- *Form Number:* DS–4127.
- *Respondents:* Recipients of Department of State grants.
- *Estimated Number of Respondents:* 240.
- *Estimated Number of Responses:* 960.
- *Average Time per Response:* 20 hours.
- *Total Estimated Burden Time:* 19,200 hours.
- *Frequency:* Quarterly.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In compliance with OMB Guidelines contained in 2 CFR 200, recipient organizations are required to provide, and the U.S. Department of State is required to collect, periodic program and financial performance reports. The responsibility of the Department to track and monitor the programmatic and financial performance necessitates a database that can help facilitate this in a consistent and standardized manner. The SAMS Domestic Results Monitoring Module and ACPRS enables enhanced monitoring and evaluation of grants through standardized collection and storage of relevant award elements, such as quarterly progress reports, workplans, results monitoring plans, grant agreements, and other business information related to implementers. The SAMS Domestic Results Monitoring Module streamlines communication with implementers and allows for rapid identification of information gaps for specific projects.

Methodology

Information will be electronically entered into SAMS Domestic and ACPRS by respondents.

Jennifer Gorkowski,

SAMS Deputy Program Manager.

[FR Doc. 2020–07245 Filed 4–6–20; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0230]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from five individuals treated with Implantable Cardioverter Defibrillators (ICDs) who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0230* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On November 5, 2019, FMCSA published a **Federal Register** notice (84 FR 59672) announcing receipt of applications from six individuals treated with ICDs and requested comments from the public. These six individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on December 5, 2019, and six comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting five of these six exemption requests would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(4). One individual's application was withdrawn. A summary of each applicant's medical history related to their ICD exemption request was discussed in the November 5, 2019, **Federal Register** notice and will not be repeated here.

The Agency's decision regarding these exemption applications is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007, evidence report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' [1] and a December 2014, focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of these reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.[2] The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received six comments in this proceeding. Five of the six comments were favorable towards the applicants continuing to drive CMV's with ICD's. The sixth comment was submitted by Mr. Corey Tugwell's cardiologist. His cardiologist's comments supported the withdrawal of Mr. Tugwell's exemption application.

In response to the comments, FMCSA believes that a driver with an ICD is at risk for incapacitation if the device discharges. This risk is combined with the risks associated with the underlying cardiovascular condition for which the ICD has been implanted as a primary or secondary preventive measure. Mr. Tugwell's application was withdrawn because an exemption is unnecessary. Mr. Tugwell was notified that he must still complete a medical certification examination by a certified medical examiner on the National Registry of Certified Medical Examiners to determine whether his underlying cardiovascular condition is stable, and if he meets the cardiovascular physical qualification standards (49 CFR 391.41(b)(4)) to receive a medical examiner's certificate.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, available medical and scientific data concerning ICDs, and any relevant public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. The December 2014 focused research report discussed earlier upholds the findings of the April 2007 report and

[1] The reports are available on the internet at *https://rosap.ntl.bts.gov/view/dot/16462; https://rosap.ntl.bts.gov/view/dot/21199.*

[2] These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following five applicants have been denied exemptions from the physical qualification standards in § 391.41(b)(4):

Charles Huff (OH)
Brian J. Hullopeter (MN)
John Gittenmeier (MO)
Gaetano Letizia (NJ)
Thomas D. Worsley (VA)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07283 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0046]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from seven individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 7, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Operations Docket No. FMCSA–2020–0046 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0046.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0046), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0046.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0046* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The seven individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate

the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Jason Allie

Mr. Allie is a 35 year-old class C driver in California. He has a history of a single seizure and has been seizure free since 2015. He takes anti-seizure medication with the dosage and frequency remaining the same since June 2015. His physician states that he is supportive of Mr. Allie receiving an exemption.

Jay Asack

Mr. Asack is a 28 year-old class D driver in Massachusetts. He has a history of epilepsy and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that she is supportive of Mr. Asack receiving an exemption.

David Bigler

Mr. Bigler is a 31 year-old class D driver in Minnesota. He has a history of epilepsy and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2017. His physician states that he is supportive of Mr. Bigler receiving an exemption.

Barry Dull

Mr. Dull is a 54 year-old class D driver in Ohio. He has a history of seizure disorder and has been seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. His physician states that he is supportive of Mr. Dull receiving an exemption.

Jeffrey Kuper

Mr. Kuper is a 46 year old class AM driver in Illinois. He has a history of seizure disorder and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that she is supportive of Mr. Kuper receiving an exemption.

John Mieyr

Mr. Mieyr is a 51 year-old class D driver in Montana. He has a history of seizure disorder and has been seizure free since 2006. He takes anti-seizure medication with the dosage and frequency remaining the same since 1993. His physician states that she is supportive of Mr. Mieyr receiving an exemption.

Harold Seaton

Mr. Seaton is a 63 year old class D, A CDL driver in Kentucky. He has a history of seizure disorder and has been seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2015. His physician states that he is supportive of Mr. Seaton receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07285 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in Appendix A to Part 391—Medical Advisory Criteria, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0242]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise and extend an existing ICR titled, ''Hazardous Materials Safety Permits.'' This ICR requires companies holding safety permits to develop communications plans that allow for the periodic tracking of the shipments. A record of the communications that includes the time of the call and location of the shipment may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or readily available to the employees at the company's principal place of business. In response to the 60-day **Federal Register** Notice published on November 7, 2019, FMCSA received one comment that did not relate to this ICR.

DATES: Please send your comments by May 7, 2020. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Rach, Office of Enforcement and Compliance, Hazardous Materials Division, Department of Transportation, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2307; email *suzanne.rach@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Hazardous Materials Safety Permits.

OMB Control Number: 2126–0030.

Type of Request: Revision and Extension of a currently-approved information collection.

Respondents: Motor carriers subject to the HM Safety Permit requirements in 49 CFR part 385, subpart E.

Estimated Number of Respondents: 987.

Estimated Time per Response: 5 minutes. The communication between motor carriers and their drivers must take place at least two times per day. It is estimated that it will take 5 minutes to maintain a daily communication record for each driver.

Expiration Date: August 31, 2020.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 692,000 hours [8.3 million trips × 5 minutes per record ÷ 60 minutes per hour = 691,667 rounded to 692,000].

Background: The Secretary of Transportation is responsible for implementing regulations to issue safety permits for transporting certain hazardous materials (HM) in accordance with 49 U.S.C. 5101 *et seq.* The HM Safety Permit regulations (49 CFR part 385, subpart E) require carriers to develop and maintain route plans so that law enforcement officials can verify the correct location of the HM shipment. The FMCSA requires companies holding safety permits to develop a communications plan that allows for the periodic tracking of the shipment. This ICR covers the record of communications that includes the time of the call and location of the shipment. The records may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or be readily available to employees at the company's principal place of business. The currently-approved information collection is based on an estimated 1,304 respondents. The total number of companies now holding a safety permit is 987 therefore in this ICR the estimated number of respondents is being revised to reflect this number.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Kenneth H. Riddle,

Acting Associate Administrator, Office of Registration and Research.

[FR Doc. 2020–07222 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0157]

Agency Information Collection Activities; Revision of an Approved Information Collection: Training Certification for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to revise an ICR titled ''Training Certification for Entry-Level Commercial Motor Vehicle Operators,'' which will now be used to register providers of entry-level driver training and to provide State Drivers' Licensing Agencies with information on individuals who have completed said training. If approved, this revision will allow FMCSA to collect information on registered training providers and entry-level driver training certification information until 2022.

DATES: We must receive your comments on or before May 7, 2020. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Joshua Jones, Commercial Driver's License Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE,

Washington, DC 20590. Telephone: 202–366–7332; email: *Joshua.jones@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126–0028.

Type of Request: Revision of a currently-approved information collection.

IC–1 (Training Certification for Entry-Level Drivers Under Subpart E)

Respondents: Entry-level Commercial Motor Vehicle (CMV) operators.

Estimated Number of Respondents (average per year): 235,824.

Estimated Time per Response (average): 10 minutes.

Expiration Date: April 30, 2020.

Frequency of Response: On occasion. Entry-level interstate CDL holders receive a certificate when they successfully complete mandatory training, and must present a copy of it to their employer in order to be qualified to drive a commercial motor vehicle (CMV) in interstate commerce. The employer keeps a copy of the training certificate in the driver qualification file.

Estimated Total Annual Burden for IC–1: 39,304 hours.

IC–2 (Training Provider Registration)

Respondents: Training providers.

Estimated Number of Respondents (average per year): 6,837.

Estimated Time per Response (average): 1.84 hours.

Expiration Date: April 30, 2020.

Frequency of Response: All training providers will need to initially register once. Additionally, all registered training providers must update their information at least biennially. They are also required to provide an update if any key information (company name, address, phone number, types of training offered, etc.) changes prior to their biennial update.

Estimated Total Annual Burden for IC–2: 15,026 hours.

IC–3 (Driver Training Certification)

Respondents: Training providers.

Estimated Number of Respondents (average per year): 6,837.

Estimated Time per Response: 5 minutes.

Expiration Date: April 30, 2020.

Frequency of Response: After an individual driver-trainee completes training administered by a training provider listed on the Training Provider Registry (TPR), that training provider must submit training certification information regarding the driver-trainee to the TPR.

Estimated Total Annual Burden for IC–3: 12,946 hours.

Estimated Total Burden Under this ICR: 67,276 hours.

Background

Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991) directed the Federal Highway Administration (predecessor Agency to FMCSA) to ''. . . commence a rulemaking proceeding on the need to require training of all entry level drivers of commercial motor vehicles.'' FMCSA subsequently published the final rule titled ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (69 FR 29384) on May 21, 2004, with an effective date of July 20, 2004, implementing Section 4007(a)(2) of ISTEA. The rule mandated training for interstate CMV drivers on four topics: Driver qualifications, hours-of-service of drivers, driver wellness, and whistle-blower protection. Under Subpart E of the existing Entry Level Driver Training (ELDT) requirements of 49 CFR part 380, employers are prohibited from allowing an entry-level driver to operate a CMV without ensuring that the driver has received this ELDT as specified under 49 CFR 380.503. These entry-level interstate CDL drivers receive a certificate when they successfully complete the mandatory training, and must present a copy of it to their employer to be qualified to drive a CMV in interstate commerce. The employer keeps a copy of the training certificate in the driver qualification file. During an investigation, the certificate serves as proof that the CDL driver completed the required training. The currently approved collection of information with OMB Control Number 2126–0028 titled ''Training Certification for Entry-Level Commercial Motor Vehicle Operators'' which was most recently approved on April 19, 2017, and which has an expiration date of April 30, 2020, reflects these existing ELDT requirements under Subpart E of 49 CFR part 380.

On July 6, 2012, President Obama signed legislation titled the ''Moving Ahead for Progress in the 21st Century Act'' (MAP–21) (Pub. L. 112–141, 126 Stat. 405, 791). Section 32304 of MAP–21 directed FMCSA to develop and establish minimum driver training standards for applicants for a CDL and/or certain CDL endorsements. FMCSA subsequently published the final rule titled ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (81 FR 88732) (ELDT final rule) on December 8, 2016, with a compliance date of February 7, 2020, implementing section 32304 of MAP–21. That final rule eliminated the existing driver training regulations under subpart E of part 380, established new minimum training standards for entry-level drivers, and in doing so established two separate information collection actions: (1) Training providers must submit information to FMCSA to ensure that they meet the new training provider eligibility requirements and may therefore be listed on a new TPR; and (2) after an individual driver-trainee completes training administered by a training provider listed on the TPR, that training provider must submit training certification information regarding the driver-trainee to the TPR. However, because the compliance dates for that final rule were set as three years after its publication, FMCSA did not, at that time, revise the collection of information to reflect these two new provisions, opting to provide an update at the time of the next renewal for the collection. Subsequently, on March 6, 2019, FMSCA published a separate final rule titled ''Commercial Driver's License Upgrade from Class B to Class A'' (84 FR 8029), that amended the ELDT regulations that were published on December 8, 2016, by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B CDL holders upgrading to a Class A CDL. This March 6, 2019, final rule does not substantively affect the paperwork collection burden associated with the ELDT regulations, therefore no action was taken to update the collection of information at that time.

On February 4, 2020, the Agency published an interim final rule titled ''Extension of Compliance Date for Entry-Level Driver Training'' (85 FR 6088) that further amends the ELDT regulations that were published on December 8, 2016, by extending the compliance date for the rule from February 7, 2020, to February 7, 2022. This compliance date extension will provide FMCSA additional time to complete development of the TPR, and provides State Driver Licensing Agencies with time to modify their information technology systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR. In a July 18, 2019, proposed rule titled ''Partial Extension of Compliance Date for Entry-Level Driver Training'' (84 FR 34324), FMCSA had proposed extending the compliance date from February 7, 2020, to February 7, 2022, only for the

requirement for training providers to submit training certification information to the TPR for each individual driver-trainee that completes training. The compliance date for the ''Training Provider Registration'' information collection activities was proposed to have remained February 7, 2020. Under the February 4, 2020, interim final rule, FMCSA is now delaying the entire ELDT final rule, as opposed to a partial delay as originally proposed, due to delays in implementation of the TPR that were not foreseen when the proposed rule was published.

Under this revision, the existing entry-level driver training requirements and information collection activities under 49 CFR 380 Subpart E that will continue to be in force for the first two years, 2020 and 2021, of the three-year period covered by this ICR are treated as a separate information collection (IC), IC–1. The ''Training Provider Registration'' information collection activities, and the ''Driver Training Certification Information'' information collection activities, that go into effect as of February 7, 2022, under the new ELDT requirements are also treated as separate information collections, IC–2 and IC–3, respectively.

On July 3, 2019, FMCSA published a notice in the **Federal Register** allowing for a 60-day comment period on this ICR. The Agency received one comment to that notice. The Commercial Vehicle Training Association (CVTA) stated their support for OMB to approve the new collections under what are now IC–2 (Training Provider Registration) and IC–3 (Driver Training Certification Information). CVTA also sought clarification as to why there were separate ICs presented in the 60-day notice for the ''Training Provider Registration'' function and the ''Driver Training Certification Information'' function. The Agency clarifies that it presented those two activities as separate ICs in order to improve the clarity and transparency of the analysis. Guidance from the Office of Information and Regulatory Affairs (OIRA) at OMB regarding the preparation of ICRs and Supporting Statements recommends that each form or collection instrument have a separate IC within a given ICR, in order to provide a more meaningful and easily understood estimate of the burden associated with each form or collection. OIRA also recommends that agencies present separate ICs within an ICR if the Agency believes that doing so would be informative.

Public Comments Invited

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87.

Kenneth Riddle,

Acting Associate Administrator for Registration and Research.

[FR Doc. 2020–07221 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0024]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 7, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2020–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0024.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0024), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0024.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0024* and

choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Dustin Bemesderfer

Mr. Bemesderfer, 32, holds a class E license in Florida.

Jason Burkholder

Mr. Burkholder, 44, holds a class M license in Indiana.

James Gray

Mr. Gray, 29, holds a class D license in Ohio.

Richard Hadlock

Mr. Hadlock, 44, holds a class D in Illinois.

Matthew Honkanen

Mr. Honkanen, 38, holds a class D license in Minnesota.

Larry Lang

Mr. Lang, 31, holds a class C license in Texas.

Jesus Perez

Mr. Perez, 37, holds a class D license in Illinois.

Jonathan Ramirez

Mr. Ramirez, 30, holds a class C license in California.

Brandon St. George

Mr. St. George, 31, holds a class CM license in Texas.

Yury Volkov

Mr. Volkov, 34, holds a class C license in Pennsylvania.

Aldale Williamson

Mr. Williamson, 27, holds a class D license in Washington, DC.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07284 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0124; FMCSA–2013–0125; FMCSA–2013–0126; FMCSA–2014–0104; FMCSA–2015–0327; FMCSA–2016–0003; FMCSA–2017–0057; FMCSA–2017–0058]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 13 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on March 27, 2020. The exemptions expire on March 27, 2022. Comments must be received on or before May 7, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0124, Docket No. FMCSA–2013–0125, Docket No. FMCSA–2013–0126, Docket No. FMCSA–2014–0104, Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0057, or Docket No. FMCSA–2017–0058 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0124; FMCSA–2013–0125; FMCSA–2013–0126; FMCSA–2014–0104; FMCSA–2015–0327; FMCSA–2016–0003; FMCSA–2017–0057; FMCSA–2017–0058), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2014–0104, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, or FMCSA–2017–0058, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2014–0104, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, or FMCSA–2017–0058, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 13 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 13 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 13 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of March 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Deontae Blanks (TX)
Marquarius Boyd (MS)
Arthur Brown (FL)

Michael Bunjer (MD)
Marco Cisneros (CA)
Keith Drown (ID)
Edison Garcia (MD)
David Garland (ME)
James Gooch (MO)
Joseph Piros (CA)
Robert Quintero (IL)
Ronald Rumsey (IA)
Charles Wirick (MD).

The drivers were included in docket number FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2014–0104, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, or FMCSA–2017–0058. Their exemptions are applicable as of March 27, 2020, and will expire on March 27, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 13 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2020–07286 Filed 4–6–20; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2012–0332; FMCSA–2013–0122; FMCSA–2013–0123]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on January 14, 2020. The exemptions expire on January 14, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On January 27, 2020, FMCSA published a notice announcing its decision to renew exemptions for 12 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (85 FR 4758). The public comment period ended on February 26, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding that was in support of the hearing exemptions.

IV. Conclusion

Based upon its evaluation of the 12 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of January 14, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (85 FR 4758):

Geoffrey Canoyer (MN)

Chase Cook (VA)

Jerry Ferguson (TX)

Douglas Gray (OR)

Sue Gregory (UT)

Buford Hudson (KY)

William Larson (NC)

Raymond Norris (TX)

Jonathan Pitts (MD)

James Queen (FL)

James Schubin (CA)

Morris Townsend (NC)

The drivers were included in docket number FMCSA–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123. Their exemptions are applicable as of January 14, 2020, and will expire on January 14, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07282 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; FMCSA–2017–0027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 76 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; FMCSA–2017–0027, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On January 27, 2020, FMCSA published a notice announcing its decision to renew exemptions for 76 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (85 FR 4769). The public comment period ended on February 27, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is

physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 76 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10). As of February 9, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 61 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 37197; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 70 FR 2701; 70 FR 16887; 70 FR 48797; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 4632; 72 FR 8417; 72 FR 36099; 72 FR 39879; 72 FR 46261; 72 FR 52419; 72 FR 54971; 72 FR 54972; 72 FR 62896; 72 FR 62897; 72 FR 64273; 72 FR 67340; 72 FR 71993; 72 FR 71995; 72 FR 71998; 73 FR 1395; 73 FR 5259; 73 FR 6246; 74 FR 34395; 74 FR 37295; 74 FR 43221; 74 FR 43223; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 60021; 74 FR 60022; 74 FR 62632; 74 FR 65845; 74 FR 65847; 75 FR 1450; 75 FR 1451; 75 FR 4623; 76 FR 25766; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 50318; 76 FR 53708; 76 FR 55469; 76 FR 62143; 76 FR 64164; 76 FR 64169; 76 FR 64171; 76 FR 70210; 76 FR 70212; 76 FR 70215; 76 FR 75940; 76 FR 75943; 76 FR 78728; 76 FR 78729; 76 FR 79760; 77 FR 543; 77 FR 545; 77 FR 3554; 78 FR 22598; 78 FR 24798; 78 FR 27281; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67454; 78 FR 67460; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 76704; 78 FR 76705; 78 FR 76707; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 2748; 79 FR 3919; 79 FR 4803; 79 FR 53708; 80 FR 31635; 80 FR 31640; 80 FR 33007; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 44188; 80 FR 48411; 80 FR 49302; 80 FR 50915; 80 FR 53383; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 62163; 80 FR 63839; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 44680; 82 FR 37499; 82 FR 47312; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922; and 83 FR 6925):

Deneris G. Allen (LA)
Christopher L. Bagby (VA)
Wayne Barker (OK)
Richard D. Becotte (NH)
Gary L. Best (MI)
Timothy A. Bohling (CO)
Charles W. Bradley (SC)
Jean-Pierre G. Brefort (CT)
Duane W. Brzuchalski (AZ)
John Camp (GA)
Henry L. Chastain (GA)
Martina B. Classen (IA)
Aubrey R. Cordrey, Jr. (DE)
Robert L. Cross, Jr. (MO)
Matthew W. Daggs (MO)
James M. Del Sasso (IL)
Albert M. DiVella (NV)
Michael M. Edleston (MA)
Elhadji M. Faye (CA)
James P. Fitzgerald (MA)
Russell W. Foster (OH)
Gordon R. Fritz (WI)
Richard L. Gandee (OH)
James E. Goodman (AL)
Christopher L. Granby (MI)
John N. Guilford (AL)
Louis M. Hankins (IL)
Steven M. Hoover (IL)
Frank E. Johnson, Jr. (FL)
Carol Kelly (IN)
Roger D. Kool (IA)
William E. Leimkuehler (OK)
Michael S. Lewis (NC)
Jose A. Marco (TX)
Dennis L. Maxcy (NY)
George A. McCue (NV)
Cameron S. McMillen (NM)
David L. Menken (NY)
Gregory G. Miller (OH)
Rashawn L. Morris (VA)
James R. Murphy (NY)
Charles D. Oestreich (MN)
Carlos A. Osollo (NM)
Robert M. Pickett II (MI)
Johnny L. Powell (MD)
Branden J. Ramos (CA)
Andres Regalado (CA)
Daniel T. Rhodes (IL)
Thenon D. Ridley (TX)
Christopher M. Rivera (NM)
Richard S. Robb (NM)
Angelo D. Rogers (AL)
Juan M. Rosas (AZ)
David J. Rothermal (RI)
James J. Slemmer (PA)
Juan E. Sotero (FL)
George E. Todd (WV)
Aaron M. Vernon (OH)
John H. Voigts (AZ)
Joseph A. Wells (IL)
James D. Zimmer (OH)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; and FMCSA–2015–0345. Their exemptions are applicable as of February 9, 2020, and will expire on February 9, 2022.

As of February 12, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 1474; 81 FR 48493; and 83 FR 6925):

Charles H. Baim (PA); Walton W. Smith (VA); and Aaron D. Tillman (DE)

The drivers were included in docket number FMCSA–2015–0347. Their exemptions are applicable as of February 12, 2020, and will expire on February 12, 2022.

As of February 16, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 2292; 83 FR 2311; 83 FR 18648; and 83 FR 24589):

Jordan N. Bean (ND)
Micheal H. Eheler (WI)
Colin D. McGregor (WI)
Ryan J. Plank (PA)
Douglas E. Porter (MI)
Jorge A. Rodriguez (CA)
Jimmy W. Rowland (FL)
Aaron R. Rupe (IL)
Juan D. Zertuche (TX)

The drivers were included in docket numbers FMCSA–2017–0026; and FMCSA–2017–0027. Their exemptions are applicable as of February 16, 2020, and will expire on February 16, 2022.

As of February 22, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 539; 77 FR 10608; 79 FR 6993; 81 FR 15401; and 83 FR 6925):

Brian K. Cline (NC); and Mickey Lawson (NC)

The drivers were included in docket number FMCSA–2011–0325. Their exemptions are applicable as of February 22, 2020, and will expire on February 22, 2022.

As of February 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 1908; 79 FR 14333; 81 FR 15401; and 83 FR 6925):

Danielle Wilkins (CA)

The driver was included in docket number FMCSA–2013–0174. The exemption is applicable as of February 27, 2020, and will expire on February 27, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07281 Filed 4–6–20; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Northeast Pacific Ocean; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR074]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Northeast Pacific Ocean

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey in the northeast Pacific Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 7, 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.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* 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 the 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 the takings are set forth.

National Environmental Policy Act

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

Accordingly, NMFS plans to adopt the National Science Foundation's (NSF's) Environmental Assessment (EA), as we have preliminarily determined that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NSF's EA is available at *https://www.nsf.gov/geo/oce/envcomp/.*

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

Summary of Request

On November 8, 2019, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Cascadia Subduction Zone off the coasts of Washington, Oregon, and British Columbia, Canada. The application was deemed adequate and complete on March 6, 2020. L–DEO's request is for take of small numbers of 31 species of marine mammals by Level A and Level B harassment. Neither L–DEO nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS has previously issued IHAs to L–DEO for similar surveys in the northeast Pacific (*e.g.,* 84 FR 35073, July 22, 2019; 77 FR 41755, July 16, 2012). L–DEO complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the *Description of Marine Mammals in the Area of Specified Activities* section.

Description of Proposed Activity

Overview

Researchers from L–DEO, Woods Hole Oceanographic Institution (WHOI), and the University of Texas at Austin Institute of Geophysics (UTIG), with funding from the NSF, and in collaboration with researchers from Dalhousie University and Simon Fraser University (SFU) propose to conduct a high-energy seismic survey from the Research Vessel (R/V) *Marcus G Langseth* (*Langseth*) in the northeast Pacific Ocean beginning in June 2020. The seismic survey would be conducted at the Cascadia Subduction Zone off the coasts of Oregon, Washington, and

British Columbia, Canada. The proposed two-dimensional (2–D) seismic survey would occur within the Exclusive Economic Zones (EEZs) of Canada and the United States, including U.S. state waters and Canadian territorial waters. The survey would use a 36-airgun towed array with a total discharge volume of ~6,600 cubic inches (in^3) as an acoustic source, acquiring return signals using both a towed streamer as well ocean bottom seismometers (OBSs) and ocean bottom nodes (OBNs).

The proposed study would use 2–D seismic surveying and OBSs and OBNs to investigate the Cascadia Subduction Zone and provide data necessary to illuminate the depth, geometry, and physical properties of the seismogenic portion and updip extent of the megathrust zone between the subducting Juan de Fuca plate and the overlying accretionary wedge/North American plate. These data would provide essential constraints for earthquake and tsunami hazard assessment in this heavily populated region of the Pacific Northwest. The primary objectives of the survey proposed by researchers from L–DEO, WHOI, and UTIG is to characterize: (1) The deformation and topography of the incoming plate; (2) the depth, topography, and reflectivity of the megathrust; (3) sediment properties and amount of sediment subduction; and (4) the structure and evolution of the accretionary wedge, including geometry and reflectivity of fault networks, and how these properties vary along strike, spanning the full length of the margin and down dip across what may be the full width of the Cascadia Subduction Zone.

Dates and Duration

The proposed survey is expected to last for 40 days, with 37 days of seismic operations, 2 days of equipment deployment, and 1 day of transit. R/V *Langseth* would likely leave out of and return to port in Astoria, Oregon, during June–July 2020.

Specific Geographic Region

The proposed survey would occur within ~42–51° N, ~124–130° W. Representative survey tracklines are shown in Figure 1. Some deviation in actual track lines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The survey is proposed to occur within the EEZs of the United States and Canada, as well as in U.S. state waters and Canadian territorial waters, ranging in depth 60–4400 meters (m). A maximum of 6,890 km of transect lines would be surveyed. Most of the survey (63.2 percent) would occur in deep water (>1,000 m), 26.4 percent would occur in intermediate water (100–1,000 m deep), and 10.4 percent would take place in shallow water <100 m deep. Approximately 4 percent of the transect lines (295 km) would be undertaken in Canadian territorial waters (from 0–12 nautical miles (22.2 km) from shore), with most effort in intermediate waters. NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS has still calculated the level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our preliminary determination under the MMPA that the activity will have a negligible impact on the affected species.

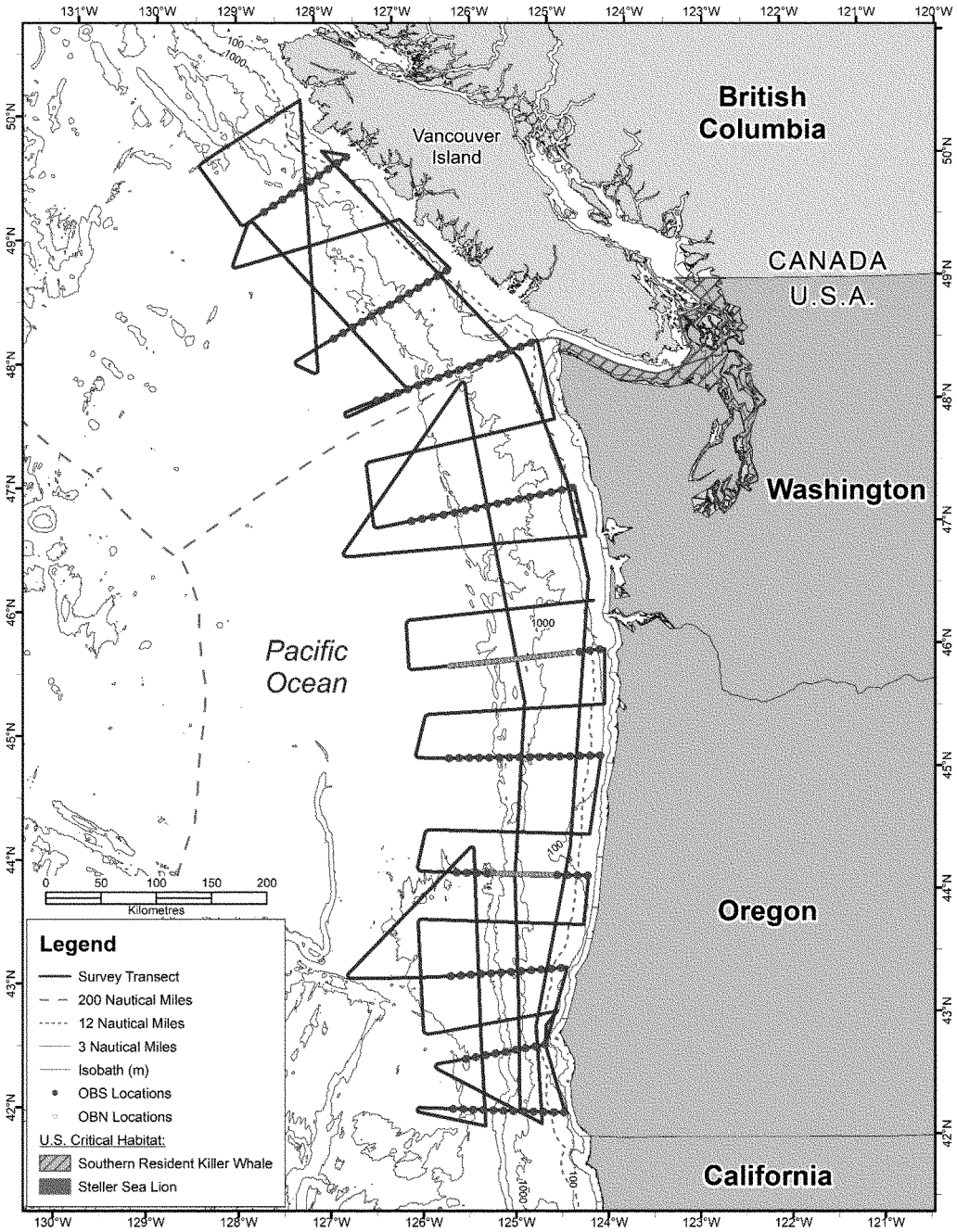

Figure 1. Location of the Proposed Seismic Survey in the Northeast Pacific Ocean

Detailed Description of Specific Activity

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, R/V *Langseth,* which is owned by NSF and operated on its behalf by L–DEO. R/V *Langseth* would deploy an array of 36 airguns as an energy source with a total volume of ~6,600 in^3. The array consists of 20 Bolt 1500LL airguns with volumes of 180 to 360 in^3 and 16 Bolt 1900LLX airguns with volumes of 40 to 120 in^3. The airgun array configuration is illustrated in Figure 2–11 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF–USGS, 2011). The vessel speed during seismic operations would be approximately 4.2 knots (~7.8 km/hour) during the survey and the airgun array would be towed at a depth of 12 m. The receiving system would consist of one 15-kilometer (km) long hydrophone streamer, OBSs, and OBNs. R/V *Oceanus,* which is owned by NSF and operated by Oregon State University, would be used to deploy the OBSs and OBNs. As the airguns are towed along the survey lines, the hydrophone streamer would transfer the data to the on-board processing system, and the OBSs and OBNs would receive and store the returning acoustic signals internally for later analysis.

Long 15-km-offset multichannel seismic (MCS) data would be acquired along numerous 2–D profiles oriented perpendicular to the margin and located

to provide coverage in areas inferred to be rupture patches during past earthquakes and their boundary zones. The survey would also include several strike lines including one continuous line along the continental shelf centered roughly over gravity-inferred fore-arc basins to investigate possible segmentation near the down-dip limit of the seismogenic zone. The margin normal lines would extend ~50 km seaward of the deformation front to image the region of subduction bend faulting in the incoming oceanic plate, and landward of the deformation front to as close to the shoreline as can be safely maneuvered. It is proposed that the southern transects off Oregon are acquired first, followed by the profiles off Washington and Vancouver Island, British Columbia.

The OBSs would consist of short-period multi-component OBSs from the Ocean Bottom Seismometer Instrument Center (OBSIC) and a large-*N* array of OBNs from a commercial provider to record shots along ~11 MCS margin-perpendicular profiles. OBSs would be deployed at 10-km spacing along ~11 profiles from Vancouver Island to Oregon, and OBNs would be deployed at a 500-m spacing along a portion of two profiles off Oregon. Two OBS deployments would occur with a total of 115 instrumented locations. 60 OBSs would be deployed to instrument seven profiles off Oregon, followed by a second deployment of 55 OBSs to instrument four profiles off Washington and Vancouver Island. The first deployment off Oregon would occur prior to the start of the proposed survey, after which R/V *Langseth* would acquire data in the southern portion of the study area. R/V *Oceanus* would start recovering the OBSs from deployment 1, and then re-deploy 55 OBSs off Washington and Vancouver Island, so that R/V *Langseth* can acquire data in the northern portion of the survey area. The OBSs have a height and diameter of ~1 m, and an ~80 kilogram (kg) anchor. To retrieve OBSs, an acoustic release transponder (pinger) is used to interrogate the instrument at a frequency of 8–11 kHz, and a response is received at a frequency of 11.5–13 kHz. The burn-wire release assembly is then activated, and the instrument is released to float to the surface from the anchor, which is not retrieved.

A total of 350 OBNs would be deployed: 229 nodes along one transect off northern Oregon, and 121 nodes along a second transect off central Oregon. The nodes are not connected to each other; each node is independent from each other, and there are no cables attached to them. Each node has internal batteries; all data is recorded and stored internally. The nodes weigh 21 kg in air (9.5 kg in water). As the OBNs are small (330 millimeters (mm) x 289 mm x 115 mm), compact, not buoyant, and lack an anchor-release mechanism, they cannot be deployed by free-fall as with the OBSs. The nodes would be deployed and retrieved using a remotely operated vehicle (ROV); the ROV would be deployed from R/V *Oceanus.* OBNs would be deployed 17 days prior to the start of the R/V *Langseth* cruise. The ROV would be fitted with a skid with capacity for 32 units, lowered to the seafloor, and towed at a speed of 0.6 knots at 5–10 m above the seafloor between deployment sites. After the 32 units are deployed, the ROV would be retrieved, the skid would be reloaded with another 32 units, and sent back to the seafloor for deployment, and so on. The ROV would recover the nodes 3 days after the completion of the R/V *Langseth* cruise. The nodes would be recovered one by one by a suction mechanism. Take of marine mammals is not expected to occur incidental to L–DEO's use of OBSs and OBNs.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) would be operated from R/V *Langseth* continuously during the seismic surveys, but not during transit to and from the survey area. All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have proposed the studies. The vessel would be self-contained, and the crew would live aboard the vessel. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP, or ADCP because they will be operated only during seismic acquisition, and it is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, given their characteristics (*e.g.,* narrow downward-directed beam), marine mammals would experience no more than one or two brief ping exposures, if any exposure were to occur. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the survey 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 (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (Caretta *et al.,* 2019; Muto *et al.,* 2019). All MMPA stock information presented in Table 1 is the most recent available at the time of publication and is available in the 2018 SARs (Caretta *et al.,* 2019; Muto *et al.,* 2019) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*). Where available, abundance and status information is also presented

for marine mammals in Canadian waters in British Columbia.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/-; N	26,960 (0.05, 25,849, 2016).	801	138.
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington.	-/-; Y	2,900 (0.05, 2,784, 2014)	16.7	>42.1.
		Central North Pacific	-/-; Y	10,103 (0.30, 7,891, 2006).	83	25.
Minke whale	*Balaenoptera acutorostrata.*	California/Oregon/Washington.	-/-; N	636 (0.72, 369, 2014)	3.5	>1.3.
Sei whale	*Balaenoptera borealis*	Eastern North Pacific	E/D; Y	519 (0.4, 374, 2014)	0.75	>0.2.
Fin whale	*Balaenoptera physalus*	California/Oregon/Washington.	E/D; Y	9,029 (0.12, 8,127, 2014)	81	>2.0.
		Northeast Pacific	E/D; Y	3,168 (0.26, 2,554, 2013)	5.1	0.4.
Blue whale	*Balaenoptera musculus*	Eastern North Pacific	E/D; Y	1,496 (0.44, 1,050, 2014)	1.2	>19.4.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	California/Oregon/Washington.	E/D; Y	1,997 (0.57, 1,270, 2014)	2.5	0.4.
Family Kogiidae:						
Pygmy sperm whale	*Kogia breviceps*	California/Oregon/Washington.	-/-; N	4,111 (1.12, 1,924, 2014)	19	0.
Dwarf sperm whale	*Kogia sima*	California/Oregon/Washington.	-/-; N	Unknown (Unknown, Unknown, 2014).	Undetermined	0.
Family Ziphiidae (beaked whales):						
Cuvier's beaked whale.	*Ziphius cavirostris*	California/Oregon/Washington.	-/-; N	3,274 (0.67, 2,059, 2014)	21	<0.1.
Baird's beaked whale	*Berardius bairdii*	California/Oregon/Washington.	-/-; N	2,697 (0.6, 1,633, 2014)	16	0
Blainville's beaked whale.	*Mesoplodon densirostris*	California/Oregon/Washington.	-/-; N	3,044 (0.54, 1,967, 2014)	20	0.1.
Hubbs' beaked whale	*Mesoplodon carlshubbi.*					
Stejneger's beaked whale.	*Mesoplodon stejnegeri.*					
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	-/-; N	1,924 (0.54, 1,255, 2014)	11	>1.6.
Striped dolphin	*Stenella coeruleoalba*	California/Oregon/Washington.	-/-; N	29,211 (0.2, 24,782, 2014).	238	>0.8.
Common dolphin	*Delphinus delphis*	California/Oregon/Washington.	-/-; N	969,861 (0.17, 839,325, 2014).	8,393	>40.
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	California/Oregon/Washington.	-/-; N	26,814 (0.28, 21,195, 2014).	191	7.5.
		British Columbia [4]	N/A	22,160 (unknown, 16,522, 2008).	Unknown	Unknown.
Northern right whale dolphin.	*Lissodelphis borealis*	California/Oregon/Washington.	-/-; N	26,556 (0.44, 18,608, 2014).	179	3.8.
Risso's dolphin	*Grampus griseus*	California/Oregon/Washington.	-/-; N	6,336 (0.32, 4,817, 2014)	46	>3.7.
False killer whale	*Pseudorca crassidens*	N/A	N/A	N/A	N/A	N/A.
Killer whale	*Orcinus orca*	Offshore	-/-; N	300 (0.1, 276, 2012)	2.8	0.
		Southern Resident	E/D; Y	75 (N/A, 75, 2018)	0.13	0.
		Northern Resident	-/-; N	302 (N/A, 302, 2018)	2.2	0.2.
		West Coast Transient	-/-; N	243 (N/A, 243, 2009)	2.4	0.
Short-finned pilot whale.	*Globicephala macrorhynchus.*	California/Oregon/Washington.	-/-; N	836 (0.79, 466, 2014)	4.5	1.2.
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	-/-; N	21,487 (0.44, 15,123, 2011).	151	>3.0.
		Northern California/Southern Oregon.	-/-; N	35,769 (0.52, 23,749, 2011).	475	>0.6.
		British Columbia [4]	N/A	8,091 (unknown, 4,885, 2008).	Unknown	Unknown.
Dall's porpoise	*Phocoenoides dalli*	California/Oregon/Washington.	-/-; N	25,750 (0.45, 17,954, 2014).	172	0.3.
		British Columbia [4]	N/A	5,303 (unknown, 4,638, 2008).	Unknown	Unknown.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

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 Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):.						
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	-/D; Y	620,660 (0.2, 525,333, 2016).	11,295	399.
		California	-/D; N	14,050 (N/A, 7,524, 2013).	451	1.8.
California sea lion	*Zalophus californianus*	U.S.	-/-; N	257,606 (N/A, 233,515, 2014).	14,011	>321.
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-/-; N	43,201 (see SAR, 43,201, 2017).	2,592	113.
		British Columbia[4]	N/A	4,037 (unknown, 1,100, 2008).	Unknown	Unknown.
Guadalupe fur seal	*Arctocephalus philippii townsendi.*	Mexico to California	T/D; Y	34,187 (N/A, 31,019, 2013).	1,062	>3.8.
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Oregon/Washington Coastal.	-/-; N	Unknown (Unknown, Unknown, 1999).	Undetermined	10.6.
		British Columbia[4]	N/A	24,916 (Unknown, 19,666, 2008).	Unknown	Unknown.
Northern elephant seal.	*Mirounga angustirostris*	California Breeding	-/-; N	179,000 (N/A, 81,368, 2010).	4,882	8.8.

[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-assessments.* CV is coefficient of variation; N_{min} 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. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Best *et al.* (2015) total abundance estimates for animals in British Columbia based on surveys of the Strait of Georgia, Johnstone Strait, Queen Charlotte Sound, Hecate Strait, and Dixon Entrance.

All species that could potentially occur in the proposed survey areas are included in Table 1. However, additional species have been recorded in the specified geographic region but are considered sufficiently rare that take is not anticipated. The temporal and/or spatial occurrence of North Pacific right whales (*Eubalaena japonica*) is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Only 82 sightings of right whales in the entire eastern North Pacific were reported from 1962 to 1999, with the majority of these occurring in the Bering Sea and adjacent areas of the Aleutian Islands (Brownell *et al.,* 2001). Most sightings in the past 20 years have occurred in the southeastern Bering Sea, with a few in the Gulf of Alaska (Wade *et al.,* 2011). Despite many miles of systematic aerial and ship-based surveys for marine mammals off the coasts of Washington, Oregon and California over several years, only seven documented sightings of right whales were made from 1990 to 2000 (Waite *et al.,* 2003), and NMFS is not aware of any documented sightings in the area since then. Because of the small population size and the fact that North Pacific right whales spend the summer feeding in high latitudes, the likelihood that the proposed survey would encounter a North Pacific right whale is discountable.

In addition, the Northern sea otter (*Enhydra lutris kenyoni*) may be found in coastal waters of the survey area. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

Two separate populations for gray whales have been recognized in the North Pacific: The eastern North Pacific and the western North Pacific (or Korean-Okhotsk) stocks (LeDuc *et al.,* 2002; Weller *et al.,* 2013). However, the distinction between these two populations has been recently debated owing to evidence that whales from the western feeding area also travel to breeding areas in the eastern North Pacific (Weller *et al.,* 2012, 2013; Mate *et al.,* 2015). Thus it is possible that whales from either the ESA listed endangered Western North Pacific distinct population segment (DPS) or the delisted Eastern North Pacific DPS could occur in the survey area, although it is unlikely that a gray whale from the Western North Pacific DPS would be encountered during the time of the survey as they are expected to be in their feeding grounds in the western North Pacific at the time of the proposed survey. NMFS expects that any gray whales encountered by L–DEO during the proposed survey would be from the Eastern North Pacific DPS only, and is not proposing to authorize take of the endangered Western North Pacific DPS; therefore, the Western North Pacific DPS will not be discussed further in this document.

The eastern North Pacific gray whale breeds and winters in Baja California, and migrates north to summer feeding grounds in the northern Bering Sea, Chukchi Sea, and western Beaufort Sea (Rice and Wolman 1971; Rice 1998; Jefferson *et al.,* 2015). The northward migration occurs from late February to June (Rice and Wolman 1971), with a peak in the Gulf of Alaska during mid-April (Braham 1984). Instead of migrating to arctic and sub-arctic waters, some individuals spend the summer months scattered along the coast from California to southeast Alaska (Rice and Wolman 1971; Nerini 1984; Darling *et al.,* 1998; Calambokidis and Quan 1999; Dunham and Duffus 2001, 2002; Calambokidis *et al.,* 2002, 2015, 2017). There is genetic evidence indicating the existence of this Pacific Coast Feeding Group (PCFG) is a

distinct local subpopulation (Frasier *et al.,* 2011; Lang *et al.,* 2014) and the United States and Canada recognize it as such (COSEWIC 2017; Caretta *et al.,* 2019a). However, the status of the PCFG as a separate stock is currently unresolved (Weller *et al.,* 2013). For the purposes of abundance estimates, the PCFG is defined as occurring between 41° N to 52° N from June 1 to November 30 (IWC 2012). The 2015 abundance estimate for the PCFG was 243 whales (Calambokidis *et al.,* 2017); approximately 100 of those may occur in British Columbia during summer (Ford 2014). In British Columbia, most summer resident gray whales are found in Clayoquot Sound, Barkley Sound, and along the southwestern shore of Vancouver Island, and near Cape Caution on mainland British Columbia (Ford 2014). During surveys in British Columbia waters during summer, most sightings of gray whales were made within 10 km of shore and in water shallower than 100 m (Ford *et al.,* 2010a). Two sightings of three gray whales were seen from R/V *Northern Light* during a survey off southern Washington in July 2012 (RPS 2012a).

Biologically Important Areas (BIAs) for feeding gray whales along the coasts of Washington, Oregon, and California have been identified, including northern Puget Sound, Northwestern Washington, and Grays Harbor in Washington, Depoe Bay and Cape Blanco and Orford Reef in Oregon, and Point St. George in California; most of these areas are of importance from late spring through early fall (Calambokidis *et al.,* 2015). BIAs have also been identified for migrating gray whales along the entire coasts of Washington, Oregon, and California; although most whales travel within 10 km from shore, the BIAs were extended out to 47 km from the coastline (Calambokidis *et al.,* 2015). The proposed surveys would occur during the late spring/summer feeding season, when most individuals from the eastern North Pacific stock occur farther north. Nonetheless, individual gray whales, particularly those from the PCFG could be encountered in nearshore waters of the proposed project area.

On May 30, 2019, NMFS declared an unusual mortality event (UME) for gray whales after elevated numbers of strandings occurred along the U.S. west coast. As of February 8, 2020, a total of 236 stranded gray whales have been reported, including 124 in the United States (48 in Alaska, 35 in Washington, 6 in Oregon, and 35 in California), 101 in Mexico, and 11 in Canada. Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. The UME is ongoing, and NMFS continues to investigate the cause(s). Additional information about the UME is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast.*

Humpback Whale

The humpback whale is found throughout all of the oceans of the world (Clapham 2009). The worldwide population of humpbacks is divided into northern and southern ocean populations, but genetic analyses suggest some gene flow (either past or present) between the North and South Pacific (*e.g.,* Baker *et al.* 1993; Caballero *et al.* 2001). Geographical overlap of these populations has been documented only off Central America (Acevedo and Smultea 1995; Rasmussen *et al.* 2004, 2007). Although considered to be mainly a coastal species, humpback whales often traverse deep pelagic areas while migrating (Clapham and Mattila 1990; Norris *et al.* 1999; Calambokidis *et al.* 2001).

Humpback whales migrate between summer feeding grounds in high latitudes and winter calving and breeding grounds in tropical waters (Clapham and Mead 1999). North Pacific humpback whales summer in feeding grounds along the Pacific Rim and in the Bering and Okhotsk seas (Pike and MacAskie 1969; Rice 1978; Winn and Reichley 1985; Calambokidis *et al.* 2000, 2001, 2008). Humpback in the north Pacific winter in four different breeding areas: (1) Along the coast of Mexico; (2) along the coast of Central America; (3) around the main Hawaiian Islands; and (4) in the western Pacific, particularly around the Ogasawara and Ryukyu islands in southern Japan and the northern Philippines (Calambokidis *et al.* 2008; Bettridge *et al.* 2015).

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Within the proposed survey area, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade *et al.* (2017), the probability that whales encountered in Oregon and California waters are from a given DPS are as follows: Mexico DPS, 32.7 percent; Central America DPS, 67.2 percent; Hawaii DPS, 0 percent. The probability that humpback whales encountered in Washington and British Columbia waters are as follows: Mexico DPS, 27.9 percent; Central America DPS, 8.7 percent; Hawaii DPS, 63.5 percent.

Humpback whales are the most common species of large cetacean reported off the coasts of Oregon and Washington from May to November (Green *et al.,* 1992; Calambokidis *et al.,* 2000; 2004). The highest numbers have been reported off Oregon during May and June and off Washington during July–September. Humpbacks occur primarily over the continental shelf and slope during the summer, with few reported in offshore pelagic waters (Green *et al.,* 1992; Calambokidis *et al.,* 2004, 2015; Becker *et al.,* 2012; Barlow 2016). Six humpback whale sightings (8 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey. There were 98 humpback whale sightings (213 animals) made during the July 2012 L–DEO seismic survey off southern Washington (RPS 2012a), and 11 sightings (23 animals) during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c).

Humpback whales are common in the waters of British Columbia, where they occur in inshore, outer coastal, and continental shelf waters, as well as offshore (Ford 2014). Williams and Thomas (2007) estimated an abundance of 1,310 humpback whales in inshore coastal waters of British Columbia based on surveys conducted in 2004 and 2005. Best *et al.* (2015) provided an estimate of 1,029 humpbacks in British Columbia based on surveys during 2004–2008. In British Columbia, humpbacks are typically seen within 20 km from the coast, in water less than 500 m deep (Ford *et al.,* 2010a). The greatest numbers of humpbacks are seen in British Columbia between April and November, although humpbacks are known to occur there throughout the

year (Ford *et al.,* 2010a; Ford 2014). Humpback whales in British Columbia are thought to belong to at least two distinct feeding stocks; those identified off southern British Columbia show little interchange with those seen off northern British Columbia (Calambokidis *et al.,* 2001, 2008). Humpback whales identified in southern British Columbia show a low level of interchange with those seen off California/Oregon/Washington (Calambokidis *et al.,* 2001).

BIAs for feeding humpbacks along the coasts of Oregon and Washington, which have been described from May to November, are all within approximately 80 km from shore, and include the waters off northern Washington, and Stonewall and Heceta Bank, Oregon (Calambokidis *et al.,* 2015). On October 9, 2019, NMFS issued a proposed rule to designate critical habitat in nearshore waters of the North Pacific Ocean for the endangered Central America DPS and the threatened Mexico DPS of humpback whale (NMFS 2019b). Critical habitat for the Central America DPS and Mexico DPS was proposed within the California Current Ecosystem (CCE) off the coasts California, Oregon, and Washington, representing areas of key foraging habitat. Off Washington and northern Oregon, the critical habitat would extend from the 50-m isobath out to the 1200-m isobath; off southern Oregon (south of 42°10′ N), it would extend out to the 2000-m isobath (NMFS 2019b).

Critical habitat for humpbacks has been designated in four locations in British Columbia (DFO 2013), including in the waters of the proposed survey area off southwestern Vancouver Island. The other three locations are located north of the proposed survey area at Haida Gwaii (Langara Island and Southeast Moresby Island) and at Gil Island (DFO 2013). These areas show persistent aggregations of humpback whales and have features such as prey availability, suitable acoustic environment, water quality, and physical space that allow for feeding, foraging, socializing, and resting (DFO 2013). Two of the proposed transect lines intersect the critical habitat on Swiftsure and La Pérouse Banks.

Minke Whale

The minke whale has a cosmopolitan distribution that spans from tropical to polar regions in both hemispheres (Jefferson *et al.* 2015). In the Northern Hemisphere, the minke whale is usually seen in coastal areas, but can also be seen in pelagic waters during its northward migration in spring and summer and southward migration in autumn (Stewart and Leatherwood 1985). In the North Pacific, the summer range of the minke whale extends to the Chukchi Sea; in the winter, the whales move farther south to within 2° of the Equator (Perrin and Brownell 2009).

The International Whaling Commission (IWC) recognizes three stocks of minke whales in the North Pacific: The Sea of Japan/East China Sea, the rest of the western Pacific west of 180° N, and the remainder of the Pacific (Donovan 1991). Minke whales are relatively common in the Bering and Chukchi seas and in the Gulf of Alaska, but are not considered abundant in any other part of the eastern Pacific (Brueggeman *et al.* 1990). In the far north, minke whales are thought to be migratory, but they are believed to be year-round residents in coastal waters off the west coast of the United States (Dorsey *et al.* 1990).

Sightings of minke whales have been reported off Oregon and Washington in shelf and deeper waters (Green *et al.,* 1992; Adams *et al.,* 2014; Barlow 2016; Caretta *et al.,* 2019a). There were no sightings of minke whales off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey or during the July 2012 L–DEO seismic survey off Oregon (RPS 2012b,c). One minke whale was seen during the July 2012 L–DEO seismic survey off southern Washington (RPS 2012a). Minke whales are sighted regularly in nearshore waters of British Columbia, but they are not considered abundant (COSEWIC 2006). They are most frequently sighted around the Gulf Islands and off northeastern Vancouver Island (Ford 2014). They are also regularly seen off the east coast of Moresby Island, and in Dixon Entrance, Hecate Strait, Queen Charlotte Sound, and the west coast of Vancouver Island were they occur in shallow and deeper water (Ford *et al.,* 2010a; Ford 2014). Williams and Thomas (2007) estimated minke whale abundance for inshore coastal waters of British Columbia at 388 individuals based on surveys conducted in 2004 and 2005 while Best *et al.* (2015) provided an estimate of 522 minke whales based on surveys during 2004–2008.

Sei Whale

The distribution of the sei whale is not well known, but it is found in all oceans and appears to prefer mid-latitude temperate waters (Jefferson *et al.* 2015). The sei whale is pelagic and generally not found in coastal waters (Jefferson *et al.* 2015). It is found in deeper waters characteristic of the continental shelf edge region (Hain *et al.* 1985) and in other regions of steep bathymetric relief such as seamounts and canyons (Kenney and Winn 1987; Gregr and Trites 2001). On feeding grounds, sei whales associate with oceanic frontal systems (Horwood 1987) such as the cold eastern currents in the North Pacific (Perry *et al.* 1999a). Sei whales migrate from temperate zones occupied in winter to higher latitudes in the summer, where most feeding takes place (Gambell 1985a). During summer in the North Pacific, the sei whale can be found from the Bering Sea to the Gulf of Alaska and down to southern California, as well as in the western Pacific from Japan to Korea. Its winter distribution is concentrated at ~20° N (Rice 1998).

Sei whales are rare in the waters off California, Oregon, and Washington (Brueggeman *et al.,* 1990; Green *et al.,* 1992; Barlow 1994, 1997). Less than 20 confirmed sightings were reported in that region during extensive surveys between 1991 and 2014 (Green *et al.,* 1992, 1993; Hill and Barlow 1992; Caretta and Forney 1993; Mangels and Gerrodette 1994; Von Saunder and Barlow 1999; Barlow 2003, 2010, 2014; Forney 2007; Carretta *et al.,* 2019a). Two sightings of four individuals were made during the June–July 2012 L–DEO Juan de Fuca plate seismic survey off Washington/Oregon (RPS 2012b). No sei whales were sighted during the July 2012 L–DEO seismic surveys off Oregon and Washington (RPS 2012a,c).

The patterns of seasonal abundance found in whaling records suggested that the whales were caught as they migrated to summer feeding grounds, with the peak of the migration in July and offshore movement in summer, from ~25 km to ~100 km from shore (Gregr *et al.,* 2000). Historical whaling data show that sei whales used to be distributed along the continental slope of British Columbia and over a large area off the northwest coast of Vancouver Island (Gregr and Trites 2001). Sei whales are now considered rare in Pacific waters of the United States and Canada; in British Columbia there were no sightings in the late 1900s after whaling ceased (Gregr *et al.,* 2006). Ford (2014) only reported two sightings for British Columbia, both of those far offshore from Haida Gwaii. Possible sei whale vocalizations were detected off the west coast of Vancouver Island during spring and summer 2006 and 2007 (Ford *et al.,* 2010b). Gregr and Trites (2001) proposed that the area off northwestern Vancouver Island and the continental slope may be critical habitat for sei whales because of favorable feeding conditions.

Fin Whale

The fin whale is widely distributed in all the world's oceans (Gambell 1985b), but typically occurs in temperate and polar regions from 20–70° north and south of the Equator (Perry *et al.* 1999b). Northern and southern fin whale populations are distinct and are recognized as different subspecies (Aguilar 2009). Fin whales occur in coastal, shelf, and oceanic waters. Sergeant (1977) suggested that fin whales tend to follow steep slope contours, either because they detect them readily or because biological productivity is high along steep contours because of tidal mixing and perhaps current mixing. Stafford *et al.* (2009) noted that sea-surface temperature is a good predictor variable for fin whale call detections in the North Pacific.

Fin whales appear to have complex seasonal movements and are seasonal migrants; they mate and calve in temperate waters during the winter and migrate to feed at northern latitudes during the summer (Gambell 1985b). The North Pacific population summers from the Chukchi Sea to California and winters from California southwards (Gambell 1985b). Aggregations of fin whales are found year-round off southern and central California (Dohl *et al.* 1980, 1983; Forney *et al.* 1995; Barlow 1997) and in the summer off Oregon (Green *et al.* 1992; Edwards *et al.* 2015). Vocalizations from fin whales have also been detected year-round off northern California, Oregon, and Washington (Moore *et al.* 1998, 2006; Watkins *et al.* 2000a,b; Stafford *et al.* 2007, 2009; Edwards *et al.* 2015).

Eight fin whale sightings (19 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey; sightings were made in waters 2,369–3,940 m deep (RPS 2012b). Fourteen fin whale sightings (28 animals) were made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). No fin whales were sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c). Fin whales were also seen off southern Oregon during July 2012 in water >2000 m deep during surveys by Adams *et al.* (2014).

Whaling records indicate fin whale occurrence off the west coast of British Columbia increased gradually from March to a peak in July, then decreased rapidly in September and October (Gregr *et al.,* 2000). Fin whales occur throughout British Columbia waters near and past the continental shelf break, as well as in inshore waters (Ford 2014). Fin whales were the second most common cetacean sighted during DFO surveys in 2002–2008 (Ford *et al.,* 2010a). They appear to be more common in northern British Columbia, but sightings have been made along the shelf edge and in deep waters off western Vancouver Island (Ford *et al.,* 1994, 2010a; Calambokidis *et al.,* 2003; Ford 2014). Acoustic detections have been made throughout the year in pelagic waters west of Vancouver Island (Edwards *et al.,* 2015). Gregr and Trites (2001) proposed that the area off northwestern Vancouver Island and the continental slope may be critical habitat for fin whales because of favorable feeding conditions.

Blue Whale

The blue whale has a cosmopolitan distribution and tends to be pelagic, only coming nearshore to feed and possibly to breed (Jefferson *et al.* 2015). Although it has been suggested that there are at least five subpopulations of blue whales in the North Pacific (NMFS 1998), analysis of blue whale calls monitored from the U.S. Navy Sound Surveillance System (SOSUS) and other offshore hydrophones (see Stafford *et al.,* 1999, 2001, 2007; Watkins *et al.,* 2000a; Stafford 2003) suggests that there are two separate populations: One in the eastern and one in the western North Pacific (Sears and Perrin 2009). Broad-scale acoustic monitoring indicates that blue whales occurring in the northeast Pacific during summer and fall may winter in the eastern tropical Pacific (Stafford *et al.,* 1999, 2001).

The distribution of the species, at least during times of the year when feeding is a major activity, occurs in areas that provide large seasonal concentrations of euphausiids (Yochem and Leatherwood 1985). The eastern North Pacific stock feeds in California waters from June–November (Calambokidis *et al.,* 1990; Mate *et al.,* 1999). There are nine BIAs for feeding blue whales off the coast of California (Calambokidis *et al.,* 2015), and core areas have also been identified there (Irvine *et al.,* 2014).

Blue whales are considered rare off Oregon, Washington, and British Columbia (Buchanan *et al.,* 2001; Gregr *et al.,* 2006; Ford 2014), although satellite-tracked individuals have been reported off the coast (Bailey *et al.,* 2009). Based on modeling of the dynamic topography of the region, blue whales could occur in relatively high densities off Oregon during summer and fall (Pardo *et al.,* 2015: Hazen *et al.,* 2017). Densities along the U.S. west coast, including Oregon, were predicted to be highest in shelf waters, with lower densities in deeper offshore areas (Becker *et al.,* 2012; Calambokidis *et al.,* 2015).

Sightings of blue whales in offshore waters of British Columbia are rare (Ford 2014; DFO 2017) and there is no abundance estimate for British Columbia waters (Nichol and Ford 2012). During surveys of British Columbia from 2002–2013, 16 sightings of blue whales were made, all of which occurred just to the south or west of Haida Gwaii during June, July, and August (Ford 2014). There have also been sightings off Vancouver Island during summer and fall (Calambokidis *et al.,* 2004b; Ford 2014), with the most recent one reported off southwestern Haida Gwaii in July 2019 (CBC 2019).

Sperm Whale

The sperm whale is the largest of the toothed whales, with an extensive worldwide distribution (Rice 1989). Sperm whale distribution is linked to social structure: Mixed groups of adult females and juvenile animals of both sexes generally occur in tropical and subtropical waters, whereas adult males are commonly found alone or in same-sex aggregations, often occurring in higher latitudes outside the breeding season (Best 1979; Watkins and Moore 1982; Arnbom and Whitehead 1989; Whitehead and Waters 1990). Males can migrate north in the summer to feed in the Gulf of Alaska, Bering Sea, and waters around the Aleutian Islands (Kasuya and Miyashita 1988). Mature male sperm whales migrate to warmer waters to breed when they are in their late twenties (Best 1979).

Sperm whales generally are distributed over large areas that have high secondary productivity and steep underwater topography, in waters at least 1000 m deep (Jaquet and Whitehead 1996; Whitehead 2009). They are often found far from shore, but can be found closer to oceanic islands that rise steeply from deep ocean waters (Whitehead 2009). Adult males can occur in water depths <100 m and as shallow as 40 m (Whitehead *et al.,* 1992; Scott and Sadove 1997). They can dive as deep as ~2 km and possibly deeper on rare occasions for periods of over 1 h; however, most of their foraging occurs at depths of ~300–800 m for 30–45 min (Whitehead 2003).

Sperm whales are distributed widely across the North Pacific (Rice 1989). Off California, they occur year-round (Dohl *et al.,* 1983; Barlow 1995; Forney *et al.,* 1995), with peak abundance from April to mid-June and from August to mid-November (Rice 1974). Off Oregon, sperm whales are seen in every season except winter (Green *et al.,* 1992). Sperm whales were sighted during

surveys off Oregon in October 2011 and off Washington in June 2011 (Adams *et al.,* 2014). Sperm whale sightings were also made off Oregon and Washington during the 2014 SWFSC vessel survey (Barlow 2016). A single sperm whale was sighted during a 2009 survey to the west of the proposed survey area (Holst 2017).

Oleson *et al.* (2009) noted a significant diel pattern in the occurrence of sperm whale clicks at offshore and inshore monitoring locations off Washington, whereby clicks were more commonly heard during the day at the offshore site and were more common at night at the inshore location, suggesting possible diel movements up and down the slope in search of prey. Sperm whale acoustic detections were also reported at the inshore site from June through January 2009, with an absence of calls during February to May (Širović *et al.,* 2012). In addition, sperm whales were sighted during surveys off Washington in June 2011 and off Oregon in October 2011 (Adams *et al.* 2014).

Whaling records report large numbers of sperm whales taken in April, with a peak in May. Analysis of data on catch locations, sex of the catch, and fetus lengths indicated that males and females were both 50–80 km from shore while mating in April and May, and that by July and August, adult females had moved to waters >100 km offshore to calve), and adult males had moved to within ~25 km of shore (Gregr *et al.,* 2000). At least in the whaling era, females did not travel north of Vancouver Island whereas males were observed in deep water off Haida Gwaii (Gregr *et al.,* 2000). After the whaling era, sperm whales have been sighted and detected acoustically in British Columbia waters throughout the year, with a peak during summer (Ford 2014). Acoustic detections at La Pérouse Bank off southwestern Vancouver Island have been recorded during spring and summer (Ford *et al.,* 2010b). Sightings west of Vancouver Island and Haida Gwaii indicate that this species still occurs in British Columbia in small numbers (Ford *et al.,* 1994; Ford 2014). Based on whaling data, Gregr and Trites (2001) proposed that the area off northwestern Vancouver Island and the continental slope may be critical habitat for male sperm whales because of favorable feeding conditions.

Pygmy and Dwarf Sperm Whales

The pygmy and dwarf sperm whales are distributed widely throughout tropical and temperate seas, but their precise distributions are unknown as most information on these species comes from strandings (McAlpine 2009). They are difficult to sight at sea, perhaps because of their avoidance reactions to ships and behavior changes in relation to survey aircraft (Würsig *et al.* 1998). The two species are difficult to distinguish from one another when sighted (McAlpine 2009).

Both *Kogia* species are sighted primarily along the continental shelf edge and slope and over deeper waters off the shelf (Hansen *et al.* 1994; Davis *et al.* 1998). Several studies have suggested that pygmy sperm whales live mostly beyond the continental shelf edge, whereas dwarf sperm whales tend to occur closer to shore, often over the continental shelf (Rice 1998; Wang *et al.* 2002; MacLeod *et al.* 2004). Barros *et al.* (1998), on the other hand, suggested that dwarf sperm whales could be more pelagic and dive deeper than pygmy sperm whales. It has also been suggested that the pygmy sperm whale is more temperate and the dwarf sperm whale more tropical, based at least partially on live sightings at sea from a large database from the eastern tropical Pacific (Wade and Gerrodette 1993). This idea is also supported by the distribution of strandings in South American waters (Muñoz-Hincapié *et al.* 1998).

Pygmy and dwarf sperm whales are rarely sighted off Oregon and Washington, with only one sighting of an unidentified *Kogia* spp. beyond the U.S. EEZ, during the 1991–2014 NOAA vessel surveys (Carretta *et al.,* 2019a). Norman *et al.* (2004) reported eight confirmed stranding records of pygmy sperm whales for Oregon and Washington, five of which occurred during autumn and winter. There are several unconfirmed sighting reports of the pygmy sperm whale from the Canadian west coast (Baird *et al.,* 1996). There is a stranding record of a pygmy sperm whale for northeastern Vancouver Island (Ford 2014), and there is a single dwarf sperm whale stranding record for southwestern Vancouver Island in September 1981 (Ford 2014). Willis and Baird (1998) state that the dwarf sperm whale is likely found in British Columbia waters more frequently than recognized, but Ford (2014) suggested that the presence of *Kogia* spp. in British Columbia waters is extralimital.

Cuvier's Beaked Whale

Cuvier's beaked whale is probably the most widespread of the beaked whales, although it is not found in polar waters (Heyning 1989). Cuvier's beaked whale appears to prefer steep continental slope waters (Jefferson *et al.* 2015) and is most common in water depths >1000 m (Heyning 1989). It is mostly known from strandings and strands more commonly than any other beaked whale (Heyning 1989). Its inconspicuous blows, deep-diving behavior, and tendency to avoid vessels all help to explain the infrequent sightings (Barlow and Gisiner 2006). The population in the California Current Large Marine Ecosystem seems to be declining (Moore and Barlow 2013).

MacLeod *et al.* (2006) reported numerous sightings and strandings along the Pacific coast of the U.S. Cuvier's beaked whale is the most common beaked whale off the U.S. West Coast (Barlow 2010), and it is the beaked whale species that has stranded most frequently on the coasts of Oregon and Washington. From 1942–2010, there were 23 reported Cuvier's beaked whale strandings in Oregon and Washington (Moore and Barlow 2013). Most (75 percent) Cuvier's beaked whale strandings reported occurred in Oregon (Norman *et al.* 2004). Records of Cuvier's beaked whale in British Columbia are scarce, although 20 strandings, one incidental catch, and five sightings have been reported, including off western Vancouver Island (Ford 2014). Most strandings have been reported in summer (Ford 2014).

Baird's Beaked Whale

Baird's beaked whale has a fairly extensive range across the North Pacific, with concentrations occurring in the Sea of Okhotsk and Bering Sea (Rice 1998; Kasuya 2009). In the eastern Pacific, Baird's beaked whale is reported to occur as far south as San Clemente Island, California (Rice 1998; Kasuya 2009). Two forms of Baird's beaked whales have been recognized, the common slate-gray form and a smaller, rare black form (Morin *et al.,* 2017). The gray form is seen off Japan, in the Aleutians, and on the west coast of North America, whereas the black form has been reported for northern Japan and the Aleutians (Morin *et al.,* 2017). Recent genetic studies suggest that the black form could be a separate species (Morin *et al.,* 2017). Baird's beaked whales are currently divided into three distinct stocks: Sea of Japan, Okhotsk Sea, and Bering Sea/eastern North Pacific (Balcomb 1989; Reyes 1991). Baird's beaked whales are occasionally seen close to shore, but their primary habitat is in waters 1,000–3,000 m deep (Jefferson *et al.,* 2015).

Along the U.S. west coast, Baird's beaked whales have been sighted primarily along the continental slope (Green *et al.,* 1992; Becker *et al.,* 2012; Caretta *et al.,* 2019a) from late spring to early fall (Green *et al.,* 1992). In the eastern North Pacific, Baird's beaked whales apparently spend the winter and

spring far offshore, and in June move onto the continental slop, where peak numbers occur during September and October. Green *et al.* (1992) noted that Baird's beaked whales on the U.S. west coast were most abundant in the summer, and were not sighted in the fall or winter.

Green *et al.* (1992) sighted five groups during 75,050 km of aerial survey effort in 1989–1990 off Washington/Oregon spanning coastal to offshore waters: two in slope waters and three in offshore waters. Two groups were sighted during summer/fall 2008 surveys off Washington/Oregon, in waters >2000 m deep (Barlow 2010). Acoustic monitoring offshore Washington detected Baird's beaked whale pulses during January through November 2011, with peaks in February and July (Ŝirović *et al.* 2012b *in* USN 2015). Baird's beaked whales were detected acoustically near the planned survey area in August 2016 during a SWFSC study using drifting acoustic recorders (Keating *et al.* 2018).

There are whaler's reports of Baird's beaked whales off the west coast of Vancouver Island throughout the whaling season (May–September), especially in July and August (Reeves and Mitchell 1993). Twenty-four sightings have been made in British Columbia since the whaling era, including off the west coast of Vancouver Island (Ford 2014). Three strandings have also been reported, including one on northeastern Haida Gwaii and two on the west coast of Vancouver Island.

Blainville's Beaked Whale

Blainville's beaked whale is found in tropical and warm temperate waters of all oceans (Pitman 2009). It has the widest distribution throughout the world of all mesoplodont species and appears to be relatively common (Pitman 2009). Like other beaked whales, Blainville's beaked whale is generally found in waters 200–1400 m deep (Gannier 2000; Jefferson *et al.* 2015). Blainville's beaked whale occurrences in cooler, higher-latitude waters are presumably related to warm-water incursions (Reeves *et al.* 2002).

MacLeod *et al.* (2006) reported stranding and sighting records in the eastern Pacific ranging from 37.3° N to 41.5° S. However, none of the 36 beaked whale stranding records in Oregon and Washington during 1930–2002 included Blainville's beaked whale (Norman *et al.* 2004). One Blainville's beaked whale was found stranded (dead) on the Washington coast in November 2016 (COASST 2016). There was one acoustic detection of Blainville's beaked whales recorded in Quinault Canyon off Washington in waters 1,400 m deep during 2011 (Baumann-Pickering *et al.,* 2014).

Hubbs' Beaked Whale

Hubbs' beaked whale occurs in temperate waters of the North Pacific (Mead 1989). Its distribution appears to be correlated with the deep subarctic current (Mead *et al.* 1982). Numerous stranding records have been reported for the U.S. West Coast (MacLeod *et al.* 2006). Most of the records are from California, but it has been sighted as far north as Prince Rupert, British Columbia (Mead 1989). Two strandings are known from Washington/Oregon (Norman *et al.* 2004). There have been no confirmed live sightings of Hubb's beaked whales in British Columbia.

Stejneger's Beaked Whale

Stejneger's beaked whale occurs in subarctic and cool temperate waters of the North Pacific Ocean (Mead 1989). In the eastern North Pacific Ocean, it is distributed from Alaska to southern California (Mead *et al.* 1982; Mead 1989). Most stranding records are from Alaskan waters, and the Aleutian Islands appear to be its center of distribution (MacLeod *et al.* 2006). After Cuvier's beaked whale, Stejneger's beaked whale was the second most commonly stranded beaked whale species in Oregon and Washington (Norman *et al.* 2004). Stejneger's beaked whale calls were detected during acoustic monitoring off of Washington between January and June 2011, with an absence of calls from mid-July through November 2011 (Ŝirović *et al.,* 2012b in Navy 2015). Analysis of these data suggest that this species could be more than twice as prevalent in this area as Baird's beaked whale (Baumann-Pickering *et al.,* 2014). At least five stranding records exist for British Columbia (Houston 1990b; Willis and Baird 1998; Ford 2014), including two strandings on the west coast of Haida Gwaii and two strandings on the west coast of Vancouver Island (Ford 2014). A possible sighting has been reported on the east coast of Vancouver Island (Ford 2014).

Bottlenose Dolphin

The bottlenose dolphin is distributed worldwide in coastal and shelf waters of tropical and temperate oceans (Jefferson *et al.* 2015). There are two distinct bottlenose dolphin types: a shallow water type, mainly found in coastal waters, and a deep water type, mainly found in oceanic waters (Duffield *et al.* 1983; Hoelzel *et al.* 1998; Walker *et al.* 1999). Coastal common bottlenose dolphins exhibit a range of movement patterns including seasonal migration, year-round residency, and a combination of long-range movements and repeated local residency (Wells and Scott 2009).

Bottlenose dolphins occur frequently off the coast of California, and sightings have been made as far north as 41° N, but few records exist for Oregon and Washington (Caretta *et al.,* 2019a). Three sightings and one stranding of bottlenose dolphins have been documented in Puget Sound since 2004 (Cascadia Research 2011 in Navy 2015). During surveys off the U.S. West Coast, offshore bottlenose dolphins were generally found at distances greater than 1.86 miles (3 km) from the coast and were most abundant off southern California (Barlow, 2010, 2016). Based on sighting data collected by SWFSC during systematic surveys in the Northeast Pacific between 1986 and 2005, there were few sightings of offshore bottlenose dolphins north of about 40° N (Hamilton *et al.,* 2009). Bottlenose dolphins occur frequently off the coast of California, and sightings have been made as far north as 41° N, but few records exist for Oregon/Washington (Carretta *et al.* 2017). It is possible that bottlenose dolphins from the California/Oregon/Washington Offshore stock may range as far north as the proposed survey area during warm-water periods (Caretta *et al.,* 2019a). Adams *et al.* (2014) recorded one sighting off Washington in September 2012. There are no confirmed records of bottlenose dolphins in British Columbia, though an unconfirmed record exists for offshore waters (Baird *et al.,* 1993).

Striped Dolphin

The striped dolphin has a cosmopolitan distribution in tropical to warm temperate waters (Perrin *et al.* 1994) and is generally seen south of 43° N (Archer 2009). However, in the eastern North Pacific, its distribution extends as far north as Washington (Jefferson *et al.,* 2015). The striped dolphin is typically found in waters outside the continental shelf and is often associated with convergence zones and areas of upwelling (Archer 2009). However, it has also been observed approaching shore where there is deep water close to the coast (Jefferson *et al.* 2015).

Striped dolphins regularly occur off California (Becker *et al.,* 2012), including as far offshore as ~300 nmi (Caretta *et al.,* 2019a). Striped dolphin encounters increase in deep, relatively warmer waters off the U.S. West Coast, and their abundance decreases north of

about 42°N (Barlow *et al.,* 2009; Becker *et al.,* 2012b; Becker *et al.,* 2016; Forney *et al.,* 2012). However, few sightings have been made off Oregon, and no sightings have been reported for Washington (Caretta *et al.,* 2019a) but strandings have occurred along the coasts of both Washington and Oregon (Caretta *et al.,* 2016). Striped dolphins are rare and considered extralimital in British Columbia (Ford 2014). There are a total of 14 confirmed records of stranded individuals or remains for Vancouver Island (Ford 2014). A single confirmed sighting was made in September 2019 in the Strait of Juan de Fuca (Pacific Whale Watch Association 2019).

Common Dolphin

The common dolphin is found in tropical and warm temperate oceans around the world (Perrin 2009). It ranges as far south as 40° S in the Pacific Ocean, is common in coastal waters 200–300 m deep and is also associated with prominent underwater topography, such as seamounts (Evans 1994). Common dolphins have been sighted as far as 550 km from shore (Barlow *et al.* 1997).

The distribution of common dolphins along the U.S. West Coast is variable and likely related to oceanographic changes (Heyning and Perrin 1994; Forney and Barlow 1998). It is the most abundant cetacean off California; some sightings have been made off Oregon, in offshore waters (Carretta *et al.,* 2017). During surveys off the west coast in 2014 and 2017, sightings were made as far north as 44° N (Barlow 2016; SIO n.d.). However, their abundance decreases dramatically north of about 40° N (Barlow *et al.,* 2009; Becker *et al.,* 2012c; Becker *et al.,* 2016; Forney *et al.,* 2012). Based on the absolute dynamic topography of the region, common dolphins could occur in relatively high densities off Oregon during July–December (Pardo *et al.,* 2015). In contrast, habitat modeling predicted moderate densities of common dolphins off the Columbia River mouth during summer, with lower densities off southern Oregon (Becker *et al.* 2014). There are three stranding records of common dolphins in British Columbia, including one from northwestern Vancouver Island, one from the Strait of Juan de Fuca, and one from Hecate Strait (Ford 2014).

Pacific White-Sided Dolphin

The Pacific white-sided dolphin is found in cool temperate waters of the North Pacific from the southern Gulf of California to Alaska. Across the North Pacific, it appears to have a relatively narrow distribution between 38° N and 47° N (Brownell *et al.,* 1999). In the eastern North Pacific Ocean, including waters off Oregon, the Pacific white-sided dolphin is one of the most common cetacean species, occurring primarily in shelf and slope waters (Green *et al.,* 1993; Barlow 2003, 2010). It is known to occur close to shore in certain regions, including (seasonally) southern California (Brownell *et al.,* 1999).

Results of aerial and shipboard surveys strongly suggest seasonal north–south movements of the species between California and Oregon/Washington; the movements apparently are related to oceanographic influences, particularly water temperature (Green *et al.,* 1993; Forney and Barlow 1998; Buchanan *et al.,* 2001). During winter, this species is most abundant in California slope and offshore areas; as northern waters begin to warm in the spring, it appears to move north to slope and offshore waters off Oregon/Washington (Green *et al.,* 1992, 1993; Forney 1994; Forney *et al.,* 1995; Buchanan *et al.,* 2001; Barlow 2003). The highest encounter rates off Oregon and Washington have been reported during March–May in slope and offshore waters (Green *et al.,* 1992). Similarly, Becker *et al.* (2014) predicted relatively high densities off southern Oregon in shelf and slope waters.

Based on year-round aerial surveys off Oregon/Washington, the Pacific white-sided dolphin was the most abundant cetacean species, with nearly all (97 percent) sightings occurring in May (Green *et al.,* 1992, 1993). Barlow (2003) also found that the Pacific white-sided dolphin was one of the most abundant marine mammal species off Oregon/Washington during 1996 and 2001 ship surveys, and it was the second most abundant species reported during 2008 surveys (Barlow 2010). Adams *et al.* (2014) reported numerous offshore sightings off Oregon during summer, fall, and winter surveys in 2011 and 2012.

Fifteen Pacific white-sided dolphin sightings (231 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b). There were fifteen Pacific white-sided dolphin sightings (462 animals) made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c). One group of 10 Pacific white-sided dolphins was sighted during the 2009 ETOMO survey (Holst 2017).

Pacific white-sided dolphins are common throughout the waters of British Columbia, including Dixon Entrance, Hecate Strait, Queen Charlotte Sound, the west coast of Haida Gwaii, as well as western Vancouver Island, and the mainland coast (Ford 2014). Stacey and Baird (1991a) compiled 156 published and unpublished records to 1988 of the Pacific white-sided dolphin within the Canadian 320-km extended EEZ. These dolphins move inshore and offshore seasonally (Stacey and Baird 1991a). There were inshore records for all months except July, and offshore records from all months except December. Offshore sightings were much more common than inshore sightings, especially in June–October; the mean water depth was ~1,100 m. Ford *et al.* (2011b) reported that most sightings occur in water depths <500 m and within 20 km from shore.

Northern Right Whale Dolphin

The northern right whale dolphin is found in cool temperate and sub-arctic waters of the North Pacific, from the Gulf of Alaska to near northern Baja California, ranging from 30° N to 50° N (Reeves *et al.,* 2002). In the eastern North Pacific Ocean, including waters off Oregon, the northern right whale dolphin is one of the most common marine mammal species, occurring primarily in shelf and slope waters ~100 to >2000 m deep (Green *et al.,* 1993; Barlow 2003). The northern right whale dolphin comes closer to shore where there is deep water, such as over submarine canyons (Reeves *et al.,* 2002).

Aerial and shipboard surveys suggest seasonal inshore-offshore and north-south movements in the eastern North Pacific Ocean between California and Oregon/Washington; the movements are believed to be related to oceanographic influences, particularly water temperature and presumably prey distribution and availability (Green *et al.,* 1993; Forney and Barlow 1998; Buchanan *et al.,* 2001). Green *et al.* (1992, 1993) found that northern right whale dolphins were most abundant off Oregon/Washington during fall, less abundant during spring and summer, and absent during winter, when this species presumably moves south to warmer California waters (Green *et al.,* 1992, 1993; Forney 1994; Forney *et al.,* 1995; Buchanan *et al.,* 2001; Barlow 2003).

Survey data suggest that, at least in the eastern North Pacific, seasonal inshore-offshore and north-south movements are related to prey availability, with peak abundance in the Southern California Bight during winter and distribution shifting northward into

Oregon and Washington as water temperatures increase during late spring and summer (Barlow, 1995; Becker *et al.,* 2014; Forney *et al.,* 1995; Forney & Barlow, 1998; Leatherwood & Walker, 1979). Seven northern right whale dolphin sightings (231 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b). There were eight northern right whale dolphin sightings (278 animals) made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c).

There are 47 records of northern right whale dolphins from British Columbia, mostly in deep water off the west coast of Vancouver Island; however, sightings have also been reported in deep water off Haida Gwaii (Ford 2014). Most sightings have occurred in water depths over 900 m (Baird and Stacey 1991a). One group of six northern right whale dolphins was seen west of Vancouver Island in water deeper than 2,500 m during a survey from Oregon to Alaska (Hauser and Holt 2009).

Risso's Dolphin

Risso's dolphin is distributed worldwide in temperate and tropical oceans (Baird 2009), although it shows a preference for mid-temperate waters of the shelf and slope between 30° and 45° N (Jefferson *et al.,* 2014). Although it occurs from coastal to deep water (~200–1000 m depth), it shows a strong preference for mid-temperate waters of upper continental slopes and steep shelf-edge areas (Hartman 2018).

Off the U.S. West Coast, Risso's dolphin is believed to make seasonal north-south movements related to water temperature, spending colder winter months off California and moving north to waters off Oregon/Washington during the spring and summer as northern waters begin to warm (Green *et al.,* 1992, 1993; Buchanan *et al.,* 2001; Barlow 2003; Becker 2007). The distribution and abundance of Risso's dolphins are highly variable from California to Washington, presumably in response to changing oceanographic conditions on both annual and seasonal time scales (Forney and Barlow 1998; Buchanan *et al.* 2001). The highest densities were predicted along the coasts of Washington, Oregon, and central and southern California (Becker *et al.,* 2012). Off Oregon and Washington, Risso's dolphins are most abundant over continental slope and shelf waters during spring and summer, less so during fall, and rare during winter (Green *et al.,* 1992, 1993). Green *et al.* (1992, 1993) reported most Risso's dolphin groups off Oregon between ~45 and 47°N. Several sightings were made off southern Oregon during surveys in 1991–2014 (Carretta *et al.,* 2017). Sightings during ship surveys in summer/fall 2008 were mostly between ~30 and 38° N; none were reported in Oregon/Washington (Barlow 2010).Two sightings of 38 individuals were recorded off Washington from August 2004 to September 2008 (Oleson *et al.* 2009). Risso's dolphins were sighted off Oregon, in June and October 2011 (Adams *et al.* 2014). There were three Risso's dolphin sightings (31 animals) made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c), or off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b).

Risso's dolphin was once considered rare in British Columbia, but there have been numerous sightings since the 1970s (Ford 2014). Most sightings have been made in Gwaii Haanas National Park Reserve, Haida Gwaii, but there have also been sightings in Dixon Entrance, off the west coast of Haida Gwaii, Queen Charlotte Sound, and to the west of Vancouver Island (Ford 2014).

False Killer Whale

The false killer whale is found in all tropical and warmer temperate oceans, especially in deep, offshore waters (Odell and McClune 1999). It is widely distributed, but not abundant anywhere (Carwardine 1995). The false killer whale generally inhabits deep, offshore waters, but sometimes is found over the continental shelf and occasionally moves into very shallow (Jefferson *et al.,* 2015; Baird 2018b). It is gregarious and forms strong social bonds, as is evident from its propensity to strand en masse (Baird 2018b). In the eastern North Pacific, it has been reported only rarely north of Baja California (Leatherwood *et al.,* 1982, 1987; Mangels and Gerrodette 1994); however, the waters off the U.S. West Coast all the way north to Alaska are considered part of its secondary range (Jefferson *et al.* 2015).

Its occurrence in Washington/Oregon is associated with warm-water incursions (Buchanan *et al.,* 2001). One pod of false killer whales occurred in Puget Sound for several months during the 1990s (USN 2015). Two were reported stranded along the Washington coast between 1930–2002, both in El Niño years (Norman *et al.* 2004). One sighting was made off southern California during 2014 (Barlow 2016).

Stacey and Baird (1991b) suggested that false killer whales are at the limit of their distribution in Canada and have always been rare. Sightings have been made along the northern and central mainland coast of British Columbia, as well as in Queen Charlotte Strait, Strait of Georgia, and along the west coast of Vancouver Island (Ford 2014).

Killer Whale

The killer whale is cosmopolitan and globally fairly abundant; it has been observed in all oceans of the world (Ford 2009). It is very common in temperate waters and also frequents tropical waters, at least seasonally (Heyning and Dahlheim 1988). There are three distinct ecotypes, or forms, of killer whales recognized in the north Pacific: Resident, transient, and offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Resident killer whales exclusively prey upon fish, with a clear preference for salmon (Ford and Ellis 2006; Hanson *et al.,* 2010; Ford *et al.,* 2016), while transient killer whales exclusively prey upon marine mammals (Caretta *et al.,* 2019). Less is known about offshore killer whales, but they are believed to consume primarily fish, including several species of shark (Dahlheim *et al.,* 2008).

Currently, there are eight killer whale stocks recognized in the U.S. Pacific: (1) Alaska Residents, occurring from southeast Alaska to the Aleutians and Bering Sea; (2) Northern Residents, from BC through parts of southeast Alaska; (3) Southern Residents, mainly in inland waters of Washington State and southern BC; (4) Gulf of Alaska, Aleutian Islands, and Bering Sea Transients, from Prince William Sound (PWS) through to the Aleutians and Bering Sea; (5) AT1 Transients, from PWS through the Kenai Fjords; (6) West Coast Transients, from California through southeast Alaska; (7) Offshore, from California through Alaska; and (8) Hawaiian (Carretta *et al.* 2018). Individuals from the Southern Resident, Northern Resident, West Coast Transient, and Offshore stocks could be encountered in the proposed project area. All three pods (J, K, and L pods) of Southern Resident killer whales may occur in the project area.

Southern Resident killer whales mainly feed on salmon, in particular Chinook (*Oncorhynchus tshawytscha*), but also prey upon other salmonids, such as chum (*O. keta*), coho (*O. kitsutch*), and steelhead (*O. mykiss*), as well as rockfish (*Sebastes* spp.), Pacific

halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea pallasi*), among others. Seasonal and spatial shifts in prey consumption have been observed, with Chinook consumed in May through September, and chum eaten in the fall. Chinook remain an important prey item while the Southern Residents are in offshore coastal waters, where they also consume a greater diversity of fish species (NMFS 2019).

Southern Resident killer whales occur for part of the year in the inland waterways of the Salish Sea, including Puget Sound, the Strait of Juan de Fuca, and the southern Strait of Georgia mostly during the spring, summer, and fall. Their movement patterns appear related to the seasonal availability of prey, especially Chinook salmon. They also move to coastal waters, primarily off Washington and British Columbia, in search of suitable prey, and have been observed as far as central California and southeast Alaska (NMFS 2019). Although less is known about the whales' movements in outer coastal waters than inland waters of the Salish Sea, satellite tagging, opportunistic sighting, and acoustic recording data suggest that Southern Residents spend nearly all their time on the continental shelf, within 34 km of shore in water less than 200 m deep (Hanson *et al.,* 2017).

The Southern Resident DPS was listed as endangered under the ESA in 2005 after a nearly 20 percent decline in abundance between 1996 and 2001 (70 FR 69903; November 18, 2005). As compared to stable or growing populations, the DPS reflects lower fecundity and has demonstrated little to no growth in recent decades, and in fact has declined further since the date of listing (NMFS 2019). The population abundance listed in the draft 2019 SARs is 75, from the July 1, 2018 annual census conducted by the Center for Whale Research (CWR) (Caretta *et al.,* 2019); since that date, four whales have died or are presumed dead, and two calves were born in 2019, bringing the abundance to 73 whales (NMFS 2019). An additional adult male is considered missing as of January 2020 (CWR 2020). NMFS has identified three main causes of the population decline: (1) Reduced quantity and quality of prey; (2) persistent organic pollutants that could cause immune or reproductive system dysfunction; and (3) noise and disturbance from increased commercial and recreational vessel traffic (NMFS 2019).

The U.S. Southern Resident killer whale critical habitat designated under the ESA currently includes inland waters of Washington relative to a contiguous shoreline delimited by the line at a depth of 6.1 m relative to extreme high water (71 FR 69054; November 29, 2006). On September 19, 2019, NMFS published a proposed rule to revise designated Southern Resident killer whale critical habitat to include 40,472.7 km^2 of marine waters between the 6.1-m depth contour and the 200-m depth contour from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). The proposed survey tracklines overlap with NMFS' proposed expanded Southern Resident critical habitat.

In Canada, Southern Resident killer whales are listed as Endangered under the Species at Risk Act (SARA), and critical habitat has been designated in the trans-boundary waters in southern British Columbia, including the southern Strait of Georgia, Haro Strait, and Strait of Juan de Fuca (SOR/2018–278, December 13, 2018; SOR/2009–68, February 19, 2009; DFO 2018). The continental shelf waters off southwestern Vancouver Island, including Swiftsure and La Pérouse Banks have also been designated as critical habitat (DFO 2018). Two of the proposed survey tracklines intersect the Canadian Southern Resident critical habitat on Swiftsure and La Pérouse Banks.

Northern Resident killer whales are not listed under the ESA, but are listed as threatened under Canada's SARA (DFO 2018). In British Columbia, Northern Resident killer whales inhabit the central and northern Strait of Georgia, Johnstone Strait, Queen Charlotte Strait, the west coast of Vancouver Island, and the entire central and north coast of mainland British Columbia (Muto *et al.,* 2019a,b). Northern Resident killer whales are also regularly acoustically detected off the coast of Washington (Hanson *et al.,* 2017). Canada has designated critical habitat for Northern Resident killer whales in Johnstone Strait, southeastern Queen Charlotte Strait, western Dixon Entrance along the north coast of Graham Island, Haida Gwaii, and Swiftsure and La Pérouse Banks off southwestern Vancouver Island (SOR/2018–278, December 13, 2018; SOR/2009–68, February 19, 2009; DFO 2018). Critical habitat for both Northern and Southern Resident killer whales has been established within the proposed survey area at Swiftsure and La Pérouse Banks (SOR/2018–278, December 13, 2018).

The main diet of transient killer whales consists of marine mammals, in particular porpoises and seals. West coast transient whales (also known as Bigg's killer whales) range from Southeast Alaska to California (Muto *et al.,* 2019a). The seasonal movements of transients are largely unpredictable, although there is a tendency to investigate harbor seal haulouts off Vancouver Island more frequently during the pupping season in August and September (Baird 1994; Ford 2014). Transients have been sighted throughout British Columbia waters, including the waters around Vancouver Island (Ford 2014).

Little is known about offshore killer whales, but they occur primarily over shelf waters and feed on fish, especially sharks (Ford 2014). Dalheim *et al.* (2008) reported sightings in southeast Alaska during spring and summer. Relatively few sightings of offshore killer whales have been reported in British Columbia; there have been 103 records since 1988 (Ford 2014). The number of sightings are likely influenced by the fact that these whales prefer deeper waters near the continental slope, where little sighting effort has taken place (Ford 2014). Most sightings are from Haida Gwaii and 15 km or more off the west coast of Vancouver Island near the continental slope (Ford *et al.,* 1994). Offshore killer whales are mainly seen off British Columbia during summer, but they can occur in British Columbia year-round (Ford 2014).

Short-Finned Pilot Whale

The short-finned pilot whale is found in tropical, subtropical, and warm temperate waters (Olson 2009); it is seen as far south as ~40° S and as far north as ~50° N (Jefferson *et al.* 2015). Pilot whales are generally nomadic, but may be resident in certain locations, including California and Hawaii (Olson 2009). Short-finned pilot whales were common off southern California (Dohl *et al.* 1980) until an El Niño event occurred in 1982–1983 (Carretta *et al.* 2017).

Few sightings were made off California/Oregon/Washington in 1984–1992 (Green *et al.* 1992; Carretta and Forney 1993; Barlow 1997), and sightings remain rare (Barlow 1997; Buchanan *et al.* 2001; Barlow 2010). No short-finned pilot whales were seen during surveys off Oregon and Washington in 1989–1990, 1992, 1996, and 2001 (Barlow 2003). A few sightings were made off California during surveys in 1991–2014 (Barlow 2010). Carretta *et al.* (2019a) reported one sighting off Oregon during 1991–2014. Several stranding events in Oregon/southern Washington have been recorded over the past few decades, including in

March 1996, June 1998, and August 2002 (Norman *et al.* 2004).

Short-finned pilot whales are considered rare in British Columbia waters (Baird and Stacey 1993; Ford 2014). There are 10 confirmed records, including three bycatch records in offshore waters, six sightings in offshore waters, and one stranding; the stranding occurred in the Strait of Juan de Fuca (Ford 2014). There are also unconfirmed records for nearshore waters of western Vancouver Island (Baird and Stacey 1993; Ford 2014).

Harbor Porpoise

The harbor porpoise inhabits temperate, subarctic, and arctic waters. It is typically found in shallow water (<100 m) nearshore but is occasionally sighted in deeper offshore water (Jefferson *et al.,* 2015); abundance declines linearly as depth increases (Barlow 1988). In the eastern north Pacific, its range extends from Point Barrow, Alaska to Point Conception, California. Their seasonal movements appear to be inshore-offshore, rather than north-south, as a response to the abundance and distribution of food resources (Dohl *et al.,* 1983; Barlow 1988). Genetic testing has also shown that harbor porpoises along the west coast of North America are not migratory and occupy restricted home ranges (Rosel *et al.,* 1995).

Based on genetic data and density discontinuities, six stocks have been identified in California/Oregon/Washington: (1) Washington Inland Waters, (2) Northern Oregon/Washington Coast, (3) Northern California/Southern Oregon, (4) San Francisco-Russian River, (5) Monterey Bay, and (6) Morro Bay (Caretta *et al.,* 2019a). Harbor porpoises form the Northern Oregon/Washington and the Northern California/Southern Oregon stocks could occur in the proposed project area (Caretta *et al.,* 2019a).

Harbor porpoises inhabit coastal Oregon and Washington waters year-round, although there appear to be distinct seasonal changes in abundance there (Barlow 1988; Green *et al.,* 1992). Green *et al.* (1992) reported that encounter rates were similarly high during fall and winter, intermediate during spring, and low during summer. Encounter rates were highest along the Oregon/Washington coast in the area from Cape Blanco (~43° N) to California, from fall through spring. During summer, the reported encounter rates decreased notably from inner shelf to offshore waters. Green *et al.* (1992) reported that 96 percent of harbor porpoise sightings off Oregon/Washington occurred in coastal waters <100 m deep, with a few sightings on the slope near the 200-m isobath. Similarly, predictive density distribution maps show the highest in nearshore waters along the coasts of Oregon/Washington, with very low densities beyond the 500-m isobath (Menza *et al.,* 2016).

There were no harbor porpoise sightings made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a), the July 2012 L–DEO seismic survey off Oregon (RPS 2012c), or off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b).

Harbor porpoises are found along the coast of British Columbia year-round, primarily in coastal shallow waters, harbors, bays, and river mouths (Osborne *et al.,* 1988), but can also be found in deep water over the continental shelf and over offshore banks that are no deeper than 150 m (Ford 2014; COSEWIC 2016). Many sightings records exist for nearshore waters of Vancouver Island, and occasional sightings have also been made in shallow water of Swiftsure and La Pérouse banks off southwestern Vancouver Island (Ford 2014).

Dall's Porpoise

Dall's porpoise is found in temperate to subarctic waters of the North Pacific and adjacent seas (Jefferson *et al.* 2015). It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (≥2500 m) oceanic waters (Hall 1979). It is probably the most abundant small cetacean in the North Pacific Ocean, and its abundance changes seasonally, likely in relation to water temperature (Becker 2007).

Off Oregon and Washington, Dall's porpoise is widely distributed over shelf and slope waters, with concentrations near shelf edges, but is also commonly sighted in pelagic offshore waters (Morejohn 1979; Green *et al.* 1992; Becker *et al.* 2014; Carretta *et al.* 2018). Combined results of various surveys out to ~550 km offshore indicate that the distribution and abundance of Dall's porpoise varies between seasons and years. North–south movements are believed to occur between Oregon/Washington and California in response to changing oceanographic conditions, particularly temperature and distribution and abundance of prey (Green *et al.* 1992, 1993; Mangels and Gerrodette 1994; Barlow 1995; Forney and Barlow 1998; Buchanan *et al.* 2001). Becker *et al.* (2014) predicted high densities off southern Oregon throughout the year, with moderate densities to the north. According to predictive density distribution maps, the highest densities off southern Washington and Oregon occur along the 500-m isobath (Menza *et al.* 2016).

Encounter rates reported by Green *et al.* (1992) during aerial surveys off Oregon/Washington were highest in fall, lowest during winter, and intermediate during spring and summer. Encounter rates during the summer were similarly high in slope and shelf waters, and somewhat lower in offshore waters (Green *et al.* 1992). Dall's porpoise was the most abundant species sighted off Oregon/Washington during 1996, 2001, 2005, and 2008 ship surveys up to ~550 km from shore (Barlow 2003, 2010). Oleson *et al.* (2009) reported 44 sightings of 206 individuals off Washington during surveys from August 2004 to September 2008. Dall's porpoise were seen in the waters off Oregon during summer, fall, and winter surveys in 2011 and 2012 (Adams *et al.,* 2014). Nineteen Dall's porpoise sightings (144 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b). There were 16 Dall's porpoise sightings (54 animals) made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c).

Dall's porpoise is found all along the coast of British Columbia and is common inshore and offshore throughout the year (Jefferson 1990; Ford 2014). It is most common over the continental shelf and slope, but also occurs >2,400 km from the coast (Pike and MacAskie 1969 in Jefferson 1990), and sightings have been made throughout the proposed survey area (Ford 2014). During a survey from Oregon to Alaska, Dall's porpoises were sighted west of Vancouver Island and Haida Gwaii in early October during the southbound transit, but none were sighted in mid-September during the northward transit; all sightings were made in water deeper than 2000 m (Hauser and Holst 2009).

Guadalupe Fur Seal

Guadalupe fur seals were once plentiful on the California coast, ranging from the Gulf of the Farallones near San Francisco, to the Revillagigedo Islands, Mexico (Aurioles-Gamboa *et al.,* 1999), but they were over-harvested in the 19th century to near extinction. After being protected, the population grew slowly; mature individuals of the species were observed occasionally in the Southern California Bight starting in the 1960s (Stewart *et al.,* 1993), and, in 1997, a

female and pup were observed on San Miguel Island (Melin & DeLong, 1999). Since 2008, individual adult females, subadult males, and between one and three pups have been observed annually on San Miguel Island (Caretta *et al.,* 2017).

During the summer breeding season, most adults occur at rookeries in Mexico (Caretta *et al.,* 2019a,b; Norris 2017 in Navy 2019a,b). Following the breeding season, adult males tend to move northward to forage. Females have been observed feeding south of Guadalupe Island, making an average round trip of 2,375 km (Ronald and Gots 2003). Several rehabilitated Guadalupe fur seals that were satellite tagged and released in central California traveled as far north as British Columbia (Norris *et al.,* 2015; Norris 2017 in Navy 2019a,b). Fur seals younger than two years old are more likely to travel to more northerly, offshore areas than older fur seals (Norris 2017 in Navy 2019a,b). Stranding data also indicates that fur seals younger than two years old are more likely to occur in the proposed survey area, as this age class was most frequently reported (Lambourn *et al.,* 2012 in Navy 2019a,b). Guadalupe fur seals have not been observed in previous L–DEO surveys in the northeast Pacific (RPS 2012a,b,c).

Increased strandings of Guadalupe fur seals have occurred along the entire coast of California. Guadalupe fur seal strandings began in January 2015 and were eight times higher than the historical average. Strandings have continued since 2015 and have remained well above average through 2019. Strandings are seasonal and generally peak in April through June of each year. Strandings in Oregon and Washington became elevated starting in 2019 and have continued to present. Strandings in these two states in 2019 are five times higher than the historical average. Guadalupe fur seals have stranded alive and dead. Those stranding are mostly weaned pups and juveniles (1–2 years old). The majority of stranded animals showed signs of malnutrition with secondary bacterial and parasitic infections. NMFS has declared a UME for Guadalupe fur seals along the entire U.S. West Coast; the UME is ongoing and NMFS is continuing to investigate the cause(s). For additional information on the UME, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2020-guadalupe-fur-seal-unusual-mortality-event-california.*

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan (Jefferson *et al.* 2015). The worldwide population of northern fur seals has declined substantially from 1.8 million animals in the 1950s (Muto *et al.* 2018). They were subjected to large-scale harvests on the Pribilof Islands to supply a lucrative fur trade. Two stocks are recognized in U.S. waters: The Eastern North Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Carretta *et al.* 2018; Muto *et al.* 2018). Abundance of the Eastern Pacific Stock has been decreasing at the Pribilof Islands since the 1940s and increasing on Bogoslof Island. The California stock originated with immigrants from the Pribilof Islands and Russian populations that recolonized San Miguel Island during the late 1950s or early 1960s after northern fur seals were extirpated from California in the 1700s and 1800s (DeLong 1982). The northern fur seal population appears to be greatly affected by El Niño events. In the month of June, approximately 93.6 percent of the northern fur seals in the survey area are expected to be from the Eastern Pacific stock and 6.4 percent from the California stock (U.S. Navy 2019). Therefore, although individuals from both the Eastern Pacific Stock and California Stock may be present in the proposed survey area, the majority are expected to be from the Eastern Pacific Stock.

Most northern fur seals are highly migratory. During the breeding season, most of the world's population of northern fur seals occurs on the Pribilof and Bogoslof islands (NMFS 2007). The main breeding season is in July (Gentry 2009). Adult males usually occur onshore from May to August, though some may be present until November; females are usually found ashore from June to November (Muto *et al.* 2018). Nearly all fur seals from the Pribilof Island rookeries are foraging at sea from fall through late spring. In November, females and pups leave the Pribilof Islands and migrate through the Gulf of Alaska to feeding areas primarily off the coasts of BC, Washington, Oregon, and California before migrating north again to the rookeries in spring (Ream *et al.* 2005; Pelland *et al.* 2014). Immature seals can remain in southern foraging areas year-round until they are old enough to mate (NMFS 2007). Adult males migrate only as far south as the Gulf of Alaska or to the west off the Kuril Islands (Kajimura 1984). Pups from the California stock also migrate to Washington, Oregon, and northern California after weaning (Lea *et al.* 2009). Although pups may be present, there are no rookeries in Washington or Oregon.

The northern fur seals spends ~90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts (Gentry 1981). The remainder of its life is spent on or near rookery islands or haulouts. While at sea, northern fur seals usually occur singly or in pairs, although larger groups can form in waters rich with prey (Antonelis and Fiscus 1980; Gentry 1981). Northern fur seals dive to relatively shallow depths to feed: 100–200 m for females, and <400 m for males (Gentry 2009). Tagged adult female fur seals were shown to remain within 200 km of the shelf break (Pelland *et al.* 2014).

Bonnell *et al.* (1992) noted the presence of northern fur seals year-round off Oregon/Washington, with the greatest numbers (87 percent) occurring in January–May. Northern fur seals were seen as far out from the coast as 185 km, and numbers increased with distance from land; they were 5–6 times more abundant in offshore waters than over the shelf or slope (Bonnell *et al.* 1992). The highest densities were seen in the Columbia River plume (~46° N) and in deep offshore waters (>2000 m) off central and southern Oregon (Bonnell *et al.* 1992). The waters off Washington are a known foraging area for adult females, and concentrations of fur seals were also reported to occur near Cape Blanco, Oregon, at ~42.8° N (Pelland *et al.* 2014). Tagged adult fur seals were tracked from the Pribilof Islands to the waters off Washington/Oregon/California, with recorded movement throughout the proposed survey area (Pelland *et al.* 2014).

Thirty-one northern fur seal sightings (63 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b). There were six sightings (6 animals) made during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c).

Off British Columbia, females and subadult males are typically found during the winter off the continental shelf (Bigg 1990). They start arriving from Alaska during December and most will leave British Columbia waters by July (Ford 2014). Ford (2014) also reported the occurrence of northern fur seals throughout British Columbia, including Dixon Entrance, Hecate Strait, Queen Charlotte Sound, and off the west

coasts of Haida Gwaii and Vancouver Island, with concentrations over the shelf and slope, especially on La Pérouse Bank, southwestern Vancouver Island. A few animals are seen in inshore waters in British Columbia, and individuals occasionally come ashore, usually at sea lion haulouts (*e.g.,* Race Rocks, off southern Vancouver Island) during winter and spring (Baird and Hanson 1997). Although fur seals sometimes haul out in British Columbia, there are no breeding rookeries.

Steller Sea Lion

The Steller sea lion occurs along the North Pacific Rim from northern Japan to California (Loughlin *et al.,* 1984). It is distributed around the coasts to the outer shelf from northern Japan through the Kuril Islands and Okhotsk Sea, through the Aleutian Islands, central Bering Sea, southern Alaska, and south to California (NOAA 2019d). There are two stocks and DPSs of Steller sea lions, the Western and Eastern DPSs, which are divided at 144° W longitude (Muto *et al.,* 2019b). The Western DPS is listed as endangered under the ESA and includes animals that occur in Japan and Russia (Muto *et al.,* 2019a,b); the Eastern DPS is not listed. Only individuals from the Eastern DPS are expected to occur in the proposed survey area.

Steller sea lions typically inhabit waters from the coast to the outer continental shelf and slope throughout their range; they are not considered migratory although foraging animals can travel long distances (Loughlin *et al.,* 2003; Raum-Suryan *et al.,* 2002). The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years a new rookery has become established on the outer Washington coast (at the Carroll Island and Sea Lion Rock complex), with >100 pups born there in 2015 (Muto *et al.,* 2018). Breeding adults occupy rookeries from late-May to early-July (NMFS 2008). Federally designated critical habitat for Steller sea lions in Oregon and California includes all rookeries (NMFS 1993). Although the Eastern DPS was delisted from the ESA in 2013, the designated critical habitat remains valid (NOAA 2019e). The critical habitat in Oregon is located along the coast at Rogue Reef (Pyramid Rock) and Orford Reef (Long Brown Rock and Seal Rock). The critical habitat area includes aquatic zones that extend 0.9 km seaward and air zones extending 0.9 km above these terrestrial and aquatic zones (NMFS 1993).

Non-breeding adults use haulouts or occupy sites at the periphery of rookeries during the breeding season (NMFS 2008). Pupping occurs from mid-May to mid-July (Pitcher and Calkins 1981) and peaks in June (Pitcher *et al.,* 2002). Territorial males fast and remain on land during the breeding season (NMFS 2008). Females with pups generally stay within 30 km of the rookeries in shallow (30–120 m) water when feeding (NMFS 2008). Tagged juvenile sea lions showed localized movements near shore (Briggs *et al.,* 2005). Loughlin *et al.* (2003) reported that most (88 percent) at-sea movements of juvenile Steller sea lions were short (< 15 km) foraging trips. Although Steller sea lions are not considered migratory, foraging animals can travel long distances outside of the breeding season (Loughlin *et al.,* 2003; Raum-Suryan *et al.,* 2002). During the summer, they mostly forage within 60 km from the coast; during winter they can range up to 200 km from shore (Ford 2014).

During a survey off Washington/Oregon June–July 2012, two Steller sea lions were seen from R/V Langseth (RPS 2012b) off southern Oregon. Eight sightings of 11 individuals were made from R/V Northern Light during a survey off southern Washington during July 2012 (RPS 2012a).

In British Columbia there are six main rookeries which are situated at the Scott Islands off northwestern Vancouver Island, the Kerourd Islands near Cape St. James at the southern end of Haida Gwaii, North Danger Rocks in eastern Hecate Strait, Virgin Rocks in eastern Queen Charlotte Sound, Garcin Rocks off southeastern Moresby Island in Haida Gwaii, and Gosling Rocks on the central mainland coast (Ford 2014). The Scott Islands and Cape St. James rookeries are the two largest breeding sites with 4,000 and 850 pups born in 2010, respectively (Ford 2014). Some adults and juveniles are also found on sites known as year-round haulouts during the breeding season. Haulouts are located along the coasts of Haida Gwaii, the central and northern mainland coast, the west coast of Vancouver Island, and the Strait of Georgia; some are year-round sites whereas others are only winter haulouts (Ford 2014). Pitcher *et al.* (2007) reported 24 major haulout sites (>50 sea lions) in British Columbia, but there are currently around 30 (Ford 2014). The total pup and non-pup count of Steller sea lions in British Columbia in 2002 was 15,438; this represents a minimum population estimate (Pitcher *et al.,* 2007). The highest pup counts in British Columbia occur in July (Bigg 1988).

California Sea Lion

The primary range of the California sea lion includes the coastal areas and offshore islands of the eastern North Pacific Ocean from British Columbia to central Mexico, including the Gulf of California (Jefferson *et al.,* 2015). However, its distribution is expanding (Jefferson *et al.,* 2015), and its secondary range extends into the Gulf of Alaska (Maniscalco *et al.,* 2004) and southern Mexico (Gallo-Reynoso and Solórzano-Velasco 1991), where it is occasionally recorded.

In California and Baja California, births occur on land from mid-May to late-June. During August and September, after the mating season, the adult males migrate northward to feeding areas as far north as Washington (Puget Sound) and British Columbia (Lowry *et al.,* 1992). They remain there until spring (March-May), when they migrate back to the breeding colonies (Lowry *et al.,* Weise *et al.,* 2006). The distribution of immature California sea lions is less well known but some make northward migrations that are shorter in length than the migrations of adult males (Huber 1991). However, most immature seals are presumed to remain near the rookeries for most of the year, as are females and pups (Lowry *et al.,* 1992). Peak numbers of California sea lions off Oregon and Washington occur during the fall (Bonnell *et al.,* 1992). California sea lions have not been observed in previous L–DEO surveys in the northeast Pacific (RPS 2012a,b,c).

California sea lions used to be rare in British Columbia, but their numbers have increased substantially since the 1970s and 1980s (Ford 2014). Wintering California sea lion numbers have increased off southern Vancouver Island since the 1970s, likely as a result of the increasing California breeding population (Olesiuk and Bigg 1984). Several thousand occur in the waters of British Columbia from fall to spring (Ford 2014). Adult and subadult male California sea lions are mainly seen in British Columbia during the winter (Olesiuk and Bigg 1984). They are mostly seen off the west coast of Vancouver Island and in the Strait of Georgia, but they are also known to haul out along the coasts of Haida Gwaii, including Dixon Entrance, and the mainland (Ford 2014).

Elevated strandings of California sea lion pups have occurred in Southern California since January 2013 and NMFS has declared a UME. The UME is confined to pup and yearling California sea lions, many of which are emaciated, dehydrated, and underweight for their age. A change in the availability of sea

lion prey, especially sardines, a high value food source for nursing mothers, is a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicate that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers. Current evidence does not indicate that this UME was caused by a single infectious agent, though a variety of disease-causing bacteria and viruses were found in samples from sea lion pups. Investigating and identifying the cause of this UME is a true public-private effort with many collaborators. The investigative team examined multiple potential explanations for the high numbers of malnourished California sea lion pups observed on the island rookeries and stranded on the mainland in 2013. The UME investigation is ongoing. For more information, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california.*

Northern Elephant Seal

The northern elephant seal breeds in California and Baja California, primarily on offshore islands, from Cedros off the west coast of Baja California, north to the Farallons in Central California (Stewart *et al.* 1994). Pupping has also been observed at Shell Island (~43.3° N) off southern Oregon, suggesting a range expansion (Bonnell *et al.* 1992; Hodder *et al.* 1998).

Adult elephant seals engage in two long northward migrations per year, one following the breeding season, and another following the annual molt (Stewart and DeLong 1995). Between the two foraging periods, they return to land to molt, with females returning earlier than males (March–April vs. July–August). After the molt, adults then return to their northern feeding areas until the next winter breeding season. Breeding occurs from December to March (Stewart and Huber 1993). Females arrive in late December or January and give birth within ~1 week of their arrival. Pups are weaned after just 27 days and are abandoned by their mothers. Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 900–1000 km. Hindell (2009) noted that traveling likely takes place at depths >200 m. Most elephant seals return to their natal rookeries when they start breeding (Huber *et al.* 1991).

When not at their breeding rookeries, adults feed at sea far from the rookeries. Males may feed as far north as the eastern Aleutian Islands and the Gulf of Alaska, whereas females feed south of 45° N (Le Boeuf *et al.* 1993; Stewart and Huber 1993). Adult male elephant seals migrate north via the California current to the Gulf of Alaska during foraging trips, and could potentially be passing through the area off Washington in May and August (migrating to and from molting periods) and November and February (migrating to and from breeding periods), but likely their presence there is transient and short-lived. Adult females and juveniles forage in the California current off California to BC (Le Boeuf *et al.* 1986, 1993, 2000). Bonnell *et al.* (1992) reported that northern elephant seals were distributed equally in shelf, slope, and offshore waters during surveys conducted off Oregon and Washington, as far as 150 km from shore, in waters >2000 m deep. Telemetry data indicate that they range much farther offshore than that (Stewart and DeLong 1995).

Off Washington, most elephant seal sightings at sea were made during June, July, and September; off Oregon, sightings were recorded from November through May (Bonnell *et al.* 1992). Several seals were seen off Oregon during summer, fall, and winter surveys in 2011 and 2012 (Adams *et al.* 2014). Northern elephant seals were also taken as bycatch off Oregon in the west coast groundfish fishery during 2002–2009 (Jannot *et al.* 2011). Northern elephant seals were sighted five times (5 animals) during the July 2012 L–DEO seismic surveys off southern Washington (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon (RPS 2012c), or off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b). One northern elephant seal was sighted during the 2009 ETOMO survey off of British Columbia (Holst 2017).

Race Rocks Ecological Preserve, located off southern Vancouver Island, is one of the few spots in British Columbia where elephant seals regularly haul out. Based on their size and general appearance, most animals using Race Rocks are adult females or subadults, although a few males also haul out there. Use of Race Rocks by northern elephant seals has increased substantially in recent years, most likely as a result of the species' dramatic recovery from near extinction in the early 20th century and its tendency to be highly migratory. A peak number (22) of adults and subadults were observed in spring 2003 (Demarchi and Bentley 2004); pups have also been born there primarily during December and January (Ford 2014). Haulouts can also be found on the western and northeastern coasts of Haida Gwaii, and along the coasts of Vancouver Island (Ford 2014).

Harbor Seal

Two subspecies of harbor seal occur in the Pacific: *P.v. stejnegeri* in the northwest Pacific Ocean and *P.v. richardii* in the eastern Pacific Ocean. *P.v. richardii* occurs in nearshore, coastal, and estuarine areas ranging from Baja California, Mexico, north to the Pribilof Islands in Alaska (Carretta *et al.,* 2019a). Five stocks of harbor seals are recognized along the U.S. West Coast: (1) Southern Puget Sound, (2) Washington Northern Inland Waters Stock, (3) Hood Canal, (4) Oregon/Washington Coast, and (5) California (Carretta *et al.,* 2019a). The Oregon/Washington Coast stock occurs in the proposed survey area.

Harbor seals inhabit estuarine and coastal waters, hauling out on rocks, reefs, beaches, and glacial ice flows. They are generally non-migratory, but move locally with the tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). Female harbor seals give birth to a single pup while hauled out on shore or on glacial ice flows; pups are born from May to mid-July. When molting, which occurs primarily in late August, seals spend the majority of the time hauled out on shore, glacial ice, or other substrates. Juvenile harbor seals can travel significant distances (525 km) to forage or disperse (Lowry *et al.,* 2001). The smaller home range used by adults is suggestive of a strong site fidelity (Pitcher and Calkins 1979; Pitcher and McAllister 1981; Lowry *et al.,* 2001).

Harbor seals haul out on rocks, reefs, and beaches along the U.S. west coast (Carretta *et al.,* 2019a). Jeffries *et al.* (2000) documented several harbor seal rookeries and haulouts along the Washington coastline. Bonnell *et al.* (1992) noted that most harbor seals sighted off Oregon and Washington were within 20 km from shore, with the farthest sighting 92 km from the coast. Menza *et al.* (2016) also showed the highest predicted densities nearshore. During surveys off the Oregon and Washington coasts, 88 percent of at-sea harbor seals occurred over shelf waters <200 m deep, with a few sightings near the 2000-m contour, and only one sighting over deeper water (Bonnell *et*

al., 1992). Twelve sightings of harbor seals occurred in nearshore waters from R/V *Northern Light* during a survey off southern Washington during July 2012 (RPS 2012a).

Harbor seals occur along all coastal areas of British Columbia, including the western coast of Vancouver Island, with the highest concentration in the Strait of Georgia (13.1 seals per km of coast); average densities elsewhere are 2.6 seals per km (Ford 2014). Almost 1,400 haulouts have been reported for British Columbia, many of them in the Strait of Georgia (Ford 2014).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

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

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

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

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 31 marine mammal species (25 cetacean and six pinniped (four otariid and two phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 15 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and four are classified as high-frequency cetaceans (*i.e.,* porpoises and *Kogia* spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures

makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2 - s$) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

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

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

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

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

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

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

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

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

time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

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, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

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

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

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;*

2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs or amplitude of calls (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004; Holt *et al.,* 2012), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SELcum of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

Forney *et al.* (2017) detail the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that

apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. As we discuss in describing our proposed mitigation later in this document, avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) state that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects. The authors discuss several case studies, including western Pacific gray whales, which are a small population of mysticetes believed to be adversely affected by oil and gas development off Sakhalin Island, Russia (Weller *et al.,* 2002; Reeves *et al.,* 2005). Western gray whales display a high degree of interannual site fidelity to the area for foraging purposes, and observations in the area during airgun surveys has shown the potential for harm caused by displacement from such an important area (Weller *et al.,* 2006; Johnson *et al.,* 2007). Forney *et al.* (2017) also discuss beaked whales, noting that anthropogenic effects in areas where they are resident could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain could lead to more severe acute effects.

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

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

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

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

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

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

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

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et*

al., 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

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

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

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

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Langseth* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a,b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Southern Resident killer whales often forage in the company of whale watch boats in the waters around the San Juan Islands, Washington. These observed behavioral changes have included faster swimming speeds (Williams *et al.,* 2002b), less directed swimming paths (Williams *et al.,* 2002b; Bain *et al.,* 2006; Williams *et al.,* 2009a), and less time foraging (Bain *et al.,* 2006; Williams *et al.,* 2006; Lusseau *et al.,* 2009; Giles and Cendak 2010; Senigaglia *et al.,* 2016). Vessels in the path of the whales can also interfere with important social behaviors such as prey sharing (Ford and Ellis 2006) or nursing (Kriete 2007). Williams *et al.* (2006) found that with the disruption of feeding behavior that has been observed in Northern Resident killer whales, it is estimated that the presence of vessels could result in an 18 percent decrease in energy intake.

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

Sounds emitted by the *Langseth* are low frequency and continuous, but would be widely dispersed in both space and time. Vessel traffic associated with the proposed survey is of low density compared to traffic associated with commercial shipping, industry support vessels, or commercial fishing vessels, and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment, and the effects of vessel noise described above are not expected to occur as a result of this survey. In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found

draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Langseth* will travel at a speed of 4.2 kn (7.8 km/h) while towing seismic survey gear (LGL 2018). At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = 0–5.5×10^{-6}; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see ''Proposed Mitigation''), which we believe eliminates any foreseeable risk of ship strike during transit. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

There is no conclusive evidence that exposure to airgun noise results in behaviorally-mediated forms of injury. Behaviorally-mediated injury (*i.e.,* mass stranding events) has been primarily associated with beaked whales exposed to mid-frequency active (MFA) naval sonar. Tactical sonar and the alerting stimulus used in Nowacek *et al.* (2004) are very different from the noise produced by airguns. One should therefore not expect the same reaction to airgun noise as to these other sources. As explained below, military MFA sonar is very different from airguns, and one should not assume that airguns will cause the same effects as MFA sonar (including strandings).

To understand why Navy MFA sonar affects beaked whales differently than airguns do, it is important to note the distinction between behavioral sensitivity and susceptibility to auditory

injury. To understand the potential for auditory injury in a particular marine mammal species in relation to a given acoustic signal, the frequency range the species is able to hear is critical, as well as the species' auditory sensitivity to frequencies within that range. Current data indicate that not all marine mammal species have equal hearing capabilities across all frequencies and, therefore, species are grouped into hearing groups with generalized hearing ranges assigned on the basis of available data (Southall *et al.,* 2007, 2019). Hearing ranges as well as auditory sensitivity/susceptibility to frequencies within those ranges vary across the different groups. For example, in terms of hearing range, the high-frequency cetaceans (*e.g., Kogia* spp.) have a generalized hearing range of frequencies between 275 Hz and 160 kHz, while mid-frequency cetaceans—such as dolphins and beaked whales—have a generalized hearing range between 150 Hz to 160 kHz. Regarding auditory susceptibility within the hearing range, while mid-frequency cetaceans and high-frequency cetaceans have roughly similar hearing ranges, the high-frequency group is much more susceptible to noise-induced hearing loss during sound exposure, *i.e.,* these species have lower thresholds for these effects than other hearing groups (NMFS, 2018). Referring to a species as behaviorally sensitive to noise simply means that an animal of that species is more likely to respond to lower received levels of sound than an animal of another species that is considered less behaviorally sensitive. So, while dolphin species and beaked whale species—both in the mid-frequency cetacean hearing group—are assumed to (generally) hear the same sounds equally well and be equally susceptible to noise-induced hearing loss (auditory injury), the best available information indicates that a beaked whale is more likely to behaviorally respond to that sound at a lower received level compared to an animal from other mid-frequency cetacean species that are less behaviorally sensitive. This distinction is important because, while beaked whales are more likely to respond behaviorally to sounds than are many other species (even at lower levels), they cannot hear the predominant, lower frequency sounds from seismic airguns as well as sounds that have more energy at frequencies that beaked whales can hear better (such as military MFA sonar).

Navy MFA sonar affects beaked whales differently than airguns do because it produces energy at different frequencies than airguns. Mid-frequency cetacean hearing is generically thought to be best between 8.8 to 110 kHz, *i.e.,* these cutoff values define the range above and below which a species in the group is assumed to have declining auditory sensitivity, until reaching frequencies that cannot be heard (NMFS, 2018). However, beaked whale hearing is likely best within a higher, narrower range (20–80 kHz, with best sensitivity around 40 kHz), based on a few measurements of hearing in stranded beaked whales (Cook *et al.,* 2006; Finneran *et al.,* 2009; Pacini *et al.,* 2011) and several studies of acoustic signals produced by beaked whales (*e.g.,* Frantzis *et al.,* 2002; Johnson *et al.,* 2004, 2006; Zimmer *et al.,* 2005). While precaution requires that the full range of audibility be considered when assessing risks associated with noise exposure (Southall *et al.,* 2007, 2019a2019), animals typically produce sound at frequencies where they hear best. More recently, Southall *et al.* (2019a2019) suggested that certain species amongst the historical mid-frequency hearing group (beaked whales, sperm whales, and killer whales) are likely more sensitive to lower frequencies within the group's generalized hearing range than are other species within the group and state that the data for beaked whales suggest sensitivity to approximately 5 kHz. However, this information is consistent with the general conclusion that beaked whales (and other mid-frequency cetaceans) are relatively insensitive to the frequencies where most energy of an airgun signal is found. Military MFA sonar is typically considered to operate in the frequency range of approximately 3–14 kHz (D'Amico *et al.,* 2009), *i.e.,* outside the range of likely best hearing for beaked whales but within or close to the lower bounds, whereas most energy in an airgun signal is radiated at much lower frequencies, below 500 Hz (Dragoset, 1990).

It is important to distinguish between energy (loudness, measured in dB) and frequency (pitch, measured in Hz). In considering the potential impacts of mid-frequency components of airgun noise (1–10 kHz, where beaked whales can be expected to hear) on marine mammal hearing, one needs to account for the energy associated with these higher frequencies and determine what energy is truly ''significant.'' Although there is mid-frequency energy associated with airgun noise (as expected from a broadband source), airgun sound is predominantly below 1 kHz (Breitzke *et al.,* 2008; Tashmukhambetov *et al.,* 2008; Tolstoy *et al.,* 2009). As stated by Richardson *et al.* (1995), ''[. . .] most emitted [seismic airgun] energy is at 10–120 Hz, but the pulses contain some energy up to 500–1,000 Hz.'' Tolstoy *et al.* (2009) conducted empirical measurements, demonstrating that sound energy levels associated with airguns were at least 20 decibels (dB) lower at 1 kHz (considered ''mid-frequency'') compared to higher energy levels associated with lower frequencies (below 300 Hz) (''all but a small fraction of the total energy being concentrated in the 10–300 Hz range'' [Tolstoy *et al.,* 2009]), and at higher frequencies (*e.g.,* 2.6–4 kHz), power might be less than 10 percent of the peak power at 10 Hz (Yoder, 2002). Energy levels measured by Tolstoy *et al.* (2009) were even lower at frequencies above 1 kHz. In addition, as sound propagates away from the source, it tends to lose higher-frequency components faster than low-frequency components (*i.e.,* low-frequency sounds typically propagate longer distances than high-frequency sounds) (Diebold *et al.,* 2010). Although higher-frequency components of airgun signals have been recorded, it is typically in surface-ducting conditions (*e.g.,* DeRuiter *et al.,* 2006; Madsen *et al.,* 2006) or in shallow water, where there are advantageous propagation conditions for the higher frequency (but low-energy) components of the airgun signal (Hermannsen *et al.,* 2015). This should not be of concern because the likely behavioral reactions of beaked whales that can result in acute physical injury would result from noise exposure at depth (because of the potentially greater consequences of severe behavioral reactions). In summary, the frequency content of airgun signals is such that beaked whales will not be able to hear the signals well (compared to MFA sonar), especially at depth where we expect the consequences of noise exposure could be more severe.

Aside from frequency content, there are other significant differences between MFA sonar signals and the sounds produced by airguns that minimize the risk of severe behavioral reactions that could lead to strandings or deaths at sea, *e.g.,* significantly longer signal duration, horizontal sound direction, typical fast and unpredictable source movement. All of these characteristics of MFA sonar tend towards greater potential to cause severe behavioral or physiological reactions in exposed beaked whales that may contribute to stranding. Although both sources are powerful, MFA sonar contains significantly greater energy in the mid-frequency range, where beaked whales hear better. Short-duration, high

energy pulses—such as those produced by airguns—have greater potential to cause damage to auditory structures (though this is unlikely for mid-frequency cetaceans, as explained later in this document), but it is longer duration signals that have been implicated in the vast majority of beaked whale strandings. Faster, less predictable movements in combination with multiple source vessels are more likely to elicit a severe, potentially anti-predator response. Of additional interest in assessing the divergent characteristics of MFA sonar and airgun signals and their relative potential to cause stranding events or deaths at sea is the similarity between the MFA sonar signals and stereotyped calls of beaked whales' primary predator: The killer whale (Zimmer and Tyack, 2007). Although generic disturbance stimuli—as airgun noise may be considered in this case for beaked whales—may also trigger antipredator responses, stronger responses should generally be expected when perceived risk is greater, as when the stimulus is confused for a known predator (Frid and Dill, 2002). In addition, because the source of the perceived predator (*i.e.,* MFA sonar) will likely be closer to the whales (because attenuation limits the range of detection of mid-frequencies) and moving faster (because it will be on faster-moving vessels), any antipredator response would be more likely to be severe (with greater perceived predation risk, an animal is more likely to disregard the cost of the response; Frid and Dill, 2002). Indeed, when analyzing movements of a beaked whale exposed to playback of killer whale predation calls, Allen *et al.* (2014) found that the whale engaged in a prolonged, directed avoidance response, suggesting a behavioral reaction that could pose a risk factor for stranding. Overall, these significant differences between sound from MFA sonar and the mid-frequency sound component from airguns and the likelihood that MFA sonar signals will be interpreted in error as a predator are critical to understanding the likely risk of behaviorally-mediated injury due to seismic surveys.

The available scientific literature also provides a useful contrast between airgun noise and MFA sonar regarding the likely risk of behaviorally-mediated injury. There is strong evidence for the association of beaked whale stranding events with MFA sonar use, and particularly detailed accounting of several events is available (*e.g.,* a 2000 Bahamas stranding event for which investigators concluded that MFA sonar use was responsible; Evans and England, 2001). D'Amico *et al.* (2009) reviewed 126 beaked whale mass stranding events over the period from 1950 (*i.e.,* from the development of modern MFA sonar systems) through 2004. Of these, there were two events where detailed information was available on both the timing and location of the stranding and the concurrent nearby naval activity, including verification of active MFA sonar usage, with no evidence for an alternative cause of stranding. An additional ten events were at minimum spatially and temporally coincident with naval activity likely to have included MFA sonar use and, despite incomplete knowledge of timing and location of the stranding or the naval activity in some cases, there was no evidence for an alternative cause of stranding. The U.S. Navy has publicly stated agreement that five such events since 1996 were associated in time and space with MFA sonar use, either by the U.S. Navy alone or in joint training exercises with the North Atlantic Treaty Organization. The U.S. Navy additionally noted that, as of 2017, a 2014 beaked whale stranding event in Crete coincident with naval exercises was under review and had not yet been determined to be linked to sonar activities (U.S. Navy, 2017). Separately, the International Council for the Exploration of the Sea reported in 2005 that, worldwide, there have been about 50 known strandings, consisting mostly of beaked whales, with a potential causal link to MFA sonar (ICES, 2005). In contrast, very few such associations have been made to seismic surveys, despite widespread use of airguns as a geophysical sound source in numerous locations around the world.

A more recent review of possible stranding associations with seismic surveys (Castellote and Llorens, 2016) states plainly that, ''[s]peculation concerning possible links between seismic survey noise and cetacean strandings is available for a dozen events but without convincing causal evidence.'' The authors' ''exhaustive'' search of available information found ten events worth further investigation via a ranking system representing a rough metric of the relative level of confidence offered by the data for inferences about the possible role of the seismic survey in a given stranding event. Only three of these events involved beaked whales. Whereas D'Amico *et al.* (2009) used a 1–5 ranking system, in which ''1'' represented the most robust evidence connecting the event to MFA sonar use, Castellote and Llorens (2016) used a 1–6 ranking system, in which ''6'' represented the most robust evidence connecting the event to the seismic survey. As described above, D'Amico *et al.* (2009) found that two events were ranked ''1'' and ten events were ranked ''2'' (*i.e.,* 12 beaked whale stranding events were found to be associated with MFA sonar use). In contrast, Castellote and Llorens (2016) found that none of the three beaked whale stranding events achieved their highest ranks of 5 or 6. Of the ten total events, none achieved the highest rank of 6. Two events were ranked as 5: One stranding in Peru involving dolphins and porpoises and a 2008 stranding in Madagascar. This latter ranking can only broadly be associated with the survey itself, as opposed to use of seismic airguns. An exhaustive investigation of this stranding event, which did not involve beaked whales, concluded that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, which was likely exacerbated by several site- and situation-specific secondary factors. The review panel found that seismic airguns were used after the initial strandings and animals entering a lagoon system, that airgun use clearly had no role as an initial trigger, and that there was no evidence that airgun use dissuaded animals from leaving (Southall et al., 2013).

However, one of these stranding events, involving two Cuvier's beaked whales, was contemporaneous with and reasonably associated spatially with a 2002 seismic survey in the Gulf of California conducted by L–DEO, as was the case for the 2007 Gulf of Cadiz seismic survey discussed by Castellote and Llorens (also involving two Cuvier's beaked whales). However, neither event was considered a ''true atypical mass stranding'' (according to Frantzis [1998]) as used in the analysis of Castellote and Llorens (2016). While we agree with the authors that this lack of evidence should not be considered conclusive, it is clear that there is very little evidence that seismic surveys should be considered as posing a significant risk of acute harm to beaked whales or other mid-frequency cetaceans. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Entanglement—Entanglements occur when marine mammals become wrapped around cables, lines, nets, or other objects suspended in the water column. During seismic operations,

numerous cables, lines, and other objects primarily associated with the airgun array and hydrophone streamers will be towed behind the *Langseth* near the water's surface. However, we are not aware of any cases of entanglement of mysticetes in seismic survey equipment. No incidents of entanglement of marine mammals with seismic survey gear have been documented in over 54,000 nmi (100,000 km) of previous NSF-funded seismic surveys when observers were aboard (*e.g.,* Smultea and Holst 2003; Haley and Koski 2004; Holst 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a; Haley and Ireland 2006; SIO and NSF 2006b; Hauser *et al.,* 2008; Holst and Smultea 2008). Although entanglement with the streamer is theoretically possible, it has not been documented during tens of thousands of miles of NSF-sponsored seismic cruises or, to our knowledge, during hundreds of thousands of miles of industrial seismic cruises. Entanglement in OBSs and OBNs is also not expected to occur. There are a relative few deployed devices, and no interaction between marine mammals and any such device has been recorded during prior NSF surveys using the devices. There are no meaningful entanglement risks posed by the proposed survey, and entanglement risks are not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

Physical Disturbance—Sources of seafloor disturbance related to geophysical surveys that may impact marine mammal habitat include placement of anchors, nodes, cables, sensors, or other equipment on or in the seafloor for various activities. Equipment deployed on the seafloor has the potential to cause direct physical damage and could affect bottom-associated fish resources.

Placement of equipment, such as OBSs and OBNs, on the seafloor could damage areas of hard bottom where direct contact with the seafloor occurs and could crush epifauna (organisms that live on the seafloor or surface of other organisms). Damage to unknown or unseen hard bottom could occur, but because of the small area covered by most bottom-founded equipment and the patchy distribution of hard bottom habitat, contact with unknown hard bottom is expected to be rare and impacts minor. Seafloor disturbance in areas of soft bottom can cause loss of small patches of epifauna and infauna due to burial or crushing, and bottom-feeding fishes could be temporarily displaced from feeding areas. Overall, any effects of physical damage to habitat are expected to be minor and temporary.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. However, the reaction of fish to airguns depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Several studies have demonstrated that airgun 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), though the bulk of studies indicate no or slight reaction to noise (*e.g.,* Miller and Cripps, 2013; Dalen and Knutsen, 1987; Pena *et al.,* 2013; Chapman and Hawkins, 1969; Wardle *et al.,* 2001; Sara *et al.,* 2007; Jorgenson and Gyselman, 2009; Blaxter *et al.,* 1981; Cott *et al.,* 2012; Boeger *et al.,* 2006), and that, most commonly, while there are likely to be impacts to fish as a result of noise from nearby airguns, such effects will be temporary. For example, investigators reported significant, short-term declines in commercial fishing catch rate of gadid fishes during and for up to five days after seismic survey operations, but the catch rate subsequently returned to normal (Engas *et al.,* 1996; Engas and Lokkeborg, 2002). Other studies have reported similar findings (Hassel *et al.,* 2004). Skalski *et al.* (1992) also found a reduction in catch rates—for rockfish (*Sebastes* spp.) in response to controlled airgun exposure—but suggested that the mechanism underlying the decline was not dispersal but rather decreased responsiveness to baited hooks associated with an alarm behavioral response. A companion study showed that alarm and startle responses were not sustained following the removal of the sound source (Pearson *et al.,* 1992). Therefore, Skalski *et al.* (1992) suggested that the effects on fish abundance may be transitory, primarily occurring during the sound exposure itself. In some cases, effects on catch rates are variable within a study, which may be more broadly representative of temporary displacement of fish in response to airgun noise (*i.e.,* catch rates may increase in some locations and decrease in others) than any long-term damage to the fish themselves (Streever *et al.,* 2016).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality and, in some studies, fish auditory systems have been damaged by airgun noise (McCauley *et al.,* 2003; Popper *et al.,* 2005; Song *et al.,* 2008). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b. (2012) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long—both of which are conditions unlikely to occur for this survey that is necessarily transient in any given location and likely result in brief, infrequent noise exposure to prey species in any given area. For this survey, the sound source is constantly moving, and most fish would likely avoid the sound source prior to receiving sound of sufficient intensity to cause physiological or anatomical damage. In addition, ramp-up may allow certain fish species the opportunity to move further away from the sound source.

A recent comprehensive review (Carroll *et al.,* 2017) found that results are mixed as to the effects of airgun noise on the prey of marine mammals. While some studies suggest a change in prey distribution and/or a reduction in prey abundance following the use of seismic airguns, others suggest no effects or even positive effects in prey abundance. As one specific example, Paxton *et al.* (2017), which describes findings related to the effects of a 2014 seismic survey on a reef off of North Carolina, showed a 78 percent decrease in observed nighttime abundance for certain species. It is important to note that the evening hours during which the decline in fish habitat use was recorded (via video recording) occurred on the same day that the seismic survey passed, and no subsequent data is presented to support an inference that the response was long-lasting. Additionally, given that the finding is based on video images, the lack of recorded fish presence does not support a conclusion that the fish actually moved away from the site or suffered any serious impairment. In summary, this particular study corroborates prior studies indicating that a startle response or short-term displacement should be expected.

Available data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are

likely to detect airgun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014). Similar to fish, however, the transient nature of the survey leads to an expectation that effects will be largely limited to behavioral reactions and would occur as a result of brief, infrequent exposures.

With regard to potential impacts on zooplankton, McCauley *et al.* (2017) found that exposure to airgun noise resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after airgun exposure compared with controls for all taxa, within 1 km of the airguns. However, the authors also stated that in order to have significant impacts on r-selected species (*i.e.,* those with high growth rates and that produce many offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned, and it is possible that the findings reflect avoidance by zooplankton rather than mortality (McCauley *et al.,* 2017). In addition, the results of this study are inconsistent with a large body of research that generally finds limited spatial and temporal impacts to zooplankton as a result of exposure to airgun noise (*e.g.,* Dalen and Knutsen, 1987; Payne, 2004; Stanley *et al.,* 2011). Most prior research on this topic, which has focused on relatively small spatial scales, has showed minimal effects (*e.g.,* Kostyuchenko, 1973; Booman *et al.,* 1996; Sætre and Ona, 1996; Pearson *et al.,* 1994; Bolle *et al.,* 2012).

A modeling exercise was conducted as a follow-up to the McCauley *et al.* (2017) study (as recommended by McCauley *et al.*), in order to assess the potential for impacts on ocean ecosystem dynamics and zooplankton population dynamics (Richardson *et al.,* 2017). Richardson *et al.* (2017) found that for copepods with a short life cycle in a high-energy environment, a full-scale airgun survey would impact copepod abundance up to three days following the end of the survey, suggesting that effects such as those found by McCauley *et al.* (2017) would not be expected to be detectable downstream of the survey areas, either spatially or temporally.

Notably, a recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to airgun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.,* 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of 5 m or less from the airguns. Mortality one week after the airgun blast was significantly higher in the copepods placed 10 m from the airgun but was not significantly different from the controls at a distance of 20 m from the airgun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the airgun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the airguns may be more pronounced than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sublethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the airgun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 509–658 m, with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an SEL of 186 dB at a range of 25 m, with no reported mortality at that distance. Regardless, if we assume a worst-case likelihood of severe impacts to zooplankton within approximately 1 km of the acoustic source, the brief time to regeneration of the potentially affected zooplankton populations does not lead us to expect any meaningful follow-on effects to the prey base for marine mammals.

A recent review article concluded that, while laboratory results provide scientific evidence for high-intensity and low-frequency sound-induced physical trauma and other negative effects on some fish and invertebrates, the sound exposure scenarios in some cases are not realistic to those encountered by marine organisms during routine seismic operations (Carroll *et al.,* 2017). The review finds that there has been no evidence of reduced catch or abundance following seismic activities for invertebrates, and that there is conflicting evidence for fish with catch observed to increase, decrease, or remain the same. Further, where there is evidence for decreased catch rates in response to airgun noise, these findings provide no information about the underlying biological cause of catch rate reduction (Carroll *et al.,* 2017).

In summary, impacts of the specified activity on marine mammal prey species will likely be limited to behavioral responses, the majority of prey species will be capable of moving out of the area during the survey, a rapid return to normal recruitment, distribution, and behavior for prey species is anticipated, and, overall, impacts to prey species will be minor and temporary. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to airgun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in the survey area would be temporary avoidance of the area. The proposed survey would move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once the survey moves out of the area or ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of this survey and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions,

termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

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. Further, 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.

Estimated Take

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

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

Authorized takes would primarily be by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high frequency cetaceans (*i.e.,* porpoises, *Kogia* spp.). The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or 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

NMFS uses 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). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. L–DEO's proposed activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L–DEO's proposed seismic survey includes the use of impulsive (seismic airguns) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4*: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6*: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8*: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential 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 acoustic propagation modeling.

L–DEO's modeling methodology is described in greater detail in the IHA application (LGL 2019). The proposed 2D survey would acquire data using the 36-airgun array with a total discharge volume of 6,600 in³ at a maximum tow depth of 12 m. L–DEO model results are used to determine the 160-dBrms radius for the 36-airgun array in deep water (>1,000 m) down to a maximum water depth of 2,000 m. Water depths in the project area may be up to 4,400 m, but marine mammals are generally not anticipated to dive below 2,000 m (Costa and Williams 1999). Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) which uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (approximately 1600 m), intermediate water depth on the slope (approximately 600–1100 m), and shallow water (approximately 50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate-water cases, the field measurements cannot be used readily to derive Level A and Level B harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate-water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of NSF–USGS, 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths. For deep water (>1,000 m), L–DEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m.

A recent retrospective analysis of acoustic propagation from use of the *Langseth* sources during a 2012 survey off Washington (*i.e.,* in the same location) suggests that predicted (modeled) radii (using the same approach as that used here) were 2–3 times larger than the measured radii in shallow water. (Crone *et al.,* 2014). Therefore, because the modeled shallow-water radii were specifically demonstrated to be overly conservative for the region in which the current survey is planned, L–DEO used the received levels from multichannel seismic data collected by the *Langseth* during the 2012 survey to estimate Level B harassment radii in shallow (<100 m) and intermediate (100–1,000 m) depths (Crone *et al.,* 2014). Streamer data in shallow water collected in 2012 have the advantage of including the effects of local and complex subsurface geology, seafloor topography, and water column properties, and thus allow determination of radii more confidently than using data from calibration experiments in the Gulf of Mexico.

The proposed survey would acquire data with a four-string 6,600-in³ airgun array at a tow depth of 12 m while the data collected in 2012 were acquired with the same airgun array at a tow depth of 9 m. To account for the differences in tow depth between the 2012 survey and the proposed 2020 survey, L–DEO calculated a scaling factor using the deep water modeling (see Appendix D in L–DEO's IHA application). A scaling factor of 1.15 was applied to the measured radii from the airgun array towed at 9 m.

The estimated distances to the Level B harassment isopleth for the *Langseth's* 36-airgun array are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Level B harassment zone (m) using L–DEO model
36 airgun array, 6,600-in^3	12	>1000	[a] 6,733
		100–1000	[b] 9,468
		<100	[b] 12,650

[a] Distance based on L–DEO model results.
[b] Distance based on data from Crone *et al.* (2014).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS source modeling software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2018). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Langseth* airgun array were derived from calculating the modified far-field signature (Table 5). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

For a more complete explanation of this modeling approach, please see ''Appendix A: Determination of Mitigation Zones'' in the IHA application.

TABLE 5—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE 6,600-IN^3 AIRGUN ARRAY

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $_{LE,MF,24h}$: 185 dB	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in^3 airgun array (Peak SPL_{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in^3 airgun array (SEL_{cum})	232.98	232.84	233.10	232.84	232.08

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User

Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities (4.2 knots) and shot intervals (37.5 m) specific to the planned survey, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 5. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the 36-airgun array for the surveys are shown in Table A–3 in Appendix A of the IHA application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 6. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 6—MODELED RADIAL DISTANCES (M) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source (volume)	Threshold	Level A harassment zone (m)				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
36-airgun array (6,600 in³).	SEL_{cum}	426.9	0	1.3	13.9	0
	Peak	38.9	13.6	268.3	43.7	10.6

Note that because of some of the assumptions included in the methods used (*e.g.,* stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds given very small modeled zones of injury for those species (up to 43.7 m), in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the 230 dB peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds 230 dB peak SPL would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

In order to provide quantitative support for this theoretical argument, we calculated expected maximum distances at which the near-field would transition to the far-field (Table 5). For a specific array one can estimate the distance at which the near-field transitions to the far-field by:

$$D = \frac{L^2}{4\lambda}$$

with the condition that $D >> \lambda$, and where D is the distance, L is the longest dimension of the array, and λ is the wavelength of the signal (Lurton, 2002). Given that λ can be defined by:

$$\lambda = \frac{v}{f}$$

where f is the frequency of the sound signal and v is the speed of the sound in the medium of interest, one can rewrite the equation for D as:

$$D = \frac{fL^2}{4v}$$

and calculate D directly given a particular frequency and known speed of sound (here assumed to be 1,500 meters per second in water, although this varies with environmental conditions).

To determine the closest distance to the arrays at which the source level predictions in Table 5 are valid (*i.e.,* maximum extent of the near-field), we calculated D based on an assumed frequency of 1 kHz. A frequency of 1 kHz is commonly used in near-field/far-field calculations for airgun arrays (Zykov and Carr, 2014; MacGillivray, 2006; NSF and USGS, 2011), and based on representative airgun spectrum data and field measurements of an airgun array used on the *Langseth,* nearly all (greater than 95 percent) of the energy from airgun arrays is below 1 kHz (Tolstoy *et al.,* 2009). Thus, using 1 kHz as the upper cut-off for calculating the maximum extent of the near-field should reasonably represent the near-field extent in field conditions.

If the largest distance to the peak sound pressure level threshold was equal to or less than the longest dimension of the array (*i.e.,* under the array), or within the near-field, then received levels that meet or exceed the threshold in most cases are not expected to occur. This is because within the near-field and within the dimensions of the array, the source levels specified in Table 5 are overestimated and not applicable. In fact, until one reaches a distance of approximately three or four times the near-field distance the average intensity of sound at any given distance from the array is still less than that based on calculations that assume a directional point source (Lurton, 2002). The 6,600-in³ airgun array used in the proposed survey has an approximate

diagonal of 28.8 m, resulting in a near-field distance of 138.7 m at 1 kHz (NSF and USGS, 2011). Field measurements of this array indicate that the source behaves like multiple discrete sources, rather than a directional point source, beginning at approximately 400 m (deep site) to 1 km (shallow site) from the center of the array (Tolstoy *et al.,* 2009), distances that are actually greater than four times the calculated 140-m near-field distance. Within these distances, the recorded received levels were always lower than would be predicted based on calculations that assume a directional point source, and increasingly so as one moves closer towards the array (Tolstoy *et al.,* 2009). Given this, relying on the calculated distance (138.7 m) as the distance at which we expect to be in the near-field is a conservative approach since even beyond this distance the acoustic modeling still overestimates the actual received level. Within the near-field, in order to explicitly evaluate the likelihood of exceeding any particular acoustic threshold, one would need to consider the exact position of the animal, its relationship to individual array elements, and how the individual acoustic sources propagate and their acoustic fields interact. Given that within the near-field and dimensions of the array source levels would be below those in Table 5, we believe exceedance of the peak pressure threshold would only be possible under highly unlikely circumstances.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean, otariid pinniped, or phocid pinniped and do not propose to authorize any Level A harassment for these species.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, and group dynamics of marine mammals that will inform the take calculations.

Extensive systematic aircraft- and ship-based surveys have been conducted for marine mammals in offshore waters of Oregon and Washington (*e.g.,* Bonnell *et al.,* 1992; Green *et al.,* 1992, 1993; Barlow 1997, 2003; Barlow and Taylor 2001; Calambokidis and Barlow 2004; Barlow and Forney 2007; Forney 2007; Barlow 2010). Ship surveys for cetaceans in slope and offshore waters of Oregon and Washington were conducted by NMFS' Southwest Fisheries Science Center (SWFSC) in 1991, 1993, 1996, 2001, 2005, 2008, and 2014 and synthesized by Barlow (2016); these surveys were conducted from the coastline up to ~556 km from shore from June or August to November or December. These data were used by the SWFSC to develop spatial models of cetacean densities for the California Current Ecosystem (CCE). Systematic, offshore, at-sea survey data for pinnipeds are more limited (*e.g.,* Bonnell *et al.,* 1992; Adams *et al.,* 2014); In British Columbia, several systematic surveys have been conducted in coastal waters (*e.g.,* Williams and Thomas 2007; Ford *et al.,* 2010a; Best *et al.,* 2015; Harvey *et al.,* 2017). Surveys in coastal as well as offshore waters were conducted by DFO during 2002 to 2008; however, little effort occurred off the west coast of Vancouver Island during late spring/summer (Ford *et al.,* 2010). Density estimates for the proposed survey areas outside the U.S. EEZ, *i.e.,* in the Canadian EEZ, were not readily available, so density estimates for U.S. waters were applied to the entire survey area.

The U.S. Navy primarily used SWFSC habitat-based cetacean density models to develop a marine species density database (MSDD) for the Northwest Training and Testing (NWTT) Study Area for NWTT Phase III activities (U.S. Navy 2019a), which encompasses the U.S. portion of the proposed survey area. For several cetacean species, the Navy updated densities estimated by line-transect surveys or mark-recapture studies (*e.g.,* Barlow 2016). These methods usually produce a single value for density that is an averaged estimate across very large geographical areas, such as waters within the U.S. EEZ off California, Oregon, and Washington (referred to as a ''uniform'' density estimate). This is the general approach applied in estimating cetacean abundance in the NMFS stock assessment reports. The disadvantage of these methods is that they do not provide spatially- or temporally-explicit density information. More recently, a newer method called spatial habitat modeling has been used to estimate cetacean densities that address some of these shortcomings (*e.g.,* Barlow *et al.,* 2009; Becker *et al.,* 2010; 2012a; 2014; Becker *et al.,* 2016; Ferguson *et al.,* 2006; Forney *et al.,* 2012; 2015; Redfern *et al.,* 2006). (Note that spatial habitat models are also referred to as ''species distribution models'' or ''habitat-based density models.'') These models estimate density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth) and thus, within the study area that was modeled, densities can be predicted at all locations where these habitat variables can be measured or estimated. Spatial habitat models therefore allow estimates of cetacean densities on finer scales (spatially and temporally) than traditional line-transect or mark-recapture analyses.

The methods used to estimate pinniped at-sea densities are typically different than those used for cetaceans, because pinnipeds are not limited to the water and spend a significant amount of time on land (*e.g.,* at rookeries). Pinniped abundance is generally estimated via shore counts of animals on land at known haulout sites or by counting number of pups weaned at rookeries and applying a correction factor to estimate the abundance of the population (for example Harvey *et al.,* 1990; Jeffries *et al.,* 2003; Lowry, 2002; Sepulveda *et al.,* 2009). Estimating in-water densities from land-based counts is difficult given the variability in foraging ranges, migration, and haulout behavior between species and within each species, and is driven by factors such as age class, sex class, breeding cycles, and seasonal variation. Data such as age class, sex class, and seasonal variation are often used in conjunction with abundance estimates from known haulout sites to assign an in-water abundance estimate for a given area. The total abundance divided by the area of the region provides a representative in-water density estimate for each species in a different location. In addition to using shore counts to estimate pinniped density, traditional line-transect derived estimates are also used, particularly in open ocean areas.

The Navy's MSDD is currently the most comprehensive compendium for density data available for the CCE. However, data products are currently not publically available for the database; thus, in this analysis the Navy's data products were used only for species for which density data were not available from an alternative spatially-explicit model (*e.g.,* pinnipeds, *Kogia* spp., minke whales, sei whales, gray whales, short-finned pilot whales, and Northern Resident, transient, and offshore killer whales). For these species, GIS was used to determine the areas expected to be ensonified in each density category (*i.e.,* distance from shore). For pinnipeds, the densities from the Navy's MSDD were corrected by projecting the most recent population growth and updated population estimates to 2020, when

available. Where available, the appropriate seasonal density estimate from the MSDD was used in the estimation here (*i.e.,* summer).

NMFS obtained data products from the Navy for densities of Southern Resident killer whales in the NWTT Offshore Study Area. The modeled density estimates were available on the scale of 1 km by 1 km grid cells. The densities from grid cells overlapping the ensonified area in each depth category were multiplied by the corresponding area to estimate potential exposures (Table 9).

For most other species, (*i.e.,* humpback, blue, fin, sperm, Baird's beaked, and other small beaked whales; bottlenose, striped, common, Pacific white-sided, Risso's and northern right whale dolphins; and Dall's porpoise), habitat-based density models from Becker *et al.* (2016) were used. Becker *et al.* (2016) used seven years of SWFSC cetacean line-transect survey data collected between 1991 and 2009 to develop predictive habitat-based models of cetacean densities in the CCE. The modeled density estimates were available on the scale of 7 km by 10 km grid cells. The densities from all grid cells overlapping the ensonified areas within each water depth category were averaged to calculate a zone-specific density for each species.

Becker *et al.* (2016) did not develop a density model for the harbor porpoise, so densities from Forney *et al.* (2014) were used for that species. Forney *et al.* (2014) presented estimates of harbor porpoise abundance and density along the Pacific coast of California, Oregon, and Washington based on aerial line-transect surveys conducted between 2007 and 2012. Separate density estimates were provided for harbor porpoises in Oregon south of 45° N and Oregon/Washington north of 45° N (*i.e.,* within the boundaries of the Northern California/Southern Oregon and Northern Oregon/Washington Coast stocks), so stock-specific take estimates were generated (Forney *et al.,* 2014).

Background information on the density calculations for each species/guild (if different from the general methods from the Navy's MSDD, Becker *et al.* (2016), or Forney *et al.* (2014) described above) are reported here. Density estimates for each species/guild (aside from Southern Resident killer whales, which are discussed separately) are found in Table 7.

Gray Whale

DeAngelis *et al.* (2011) developed a migration model that provides monthly, spatially explicit predictions of gray whale abundance along the U.S. West Coast from December through June. These monthly density estimates apply to a ''main migration corridor'' that extends from the coast to 10 km offshore. A zone from the main migration corridor out to 47 km offshore is designated as an area of ''potential presence''. To derive a density estimate for this area the Navy assumed that 1 percent of the population could be within the 47-km ''potential presence'' area during migration. Given the 2014 stock assessment population estimate of 20,990 animals (Carretta *et al.,* 2017b), approximately 210 gray whales may use this corridor. Assuming the migration wave lasts 30 days, then 7 whales on average on any one day could occur in the ''potential presence'' area. The area from the main migration route offshore to 47 km within the NWTT study area = 45,722.06 km², so density within this zone = 0.00015 whales/km². From July–November, gray whale occurrence off the coast is expected to consist primarily of whales belonging to the PCFG. Calambokidis *et al.* (2012) provided an updated analysis of the abundance of the PCFG whales in the Pacific Northwest and recognized that this group forms a distinct feeding aggregation. For the purposes of establishing density, the Navy assumed that from July 1 to November 30 all the 209 PCFG whales could be present off the coast in the Northern California/Oregon/Washington region (this accounts for the potential that some PCFG whales may be outside of the area but that there also may be some non-PCFG whales in the region as noted by Calambokidis *et al.*(2012)). Given that the PCFG whales are found largely nearshore, it was assumed that all the whales could be within 10 km of the coast. To capture the potential presence of whales further offshore (*e.g.,* Oleson *et al.,* 2009), it was assumed that a percentage of the whales could be present from 10 km out to 47 km off the coast; the 47 km outer limit is consistent with the DeAngelis *et al.* (2011) migration model. Since 77 percent of the PCFG sightings were within the nearshore BIAs (Calambokidis *et al.,* 2015), it was assumed that 23 percent (48 whales) could potentially be found further offshore. Two strata were thus developed for the July–November gray whale density layers: (1) From the coast to 10 km offshore, and (2) from 10 km to 47 km offshore. The density was assumed to be 0 animals/km² for areas offshore of 47 km.

Small Beaked Whale Guild

NMFS has developed habitat-based density models for a small beaked whale guild in the CCE (Becker *et al.,* 2012b; Forney *et al.,* 2012). The small beaked whale guild includes Cuvier's beaked whale and beaked whales of the genus *Mesoplodon,* including Blainville's beaked whale, Hubbs' beaked whale, and Stejneger's beaked whale. NMFS SWFSC developed a CCE habitat-based density model for the small beaked whale guild which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2009 (Becker *et al.,* 2016).

False Killer Whale

False killer whales were not included in the Navy's MSDD, as they are very rarely encountered in the northeast Pacific. Density estimates for false killer whales were also not presented in Barlow (2016) or Becker *et al.* (2016), as no sightings occurred during surveys conducted between 1986 and 2008 (Ferguson and Barlow 2001, 2003; Forney 2007; Barlow 2003, 2010). One sighting was made off of southern California during 2014 (Barlow 2016). One pod of false killer whales occurred in Puget Sound for several months during the 1990s (Navy 2015). Based on the available information, NMFS does not believe false killer whales are expected to be taken, but L–DEO has requested take of this species so we are proposing to authorize take.

Killer Whale

A combination of movement data (from both visual observations and satellite-linked tags) and detections from stationary acoustic recorders have provided information on the offshore distribution of the Southern Resident stock (Hanson *et al.,* 2018). These data have been used to develop state space movement models that provide estimates of the probability of occurrence (or relative density) of Southern Residents in the offshore study area in winter and spring (Hanson *et al.,* 2018). Since the total number of animals that comprise each pod is known, the relative density estimates were used in association with the total abundance estimates to derive absolute density estimates (*i.e.,* number of animals/km²) within the offshore study area. Given that the K and L pods were together during all but one of the satellite tag deployments, Hanson *et al.* (2018) developed two separate state space models, one for the combined K and L pods and one for the J pod. The absolute density estimates were thus derived based on a total of 53 animals for the K and L pods (K pod = 18 animals, L pod = 35 animals) and 22 animals for the J pod (Center for Whale Research, 2019). Of the three pods, the

K and L pods appear to have a more extensive and seasonally variable offshore coastal distribution, with rare sightings as far south as Monterey Bay, California (Carretta *et al.,* 2019; Ford *et al.,* 2000; Hanson *et al.,* 2018). Two seasonal density maps were thus developed for the K and L pods, one representing their distribution from January to May (the duration of the tag deployments), and another representing their distribution from June to December. Based on stationary acoustic recording data, their excursions offshore from June to December are more limited and typically do not extend south of the Columbia River (Emmons 2019). To provide more conservative density estimates, the Navy extended the June to December distribution to just south of the Columbia River and redistributed the total K and L populations (53 animals) within the more limited range boundaries. A conservative approach was also adopted for the J pod since the January to May density estimates were assumed to represent annual occurrence patterns, despite information that this pod typically spends more time in the inland waters during the summer and fall (Carretta *et al.,* 2019; Ford *et al.,* 2000; Hanson *et al.,* 2018). Further, for all seasons the Navy assumed that all members of the three pods of Southern Residents could occur either offshore or in the inland waters, so the total number of animals in the stock was used to derive density estimates for both study areas.

Due to the difficulties associated with reliably distinguishing the different stocks of killer whales from at sea sightings, and anticipated equal likelihood of occurrence among the stocks, density estimates for the rest of the stocks are presented as a whole (*i.e.,* includes the Offshore, West Coast Transient, and Northern Resident stocks). Barlow (2016) presents density values for killer whales in the CCE, with separate densities for waters off Oregon/Washington (*i.e.,* north of the California border) and Northern California for summer/fall. Density data are not available for the NWTT Offshore area northwest of the CCE study area, so data from the SWFSC Oregon/Washington area were used as representative estimates. These values were used to represent density year-round.

Short-Finned Pilot Whale

Along the U.S. West Coast, short-finned pilot whales were once common south of Point Conception, California (Carretta *et al.,* 2017b; Reilly & Shane, 1986), but now sightings off the U.S. West Coast are infrequent and typically occur during warm water years (Carretta *et al.,* 2017b). Stranding records for this species from Oregon and Washington waters are considered to be beyond the normal range of this species rather than an extension of its range (Norman *et al.,* 2004). Density values for short-finned pilot whales are available for the SWFSC Oregon/Washington and Northern California strata for summer/fall (Barlow, 2016). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates. These values were used to represent density year-round.

Guadalupe Fur Seal

Adult male Guadalupe fur seals are expected to be ashore at breeding areas over the summer, and are not expected to be present during the planned geophysical survey (Caretta *et al.,* 2017b; Norris 2017b). Additionally, breeding females are unlikely to be present within the Offshore Study Area as they remain ashore to nurse their pups through the fall and winter, making only short foraging trips from rookeries (Gallo-Reynoso *et al.,* 2008; Norris 2017b; Yochem *et al.,* 1987). To estimate the total abundance of Guadalupe fur seals, the Navy adjusted the population reported in the 2016 SAR (Caretta *et al.,* 2017b) of 20,000 seals by applying the average annual growth rate of 7.64 percent over the seven years between 2010 and 2017. The resulting 2017 projected abundance was 33,485 fur seals. Using the reported composition of the breeding population of Guadalupe fur seals (Gallo-Reynoso 1994) and satellite telemetry data (Norris 2017b), the Navy established seasonal and demographic abundances of Guadalupe fur seals expected to occur within the Offshore Study Area.

The distribution of Guadalupe fur seals in the Offshore Study Area was stratified by distance from shore (or water depth) to reflect their preferred pelagic habitat (Norris, 2017a). Ten percent of fur seals in the Study Area are expected to use waters over the continental shelf (approximated as waters with depths between 10 and 200 m). A depth of 10 m is used as the shoreward extent of the shelf (rather than extending to shore), because Guadalupe fur seals in the Offshore Study Area are not expected to haul out and would not be likely to come close to shore. All fur seals (*i.e.,* 100 percent) would use waters off the shelf (beyond the 200-m isobath) out to 300 km from shore, and 25 of percent of fur seals would be expected to use waters between 300 and 700 km from shore (including the planned geophysical survey area). The second stratum (200 m to 300 km from shore) is the preferred habitat where Guadalupe fur seals are most likely to occur most of the time. Individuals may spend a portion of their time over the continental shelf or farther than 300 km from shore, necessitating a density estimate for those areas, but all Guadalupe fur seals would be expected to be in the central stratum most of the time, which is the reason 100 percent is used in the density estimate for the central stratum (Norris, 2017a). Spatial areas for the three strata were estimated in a GIS and used to calculate the densities.

The Navy's density estimate for Guadalupe fur seals projected the abundance through 2017, while L–DEO's survey will occur in 2020. Therefore, we have projected the abundance estimate in 2020 using the abundance estimate (34,187 animals) and population growth rate (5.9 percent) presented in the 2019 draft SARs (Caretta *et al.,* 2019). This calculation yielded an increased density estimate of Guadalupe fur seals than what was presented in the Navy's MSDD.

Northern Fur Seal

The Navy estimated the abundance of northern fur seals from the Eastern Pacific stock and the California breeding stock that could occur in the NWTT Offshore Study Area by determining the percentage of time tagged animals spent within the Study Area and applying that percentage to the population to calculate an abundance for adult females, juveniles, and pups independently on a monthly basis. Adult males are not expected to occur within the Offshore Study Area and the planned survey area during the planned geophysical survey as they spend the summer ashore at breeding areas in the Bering Sea and San Miguel Island (Caretta *et al.,* 2017b). Using the monthly abundances of fur seals within the Offshore Study Area, the Navy created strata to estimate the density of fur seals within three strata: 22 km to 70 km from shore, 70 km to 130 km from shore, and 130 km to 463 km from shore (the western Study Area boundary). L–DEO's planned survey is 423 km from shore at the closest point. Based on satellite tag data and historic sealing records (Olesiuk 2012; Kajimura 1984), the Navy assumed 25 percent of the population present within the overall Offshore Study Area may be within the 130 km to 463 km stratum.

The Navy's density estimates for northern fur seals did not include the latest abundance data collected from Bogoslof Island or the Pribilof Islands in 2015 and 2016. Incorporating the latest

pup counts yielded a slight decrease in the population abundance estimate, which resulted in a slight decrease in the estimated densities of northern fur seals in each depth stratum.

Steller Sea Lion

The Eastern stock of Steller sea lions has established rookeries and breeding sites along the coasts of California, Oregon, British Columbia, and southeast Alaska. A new rookery was recently discovered along the coast of Washington at the Carroll Island and Sea Lion Rock complete, where more than 100 pups were born in 2015 (Muto *et al.,* 2017; Wiles 2015). The 2017 SAR did not factor in pups born at sites along the Washington coast (Muto *et al.,* 2017). Considering that pups have been observed at multiple breeding sites since 2013, specifically at the Carroll Island and Sea Lion Rock complex (Wiles 2015), the 2017 SAR abundance of 1,407 Steller sea lions (non-pups only) for Washington underestimates the total population. Wiles (2015) estimates that up to 2,500 Steller sea lions are present along the Washington coast, which is the abundance estimate used by the Navy to calculate densities. Approximately 30,000 Steller sea lions occur along the coast of British Columbia, but these animals were not included in the Navy's calculations. The Navy applied the annual growth rate for each regional population (California, Oregon, Washington, and southeast Alaska), reported in Muto *et al.* (2017), to each population to estimate the stock abundance in 2017, and we further projected the population estimate in 2020.

Sea lions from northern California and southern Oregon rookeries migrate north in September following the breeding season and winter in northern Oregon, Washington, and British Columbia waters. They disperse widely following the breeding season, which extends from May through July, likely in search of different types of prey, which may be concentrated in areas where oceanic fronts and eddies persist (Fritz *et al.,* 2016; Jemison *et al.,* 2013; Lander *et al.,* 2010; Muto *et al.,* 2017; NMFS 2013; Raum-Suryan *et al.,* 2004; Sigler *et al.,* 2017). Adults depart rookeries in August. Females with pups remain within 500 km of their rookery during the non-breeding season and juveniles of both sexes and adult males disperse more widely but remain primarily over the continental shelf (Wiles 2015).

Based on 11 sightings along the Washington coast, Steller sea lions were observed at an average distance of 13 km from shore and 35 km from the shelf break (defined as the 200-m isobath) (Oleson *et al.,* 2009). The mean water depth in the area of occurrence was 42 m, and surveys were conducted out to approximately 60 km from shore. Wiles (2015) estimated that Steller sea lions off the Washington coast primarily occurred within 60 km of shore, favoring habitats over the continental shelf. However, a few individuals may travel several hundred km offshore (Merrick & Loughlin 1997; Wiles 2015). Based on these occurrence and distribution data, two strata were used to estimate densities for Steller sea lions. The spatial area extending from shore to the 200-m isobath (*i.e.,* over the continental shelf) was defined as one stratum, and the second stratum extended from the 200-m isobath to 300 km from shore to account for reports of Steller sea lions occurring several hundred km offshore. Ninety-five percent of the population of Steller sea lions occurring in the NWTT Study Area were distributed over the continental shelf stratum and the remaining five percent were assumed to occur between the 200-m isobath and 300 km from shore.

The percentage of time Steller sea lions spend hauled out varies by season, life stage, and geographic location. To calculated densities in the Study Area, the projected population abundance was adjusted to account for time spent hauled out. In spring and winter, sea lions were estimated to be in the water 64 percent of the time. In summer, when sea lions are more likely to be in the water, the percent of animals estimated to be in the water was increased to 76 percent, and in fall, sea lions were anticipated to be in the water 53 percent of the time (U.S. Navy 2019). Densities were calculated for each depth stratum off Washington and off Oregon.

California Sea Lion

Seasonal at-sea abundance of California sea lions is estimated from strip transect survey data collected offshore along the California coastline (Lowry & Forney 2005). The survey area was divided into seven strata, labeled A through G. Abundance estimates from the two northernmost strata (A and B) were used to estimate the abundance of California sea lions occurring in the NWTT Study Area. While the northernmost stratum (A) only partially overlaps with the Study Area, this approach conservatively assumes that all sea lions from the two strata would continue north into the Study Area.

The majority of male sea lions would be expected in the NWTT Study Area from August to mid-June (Wright *et al.,* 2010). In summer, males are expected to be at breeding sites off of Southern California. In-water abundance estimates of adult and sub-adult males in strata A and B were extrapolated to estimate seasonal densities in the Study Area. Approximately 3,000 male California sea lions are known to pass through the NWTT Study Area in August as they migrate northward to the Washington coast and inland waters (DeLong 2018a; Wright *et al.,* 2010). Nearly all male sea lions are expected to be on or near breeding sites off California in July (DeLong *et al.,* 2017; Wright *et al.,* 2010). An estimate of 3,000 male sea lions is used for the month of August. Projected 2017 seasonal abundance estimates were derived by applying an annual growth rate of 5.4 percent (Caretta *et al.,* 2017b) between 1999 and 2017 to the abundance estimates from Lowry & Forney (2005).

The strata used to calculated densities in the NWTT Study Area were based on distribution data from Wright *et al.* (2010) and Lowry & Forney (2005) indicating that approximately 90 percent of California sea lions occurred within 40 km of shore and 100 percent of sea lions were within 70 km of shore. A third stratum was added that extends from shore to 450 km offshore to account for anomalous conditions, such as changes in sea surface temperature and upwelling associated with El Niño, during which California sea lions have been encountered farther from shore, presumably seeking prey (DeLong & Jeffries 2017; Weise *et al.,* 2010). The Navy calculated densities for each stratum (0 to 40 km, 40 to 70 km, and 0 to 450 km) for each season, spring, summer, fall, and winter, but noted that the density of California sea lions in all strata for June and July was 0 animals/km^2. The Navy's calculated densities for August were conservatively used here, as sightings of California sea lions have been reported on the continental shelf in June and July (Adams *et al.,* 2014).

Northern Elephant Seal

The most recent surveys supporting the abundance estimate for northern elephant seals were conducted in 2010 (Caretta *et al.,* 2017b). By applying the average growth rate of 3.8 percent per year for the California breeding stock over the seven years from 2010 to 2017, the Navy calculated a projected 2017 abundance estimate of 232,399 elephant seals (Caretta *et al.,* 2017b; Lowry *et al.,* 2014). Male and female distributions at sea differ both seasonally and spatially. Pup counts reported by Lowry *et al.,* (2014) and life tables compiled by Condit *et al.,* (2014) were used to determine the proportion of males and females in the population, which was

estimated to be 56 percent female and 44 percent male. Females are assumed to be at sea 100 percent of the time within their seasonal distribution area in fall and summer (Robinson *et al.,* 2012). Males are at sea approximately 90 percent of the time in fall and spring, remain ashore through the entire winter, and spend one month ashore to molt in the summer (*i.e.,* are at sea 66 percent of the summer). Monthly distribution maps produced by Robinson *et al.* (2012) showing the extent of foraging areas used by satellite tagged female elephant seals were used to estimate the spatial areas to calculate densities. Although the distributions were based on tagged female seals, Le Boeuf *et al.* (2000) and Simmons *et al.* (2007) reported similar tracks by males over broad spatial scales. The spatial areas representing each monthly distribution were calculating using GIS and then averaged to produce seasonally variable areas and resulting densities.

As with other pinniped species above, NMFS used the population growth rate reported by Caretta *et al.* (2017b) to project the estimated abundance in 2020. The resulting population estimate and estimated densities increased from those presented in the Navy's MSDD (U.S. Navy 2019).

Harbor Seal

Only harbor seals from the Washington and Oregon Coast stock would be expected to occur in the proposed survey area. The most recent abundance estimate for the Washington and Oregon Coast stock is 24,732 harbor seals (Caretta *et al.,* 2017b). Survey data supporting this abundance estimate are from 1999, which exceeds the eight-year limit beyond which NMFS will not confirm abundance in a SAR (Caretta *et al.,* 2017b). However, based on logistical growth curves for the Washington and Oregon Coast stock that leveled off in the early 1990s (Caretta *et al.,* 2017b) and unpublished data from the Washington Department of Fish and Wildlife (DeLong & Jeffries 2017), an annual growth rate of 0 percent (*i.e.,* the population has remained stable) was applied such that the 2017 abundance estimate used by the Navy, and 2020 estimate used here, was still 24,732 harbor seals. A haulout factor of 33 percent was used to account for hauled-out seals (*i.e.,* seals are estimated to be in the water 33 percent of the time) (Huber *et al.,* 2001). A single stratum extending from shore to 30 km offshore was used to define the spatial area used by the Navy for calculating densities off Washington and Oregon (Bailey *et al.,* 2014; Oleson *et al.,* 2009).

Marine Mammal Densities

Densities for most species are presented by depth stratum (shallow, intermediate, and deep water) in Table 7. For species where densities are available based on other categories (gray whale, harbor porpoise, northern fur seal, Guadalupe fur seal, California sea lion, Steller sea lion), category definitions are provided in the footnotes of Table 7.

TABLE 7—MARINE MAMMAL DENSITY VALUES IN THE SURVEY AREA

Species	Estimated density (#/km²)			Reference
	Shallow <100 m/category 1	Intermediate 100–1000 m/ category 2	Deep >1000 m/category 3	
LF Cetaceans:				
Humpback whale	0.0052405	0.0040200	0.0004830	Becker *et al.* (2016).
Blue whale	0.0020235	0.0010518	0.0003576	Becker *et al.* (2016).
Fin whale	0.0002016	0.0009306	0.0013810	Becker *et al.* (2016).
Sei whale	0.0004000	0.0004000	0.0004000	U.S. Navy (2019).
Minke whale	0.0013000	0.0013000	0.0013000	U.S. Navy (2019).
Gray whale [a]	0.0155000	0.0010000	N.A.	U.S. Navy (2019).
MF Cetaceans:				
Sperm whale	0.0000586	0.0001560	0.0013023	Becker *et al.* (2016).
Baird's beaked whale	0.0001142	0.0002998	0.0014680	Becker *et al.* (2016).
Small beaked whale	0.0007878	0.0013562	0.0039516	Becker *et al.* (2016).
Bottlenose dolphin	0.0000007	0.0000011	0.0000108	Becker *et al.* (2016).
Striped dolphin	0.0000000	0.0000025	0.0001332	Becker *et al.* (2016).
Short-beaked common dolphin	0.0005075	0.0010287	0.0016437	Becker *et al.* (2016).
Pacific white-sided dolphin	0.0515230	0.0948355	0.0700595	Becker *et al.* (2016).
Northern right-whale dolphin	0.0101779	0.0435350	0.0621242	Becker *et al.* (2016).
Risso's dolphin	0.0306137	0.0308426	0.0158850	Becker *et al.* (2016).
False killer whale [b]	N.A.	N.A.	N.A.	
Killer whale (all stocks except Southern Residents).	0.0009200	0.0009200	0.0009200	U.S. Navy (2019).
Short-finned pilot whale	0.0002500	0.0002500	0.0002500	U.S. Navy (2019).
HF Cetaceans:				
Pygmy/dwarf sperm whale	0.0016300	0.0016300	0.0016300	U.S. Navy (2019).
Dall's porpoise	0.1450767	0.1610605	0.1131827	Becker *et al.* (2016).
Harbor porpoise [c]	0.6240000	0.4670000	N.A.	Forney *et al.* (2014).
Otariids:				
Northern fur seal [d]	0.0113247	0.1346441	0.0103424	U.S. Navy (2019).
Guadalupe fur seal [e]	0.0234772	0.0262595	N.A.	U.S. Navy (2019).
California sea lion [f]	0.0288000	0.0037000	0.0065000	U.S. Navy (2019).
Steller sea lion [g]	0.3088864	0.0022224	N.A.	U.S. Navy (2019).
Phocids:				
Northern elephant seal	0.0345997	0.0345997	0.0345997	U.S. Navy (2019).
Harbor seal [h]	0.3424000	N.A.	N.A.	U.S. Navy (2019).

[a] Category 1 = 0–10 km offshore, Category 2 = 10–47 km offshore (U.S. Navy 2019).
[b] No density estimates available for false killer whales in the survey area, take is based on mean group size from Mobley *et al.* (2000).
[c] Category 1 = South of 45° N, Category 2 = North of 45° N (Forney *et al.,* 2014).
[d] Category 1 = 22–70 km offshore, Category 2 = 70–130 km offshore, Category 3 = 130–463 km offshore (U.S. Navy 2019).

[e] Category 1 = 10–200 m depth, Category 2 = 200 m depth–300 km offshore; No stock-specific densities are available so these densities were applied to northern fur seals as a species (U.S. Navy 2019).
[f] Category 1 = 0–40 km offshore, Category 2 = 40–70 km offshore, Category 3 = 0–450 km offshore (U.S. Navy 2019).
[g] Category 1 = shore–200 m depth, Category 2 = 200 m depth–300 m offshore (U.S. Navy 2019).
[h] Category 1 = 0–30 km offshore (U.S. Navy 2019).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L–DEO model results) was used to draw a buffer around every transect line in GIS to determine the total ensonified area in each depth category (Table 8). The areas presented in Table 8 do not include areas ensonified within Canadian territorial waters (from 0–12 nmi (22.2 km) from shore). As discussed above, NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS has still calculated the level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our preliminary determination under the MMPA that the activity will have a negligible impact on the affected species. The total estimated take in U.S. and Canadian waters is presented in Table 11.

In past applications, to account for unanticipated delays in operations, L–DEO has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed. In this application, however, due to the strict operational timelines and availability of the R/V *Langseth,* no additional time or distance has been added to the survey calculations. 37 days is the absolute maximum amount of time the R/V *Langseth* is available to conduct seismic operations.

The ensonified areas in Table 8 were used to estimate take of marine mammal species with densities available for the three depth strata (shallow, intermediate, and deep waters). For other species where densities are available based on other categories (*i.e.,* gray whale, harbor porpoise, northern fur seal, Guadalupe fur seal, California sea lion, Steller sea lion; see Table 7), GIS was used to determine the areas expected to be ensonified in each density category (see Table B–2 in L–DEO's application for the ensonified areas in each category).

TABLE 8—AREAS (KM^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Survey zone	Criteria	Relevant isopleth (m)	Total ensonified area (km^2)
Level B Harassment:			
Shallow <100 m	160 dB	[a] 12,650	11,433.80
Intermediate 100–1000 m	160 dB	[b] 9,468	24,200.75
Deep >1000 m	160 dB	[b] 6,733	50,924.56
		Overall	86,559.11
Level A Harassment			
All depth zones	LF Cetacean	426.9	5,605.34
	MF Cetacean	13.6	179.85
	HF Cetacean	268.3	3,532.92
	Otariid	10.6	140.19
	Phocid	43.7	577.63

[a] Based on L–DEO model results.
[b] Based on data from Crone *et al.* (2014).

Density estimates for Southern Resident killer whales from the U.S. Navy's MSDD were overlaid with GIS layers of the Level B harassment zones in each depth category to determine the areas expected to be ensonified in each density category (Table 9).

TABLE 9—SOUTHERN RESIDENT KILLER WHALE DENSITIES AND CORRESPONDING ENSONIFIED AREAS

Pod	Density (animals/km^2)	Ensonified area (km^2)
K/L	0.000000	5,883
	0.000001—0.002803	17,875
	0.002804—0.005615	2,817
	0.005616—0.009366	1,200
	0.009367—0.015185	320
J	0.000000	7,260
	0.000001—0.001991	8,648
	0.001992—0.005010	1,128

TABLE 9—SOUTHERN RESIDENT KILLER WHALE DENSITIES AND CORRESPONDING ENSONIFIED AREAS—Continued

Pod	Density (animals/km²)	Ensonified area (km²)
	0.005011—0.009602	236
	0.009603—0.018822	20

The marine mammals predicted to occur within these respective areas, based on estimated densities or other occurrence records, are assumed to be incidentally taken. For species where NMFS expects take by Level A harassment to potentially occur, the calculated Level A harassment takes have been subtracted from the total within the Level B harassment zone. Estimated exposures for the proposed survey outside of Canadian territorial waters are shown in Table 10.

TABLE 10—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

Species	MMPA stock [a]	Stock abundance	Estimated take		Total proposed take	Percent of MMPA stock
			Level B	Level A		
LF Cetaceans:						
Humpback whale	Central North Pacific	10,103	172	10	[b] 182	1.80
	California/Oregon/Washington.	2,900				6.28
Blue whale	Eastern North Pacific	1,647	63	4	67	4.06
Fin whale	California/Oregon/Washington.	9,029	89	6	95	1.06
	Northeast Pacific	3,168				3.01
Sei whale	Eastern North Pacific	27,197	32	2	34	0.13
Minke whale	California/Oregon/Washington.	25,000	105	7	112	0.45
Gray whale	Eastern North Pacific	26,960	90	2	92	0.34
MF Cetaceans:						
Sperm whale	California/Oregon/Washington.	26,300	71	0	71	0.27
Baird's beaked whale	California/Oregon/Washington.	2,697	83	0	83	3.08
Small beaked whale	California/Oregon/Washington.	6,318	244	0	[c] 244	3.86
Bottlenose dolphin	California/Oregon/Washington (offshore).	1,924	1	0	[d] 13	0.68
Striped dolphin	California/Oregon/Washington.	29,211	7	0	[d] 46	0.16
Short-beaked common dolphin.	California/Oregon/Washington.	969,861	114	0	[d] 179	0.02
Pacific white-sided dolphin.	California/Oregon/Washington.	26,814	6,452	0	6,452	24.06
Northern right-whale dolphin.	California/Oregon/Washington.	26,556	4,333	0	4,333	16.32
Risso's dolphin	California/Oregon/Washington.	6,336	1,906	0	1,906	30.08
False killer whale	N.A.	N.A.	N.A.	N.A.	[e] 5	N.A.
Killer whale	Southern Resident	75	43	0	43	[g] 57.33
	Northern Resident	302	27	0	[f] 27	8.94
	West Coast Transient	243	26		[f] 26	10.70
	Offshore	300	26		[f] 26	8.67
Short-finned pilot whale	California/Oregon/Washington.	836	24	0	[d] 29	3.47
HF Cetaceans:						
Pygmy/dwarf sperm whale.	California/Oregon/Washington.	4,111	135	6	141	3.42
Dall's porpoise	California/Oregon/Washington.	27,750	10,869	452	11,321	[g] 40.80
Harbor porpoise	Northern Oregon/Washington Coast.	21,487	12,557	449	13,006	[g] 60.53
	Northern California/Southern Oregon.	35,769				[g] 36.36
Otariid Seals:						
Northern fur seal	Eastern Pacific	620,660	4,604	0	4,604	0.74
	California	14,050				32.77
Guadalupe fur seal	Mexico to California	34,187	2,387	0	2,387	6.98
California sea lion	U.S.	257,606	1140	0	1,140	0.44
Steller sea lion	Eastern U.S.	43,201	7281	0	7,281	16.85

TABLE 10—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION—Continued

Species	MMPA stock [a]	Stock abundance	Estimated take		Total proposed take	Percent of MMPA stock
			Level B	Level A		
Phocid Seals:						
Northern elephant seal	California Breeding	179,000	1995	0	1,995	1.11
Harbor seal	Oregon/Washington Coast	[h] 24,732	6537	0	6,537	26.43

[a] In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all proposed takes occurred within each stock.
[b] Takes are allocated among the three DPSs in the area based on Wade *et al.* (2017) (Oregon: 32.7% Mexico DPS, 67.2% Central America DPS; Washington/British Columbia: 27.9% Mexico DPS, 8.7% Central America DPS, 63.5% Hawaii DPS).
[c] Total for small beaked whale guild. Requested take includes 7 Blainville's beaked whales, 86 Stejneger's beaked whales, 86 Cuvier's beaked whales, and 74 Hubbs' beaked whales (see Appendix B of L–DEO's application for more information).
[d] Proposed take increased to mean group size from Barlow (2016).
[e] Proposed take increased to mean group size from Mobley *et al.* (2000).
[f] Total estimated take is 86 killer whales. Approximately one-third of calculated takes were assigned to each stock due to expected equal likelihood of occurrence in the survey area.
[g] The percentage of these stocks expected to experience take is discussed further in the Small Numbers section later in the document.
[h] As noted in Table 1, there is no current estimate of abundance available for the Oregon/Washington Coast stock of harbor seal. The abundance estimate from 1999, included here, is the best available.

The proposed take numbers shown in Table 10 are expected to be conservative. Marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is therefore not accounted for in the take estimates. Also, note that in consideration of the near-field soundscape of the airgun array, we propose to authorize a different number of takes of mid-frequency cetaceans and pinnipeds by Level A harassment than the number proposed by L–DEO (see Appendix B in L–DEO's IHA application).

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 the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the 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 the 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.

L–DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the planned surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Shutdown procedures; (5) Ramp-up procedures; and (6) Vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, within which observation of certain marine mammals requires shutdown of the acoustic source, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m exclusion zone, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). Visual monitoring of the exclusion zone and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel.

Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone.

L–DEO must use dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, during a deep penetration (*i.e.,* ''high energy'') seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source.

During use of the airgun (*i.e.,* anytime the acoustic source is active, including ramp-up), detections of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

While the R/V *Langseth* is surveying in water depths of 200 m or less, a second vessel with additional PSOs would travel approximately 5 km ahead of the R/V *Langseth*. Two PSOs would be on watch on the second vessel during all such survey operations and would alert PSOs on the R/V *Langseth* of any marine mammal observations so that they may be prepared to initiate shutdowns.

Visual PSOs on both vessels may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

Passive acoustic monitoring (PAM) would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional five hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids, other than killer whales) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and

• Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of five hours in any 24-hour period.

Establishment of Exclusion and Buffer Zones

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 500-m radius. The 500-m EZ would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The 500-m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500-m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

An extended EZ of 1,500 m must be enforced for all beaked whales, and dwarf and pygmy sperm whales. No buffer zone is required.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

• The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance);

• Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;

• One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

• Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, beaked whales, pilot whales, false killer whales, and Risso's dolphins);

• Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;

• PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;

• Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;

• If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 minutes is not required; and

• Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will 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 exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable exclusion zone and/or (2) a marine mammal (other than delphinids, see

below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required. L–DEO must also implement shutdown of the airgun array if killer whale vocalizations are detected, regardless of localization.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 500-m EZ. The animal would be considered to have cleared the 500-m EZ if it is visually observed to have departed the 500-m EZ, or it has not been seen within the 500-m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, pilot whales, beaked whales, false killer whales, and Risso's dolphins.

The shutdown requirement can be waived for small dolphins if an individual is visually detected within the exclusion zone. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins—*Tursiops, Delphinus, Stenella, Lagenorhynchus, and Lissodelphis.*

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone).

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, beaked whales, pilot whales, and Risso's dolphins, with no further observation of the marine mammal(s).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any of the following are observed at any distance:

- Any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult;
- An aggregation of six or more large whales;
- A North Pacific right whale; and/or
- A killer whale of any ecotype.

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (*i.e.,* as a large whale or other marine mammal);

2. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel;

3. All vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all mysticetes);

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel; and

5. When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation

distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

Operational Restrictions

While the R/V *Langseth* is surveying in waters 200 m deep or less, survey operations will occur in daylight hours only (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) to ensure the ability to use visual observation as a detection-based mitigation tool and to implement shutdown procedures for species or situations with additional shutdown requirements outlined above (*e.g.,* killer whale of any ecotype, aggregation of six or more large whales, large whale with a calf).

Communication

Each day of survey operations, L–DEO will contact NMFS Northwest Fisheries Science Center, NMFS West Coast Region, The Whale Museum, Orca Network, Canada's DFO and/or other sources to obtain near real-time reporting for the whereabouts of Southern Resident killer whales.

Mitigation Measures Considered But Eliminated

As stated above, in determining appropriate mitigation measures, NMFS considers the practicability of the measures for applicant implementation, which may include such things as cost or impact on operations. NMFS has proposed expanding critical habitat for Southern Resident killer whales to include marine waters between the 6.1-m depth contour and the 200-m depth contour from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). Though the proposed expansion has not been finalized, due to the habitat features of the area and the higher likelihood of occurrence within the area, NMFS considered implementing a closure area and prohibiting L–DEO from conducting survey operations between the 200-m isobath and the coastline. However, this measure was eliminated from consideration because the closure would not be practicable for L–DEO, as the primary purpose of their proposed survey is to investigate the geologic features that occur within that area. Therefore, NMFS is not proposing to exclude L–DEO from waters within the 200-m isobath for this survey.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, as well as other measures considered by NMFS described above, NMFS has preliminarily determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic operations, at least five visual PSOs would be based aboard the *Langseth.* Two visual PSOs would be on duty at all time during daytime hours, with an additional two PSOs on duty aboard a second scout vessel at all times during daylight hours when operating in waters shallower than 200 m. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;

• PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;

• NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;

• NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;

• PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;

• PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and

• The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

• Vessel names (source vessel and other vessels associated with survey) and call signs;

• PSO names and affiliations;

• Dates of departures and returns to port with port name;

• Date and participants of PSO briefings;

• Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;

• Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;

• Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

• Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

• Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and

• Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

• Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

• PSO who sighted the animal;

• Time of sighting;

• Vessel location at time of sighting;

• Water depth;

• Direction of vessel's travel (compass direction);

• Direction of animal's travel relative to the vessel;

• Pace of the animal;

• Estimated distance to the animal and its heading relative to vessel at initial sighting;

• Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

• Estimated number of animals (high/low/best);

• Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

• Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

• Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

• Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

• Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and

• Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

• An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

• Date and time when first and last heard;

• Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and

• Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

A report would be submitted to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations and including an estimate of those that were not detected, in consideration of both the characteristics

and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS West Coast 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.

Vessel strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR, NMFS and to the NMFS West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- 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 measure 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;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck
- Description of the behavior of the animal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present 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).

Actions To Minimize Additional Harm to Live-stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise L–DEO of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: If at any time, the marine mammal the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown around the animals' location is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises L–DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Additional Information Requests—if NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L–DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Reporting Species of Concern

To support NMFS's goal of improving our understanding of occurrence of marine mammal species or stocks in the area (*e.g.,* presence, abundance, distribution, density), L–DEO will immediately report observations of Southern Resident killer whales and North Pacific right whales to OPR, NMFS .

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of

marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Tables 10 and 11, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis. As described above, we proposed to authorize only the takes estimated to occur outside of Canadian territorial waters (Table 10); however, for the purposes of our negligible impact analysis and determination, we consider the total number of takes that are anticipated to occur as a result of the entire proposed survey (including the portion of the survey that would occur within the Canadian territorial waters (approximately four percent of the survey) (Table 11).

TABLE 11—TOTAL ESTIMATED TAKE INCLUDING CANADIAN TERRITORIAL WATERS

Species	Estimated take (excluding Canadian territorial waters)		Estimated take (Canadian territorial waters)		Total estimated take	
	Level A	Level B	Level A	Level B	Level B	Level A
LF Cetaceans:						
Humpback whale	172	10	23	1	195	11
Blue whale	63	4	8	0	71	4
Fin whale	89	6	2	0	91	6
Sei whale	32	2	2	0	34	2
Minke whale	105	7	6	0	111	7
Gray whale	90	2	24	1	114	3
MF Cetaceans:						
Sperm whale	71	0	1	0	72	0
Baird's beaked whale	83	0	1	0	84	0
Small beaked whale	244	0	5	0	249	0
Bottlenose dolphin	13	0	0	0	13	0
Striped dolphin	7	0	0	0	7	0
Short-beaked common dolphin	179	0	4	0	183	0
Pacific white-sided dolphin	6,452	0	354	0	6,806	0
Northern right-whale dolphin	4,333	0	123	0	4,457	0
Risso's dolphin	1,906	0	155	0	2,062	0
False killer whale	5	0	5	0	10	0
Killer whale (Southern Resident)	43	0	2	0	45	0
Killer whale (Northern Resident)	27	0	2	0	29	0
Killer whale (West Coast Transient)	26	0	2	0	28	0
Killer whale (Offshore)	26	0	2	0	28	0
Short-finned pilot whale	29	0	1	0	30	0
HF Cetaceans:						
Pygmy/dwarf sperm whale	135	6	8	0	143	6
Dall's porpoise	10,869	452	746	24	11,615	476
Harbor porpoise	12,557	449	2,622	86	15,179	535
Otariid Seals:						
Northern fur seal	4,604	0	58	0	4,662	0
Guadalupe fur seal	2,387	0	122	0	2,509	0
California sea lion	1,140	0	147	0	1,287	0
Steller sea lion	7,281	0	1,342	0	8,623	0
Phocid Seals:						
Northern elephant seal	1,995	0	176	0	2,171	0
Harbor seal	6,537	0	1,744	0	8,281	0

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned survey, even in the absence of mitigation, and none would be authorized. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We are proposing to authorize a limited number of instances of Level A harassment of nine species (low- and high-frequency cetacean hearing groups only) and Level B harassment of 31 marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS, not total deafness, because of the constant movement of relative to each other of both the R/V *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of

time (*i.e.,* since the duration of exposure to loud sounds will be relatively short) and, further, would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the R/V *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison et al., 2012).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (37 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The tracklines of this survey either traverse or are proximal to BIAs for humpback and gray whales (Ferguson *et al.,* 2015). The entire U.S. West Coast within 47 km of the coast is a BIA for migrating gray whale potential presence from January to July and October to December. The BIA for northbound gray whale migration is broken into two phases, Phase A (within 8 km of shore) and Phase B (within 5 km of shore), which are active from January to July and March to July, respectively. The BIA for southbound migration includes waters within 10 km of shore and is active from October to March. There are four gray whale feeding BIAs within the proposed survey area: the Grays Harbor gray whale feeding BIA is used between April and November; the Northwest Washington gray whale feeding BIA is used between May and November; and the Depoe Bay and Cape Blanco and Orford Reef gray whale feeding BIAs off Oregon are each used between June and November. There are also two humpback whale feeding BIAs within the survey area: the Stonewall and Heceta Bank humpback whale feeding BIA off central Oregon and the northern Washington BIA off the Washington Olympic Peninsula are each used between May and November.

For the humpback whale feeding and gray whale feeding and northbound migration BIAs, L–DEO's proposed survey beginning in June 2020 could overlap with a period where BIAs represent an important habitat. However, only a portion of seismic survey days would actually occur in or near these BIAs, and all survey efforts would be completed by mid-July, still in the early window of primary use for these BIAs. Gray whales are most commonly seen migrating northward between March and May and southward between November and January. As proposed, there is no possibility that L–DEO's survey impacts the southern migration, and presence of northern migrating individuals should be below peak during survey operations beginning in June 2020.

Although migrating gray whales may slightly alter their course in response to the survey, the exposure would not substantially impact their migratory behavior (Malme *et al.,* 1984; Malme and Miles 1985; Richardson *et al.,* 1995), and Yazvenko *et al.* (2007b) reported no apparent changes in the frequency of feeding activity in Western gray whales exposed to airgun sounds in their feeding grounds near Sakhalin Island. Goldbogen *et al.* (2013) found blue whales feeding on highly concentrated prey in shallow depths (such as the conditions expected within humpback feeding BIAs) were less likely to respond and cease foraging than whales feeding on deep, dispersed prey when exposed to simulated sonar sources, suggesting that the benefits of feeding for humpbacks foraging on high-density prey may outweigh perceived harm from the acoustic stimulus, such as the seismic survey (Southall *et al.,* 2016). Additionally, L–DEO will shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce impacts to cooperatively foraging animals. For all habitats, no physical impacts to BIA habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish and invertebrate mortality, in feeding habitats, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area and any injury or mortality of prey species would be localized around the survey and not of a degree that would adversely impact marine mammal foraging. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing BIAs, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within the designated BIAs.

Critical habitat has been established on the U.S. West Coast for the eastern DPS of Steller sea lions (58 FR 45269; August 27, 1993) and in inland waters of Washington for Southern Resident killer whales (71 FR 69054; November 29, 2006). Critical habitat for the Mexico and Central America DPSs of humpback whales has been proposed along the U.S. West Coast (84 FR 54354; October 9, 2019), and NMFS has proposed expanding Southern Resident killer whale critical habitat to include coastal waters of Washington, Oregon, and California (84 FR 49214; September 19, 2019). Only a portion of L–DEO's proposed seismic survey will occur in or near these critical habitats.

Critical habitat for Steller sea lions has been established at two rookeries on the Oregon coast, at Rogue Reef (Pyramid Rock) and Orford Reef (Long Brown Rock and Seal Rock). The critical habitat area includes aquatic zones that extend 0.9 km seaward and air zones extending 0.9 km above these rookeries (NMFS 1993). Steller sea lions occupy rookeries and pup from late-May through early-July (NMFS 2008), which coincides with L–DEO's proposed survey. The Orford Reef and Rogue Reef critical habitats are located 7 km and 9 km from the nearest proposed seismic transect line, respectively. Impacts to Steller sea lions within these areas, and throughout the survey area, are expected to be limited to short-term behavioral disturbance, with no lasting biological consequences.

Critical habitat for the threatened Mexico DPS and endangered Central America DPS humpback whales has been proposed along the U.S. West Coast (84 FR 54354; October 9, 2019). The proposed critical habitat encompasses the humpback whale feeding BIAs described above and generally includes waters between the 50-m isobath and the 1,200-m isobath, though some areas of the proposed critical habitat extend further offshore. NMFS determined that prey within humpback whale feeding areas are

essential to the conservation of each of the three DPSs of humpback whales for which critical habitat was proposed (Mexico, Central America, and Western North Pacific DPSs). Critical habitat was therefore proposed in consideration of importance that the whales not only have reliable access to prey within their feeding areas, but that prey are of a sufficient density to support feeding and the build-up of energy reserves. Although humpback whales are generalist predators and prey availability can very seasonally and spatially, substantial data indicate that the humpback whales' diet is consistently dominated by euphausiid species (of genus *Euphausia, Thysanoessa, Nyctiphanes,* and *Nematoscelis*) and small pelagic fishes, such as northern anchovy (*Engraulis mordax*), Pacific herring (*Clupea pallasii*), Pacific sardine (*Sardinops sagax*), and capelin (*Mallotus villosus*) (Nemoto 1957, 1959; Klumov 1963; Rice Krieger and Wing 1984; Baker 1985; Kieckhefer 1992; Clapham *et al.,* 1997; Neilson *et al.,* 2015). While there are possible impacts of seismic activity on plankton and fish species (*e.g.,* McCauley *et al.,* 2017; Hastings and Popper 2005), the areas expected to be affected by L–DEO's activities are small relative to the greater habitat areas available.

Additionally, humpback whales feeding on high-density prey may be less likely to cease foraging when the benefit of energy intake outweighs the perceived harm from acoustic stimulus (Southall *et al.,* 2016). Therefore, this seismic activity is not expected to have a lasting physical impact on humpback whale proposed critical habitat, prey within it, or overall humpback whale fitness. Any impact would be a temporary increase in sound levels when the survey is occurring in or near the critical habitat and resulting temporary avoidance of prey or marine mammals themselves due these elevated sound levels. As stated above, L–DEO will shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce direct impacts to groups of humpback whales that may be cooperatively feeding in the area.

Southern Resident Killer Whales

In acknowledgment of our concern regarding the status of Southern Resident killer whales, including low abundance and decreasing trend, we address impacts to this stock separately in this section.

L–DEO's proposed tracklines do not overlap with existing Southern Resident killer whale habitat, but NMFS has proposed expanding Southern Resident critical habitat to include waters between the 6.1-m and 200-m depth contours from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). The proposed expanded critical habitat areas were identified in consideration of physical and biological features essential to conservation of Southern Resident killer whales (essential features): (1) Water quality to support growth and development; (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging. NMFS did not identify in-water sound levels as a separate essential feature of existing or proposed expanded critical habitat areas, though anthropogenic sound is recognized as one of the primary threats to Southern Resident killer whales (NMFS 2019). Exposure to vessel noise and presence of whale watching boats can significantly affect the foraging behavior of Southern Resident killer whales (Williams *et al.,* 2006; Lusseau *et al.,* 2009; Giles and Cendak 2010; Senigaglia *et al.,* 2016). Nutritional stress has also been identified as a primary cause of Southern Resident killer whale decline (Ayres *et al.,* 2012; Wasser *et al.,* 2017), suggesting that reduced foraging effort may have a greater impact than behavioral disturbance alone. However, these studies have primarily focused on effects of whale watch vessels operating in close proximity to Southern Resident killer whales, and commercial shipping traffic in the Salish Sea (*i.e.,* the inland waters of Washington and British Columbia). Commercial whale watch and private recreational vessels operating in the waters around the San Juan Islands in summer months number in the dozens (Erbe 2002), and at least 400 piloted vessels (commercial vessels over 350 gross tons and pleasure craft over 500 gross tons that are required to be guided in and out of the Port of Vancouver by British Columbia Coast Pilots) transit through Haro Strait each month (Joy *et al.,* 2002). Concentration of vessel traffic on the outer coast, where the proposed survey area occurs, is much lower than in the inland waters (Cominelli *et al.,* 2018), suggesting that effects from vessel noise may be lower than in inland waters. Increased noise levels from the proposed survey in any specific area would be short-term due to the mobile nature of the survey, unlike the near-constant vessel presence in inland waters.

Approximately 23 percent of L–DEO's total tracklines occur within the 200-m isobath along Washington and Oregon. L–DEO would be required to shut down seismic airguns immediately upon visual observation or acoustic detection of killer whales of any ecotype at any distance to minimize potential exposures of Southern Resident killer whales, and will operate within the 200-m isobath in daylight hours only, to increase the ability to visually detect killer whales and implement shutdowns. Southern Resident killer whales exposed to elevated sound levels from the R/V *Langseth* and the airgun array may reduce foraging time, but the amount of tracklines that overlap with the areas of highest estimated densities of Southern Resident killer whales (see Figures 7–9 and 7–11 in the U.S. Navy's MSDD (U.S. Navy 2019)) is low relative to the total survey effort. Approximately 360 km of survey tracklines occur within the areas of highest Southern Resident killer whale density (the three highest density ranges for each pod), which represents approximately 5 percent of the total survey tracklines, or just under two days of survey operations. If Southern Resident killer whales are encountered during the survey in these areas and reduce foraging effort in response, the relatively small amount of time of altered behavior would not likely affect their overall foraging ability. While Southern Resident killer whales may be encountered outside of these areas of highest density, the likelihood is significantly decreased and thus the likelihood of impacts to foraging is decreased. Short-term impacts to foraging ability are not likely to result in significant or lasting consequences for individual Southern Resident killer whales or the population as a whole (Ayres *et al.,* 2012). Due to the mobile nature of the survey, animals would not be exposed to elevated sounds for an extended period, and the proposed critical habitat contains a large area of suitable habitat that would allow Southern Resident killer whales to forage away from the survey. Noren *et al.* (2016) reported that although resident killer whales increase energy expenditure in response to vessel presence, the increase is considered to be negligible.

No permanent hearing impairment (Level A harassment) is anticipated or proposed to be authorized. Authorized takes of Southern Resident killer whales would be limited to Level B harassment in the form of behavioral disturbance. We anticipate 45 instances of Level B

harassment of Southern Resident killer whales, which we expect would likely occur to a smaller subset of the population on only a few days. Limited, short term behavioral disturbance of the nature expected here would not be expected to result in fitness-level effects to individual Southern Resident killer whales or the population as a whole.

Negligible Impact Conclusions

The proposed survey would be of short duration (37 days of seismic operations), and the acoustic ''footprint'' of the proposed survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area. Short term exposures to survey operations are not likely to significantly disrupt marine mammal behavior, and the potential for longer-term avoidance of important areas is limited.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing, at least to some extent, potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation (although all authorized PTS has been accounted for in this analysis). Further, for Southern Resident Killer Whales (as described above), additional mitigation (*e.g.,* second monitoring vessel, daylight only surveys) is expected to increase the ability of PSOs to detect killer whales and shut down the airgun array to reduce the instances and severity of behavioral disturbance.

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed to be authorized;
- The proposed activity is temporary and of relatively short duration (37 days);
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of potential PTS that may occur are expected to be very small in number. Instances of potential PTS that are incurred in marine mammals are expected to be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal; and
- The proposed mitigation measures, including visual and acoustic monitoring, shutdowns, and enhanced measures for areas of biological importance (*e.g.,* additional monitoring vessel, daylight operations only) are expected to minimize potential impacts to marine mammals (both amount and severity).
- Additionally as described above for Southern Resident killer whales specifically, anticipated impacts are limited to few days of behavioral disturbance for any one individual and additional mitigation (*e.g.,* additional monitoring vessel, survey timing, shutdowns) are expected to ensure that both the numbers and severity of impacts to this stock are minimized, and, therefore the proposed authorization of Southern Resident killer whale take is not expected impact the fitness of any individuals, much less rates of recruitment or survival.

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 mitigation and monitoring 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.

There are several stocks for which the estimated instances of take appear high when compared to the stock abundance (Table 10), including the Southern Resident killer whale stock, the California/Oregon/Washington Dall's porpoise stock, and the Northern California/Southern Oregon and Northern Oregon/Washington Coast harbor porpoise stocks. However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from the four referenced above and described below), the proposed take is less than one-third of the best available stock abundance (recognizing that some of those takes may be repeats of the same individual, thus rendering the actual percentage even lower).

The expected take of Southern Resident killer whales, as a proportion of the population abundance, is 57.33 percent, if all takes are assumed to occur for unique individuals. In their NWTT Phase III MSDD, the U.S. Navy created density estimates of Southern Resident killer whales in their Offshore Study Area (U.S. Navy 2019). These density estimates were developed with the assumption that all members of the Southern Resident population were within the Study Area (*i.e.,* no Southern Resident killer whales were assumed to be in the inland waters of the Salish Sea). In reality, Southern Resident killer whales have historically spent much of

their time in the Salish Sea from spring through fall to forage on Fraser River Chinook salmon (Shields *et al.,* 2017) and it is likely that some or all of the population may be in inland waters during the proposed survey. Therefore, we expect that there will be multiple takes of a smaller number of individuals within the action area, such that the number of individuals taken will be less than one-third of the population.

The expected take of the California/Oregon/Washington stock of Dall's porpoises, as a proportion of the population abundance, is 40.8 percent, if all takes are assumed to occur for unique individuals. In reality, it is unlikely that all takes would occur to different individuals. L–DEO's proposed survey area represents a small portion of the stock's overall range (Caretta *et al.,* 2017), and it is more likely that there will be multiple takes of a smaller number of individuals within the action area. In addition, Best *et al.* (2015) estimated the population of Dall's porpoise in British Columbia to be 5,303 porpoises based on systematic line-transect surveys of the Strait of Georgia, Johnstone Strait, Queen Charlotte Sound, Hecate Strait, and Dixon Entrance between 2004 and 2007. In consideration of the greater abundance estimate combining the U.S. stock and animals in British Columbia, and the likelihood of repeated takes of individuals, it is unlikely that more than one-third of the stock would be exposed to the seismic survey.

When assuming all takes of harbor porpoise would occur to either the Northern Oregon/Washington Coast or Northern California/Southern Oregon stocks, the take appears high relative to stock abundance (60.53 and 36.36 percent, respectively). In reality, takes will occur to both stocks, and therefore, the number of takes of each stock will be much lower. NMFS has no commonly used method to estimate the relative proportion of each stock that would experience take, but here we propose to apportion the takes between the two stocks based on the stock boundary (Lincoln City, Oregon) and the approximate proportion of the survey area that will occur on either side of the stock boundary. North of Lincoln City, Oregon, harbor porpoises belong to the Northern Oregon/Washington Coast stock, and south of Lincoln City, harbor porpoises belong to the Northern California/Southern Oregon stock. Approximately one-third of the proposed survey occurs south of Lincoln City, therefore one-third of the total estimated takes are assumed to be from the Northern California/Southern Oregon stock. The remaining two-thirds of the estimated takes are assumed to be from the Northern Oregon/Washington Coast stock. The estimated one-third of total takes assigned to the Northern California/Southern Oregon stock (4,335 total Level A and Level B takes) represent 12.12 percent of the stock abundance, which NMFS considers to be small relative to the stock abundance. In addition, the proposed survey area represents a small portion of the stock's range, and it is likely that there will be multiple takes of a small portion of individuals, further reducing the number of individuals exposed. The estimated two-thirds of total takes assigned to the Northern Oregon/Washington Coast stock (8,671 takes) represent 40.35 percent of the stock abundance, which is still considered high relative to stock abundance. However, the Northern Oregon/Washington Coast stock abundance estimate does not include animals in Canadian waters (Caretta *et al.,* 2017). Best *et al.* (2015) estimated a population abundance of 8,091 harbor porpoises in British Columbia. The estimated takes of animals in the northern portion of the survey area (north of Lincoln City) represent 29.32 percent of the combined British Columbia and Northern Oregon/Washington Coast abundance estimates, which NMFS considers to be small relative to estimated abundance.

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 (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of blue whales, fin whales, sei whales, sperm whales, Central America DPS humpback whales, Mexico DPS humpback whales, Southern Resident killer whale DPS, and Guadalupe fur seal, which are listed under the ESA. The NMFS Office of Protected Resources (OPR) Permits and Conservation Division has requested initiation of Section 7 consultation with the NMFS OPR ESA Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey in the northeast Pacific Ocean beginning in June 2020, 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 geophysical 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, 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); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

• Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 1, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–07289 Filed 4–6–20; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 85 Tuesday,

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Part III

The President

Memorandum of April 2, 2020—Providing an Order of Succession Within the Pension Benefit Guaranty Corporation

Memorandum of April 2, 2020—Providing Federal Support for Governors' Use of the National Guard To Respond to COVID–19

Federal Register
Vol. 85, No. 67
Tuesday, April 7, 2020

Presidential Documents

Title 3—

The President

Memorandum of April 2, 2020

Providing an Order of Succession Within the Pension Benefit Guaranty Corporation

Memorandum for the Director of the Pension Benefit Guaranty Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum and to the limitations set forth in the Act, the following officials of the Pension Benefit Guaranty Corporation, in the order listed, shall act as and perform the functions and duties of the office of the Director of the Pension Benefit Guaranty Corporation (Director) during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

(a) Chief Financial Officer;

(b) Chief Management Officer; and

(c) General Counsel.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 of this memorandum shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. *Revocation.* The Presidential Memorandum of February 1, 2013 (Designation of Officers of the Pension Benefit Guaranty Corporation to Act as Director of the Pension Benefit Guaranty Corporation), is hereby revoked.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

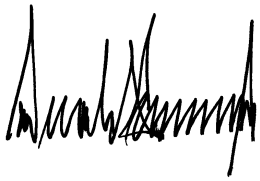
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. *Publication.* You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 2, 2020

[FR Doc. 2020–07452
Filed 4–6–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Memorandum of April 2, 2020

Providing Federal Support for Governors' Use of the National Guard To Respond to COVID–19

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), and section 502 of title 32, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to take measures to assist State and territorial Governors under the Stafford Act in their responses to all threats and hazards to the American people in their respective States and territories. Considering the profound and unique public health risks posed by the ongoing outbreak of COVID–19, the disease caused by the novel (new) coronavirus known as SARS–CoV–2 (''the virus''), the need for close cooperation and mutual assistance between the Federal Government and the States is greater than at any time in recent history. In recognizing this serious public health risk, I noted that on March 11, 2020, the World Health Organization announced that the COVID–19 outbreak can be characterized as a pandemic. On March 13, 2020, I declared a national emergency recognizing the threat that SARS–CoV–2 poses to the Nation's healthcare systems. I also determined that same day that the COVID–19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)). All States have activated their Emergency Operations Centers and are working to fight the spread of the virus and attend to those who have symptoms or who are already infected with COVID–19. To provide maximum support to the Governors of the States of Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, Tennessee, and Texas and the territory of the U.S. Virgin Islands as they make decisions about the responses required to address local conditions in each of their respective jurisdictions and as they request Federal support under the Stafford Act, I am taking the actions set forth in sections 2 and 3 of this memorandum:

Sec. 2. *One Hundred Percent Federal Cost Share.* To maximize assistance to the Governors of the States of Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, Tennessee, and Texas and the territory of the U.S. Virgin Islands to facilitate Federal support with respect to the use of National Guard units under State control, I am directing the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security to fund 100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that these States and this territory undertake using their National Guard forces, as authorized by sections 403 (42 U.S.C. 5170b) and 503 (42 U.S.C. 5193) of the Stafford Act.

Sec. 3. *Support of Operations or Missions to Prevent and Respond to the Spread of COVID–19.* I am directing the Secretary of Defense, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), to request pursuant to 32 U.S.C. 502(f) that the Governors of the States of Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, Tennessee, and Texas and the territory of

the U.S. Virgin Islands order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that FEMA issues to the Department of Defense for the purpose of supporting their respective State, territorial, and local emergency assistance efforts under the Stafford Act.

Sec. 4. *Termination.* The 100 percent Federal cost share provided for in this memorandum shall terminate 30 days from the date of this memorandum.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

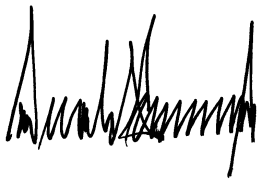
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 2, 2020

[FR Doc. 2020–07453
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Billing code 3295–F0–P

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