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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 85 Wednesday,
No. 83 April 29, 2020

Pages 23731–23892

OFFICE OF THE FEDERAL REGISTER

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

RIN 3133–AF18

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: In response to the COVID–19 pandemic, the NCUA Board (Board) is issuing this interim final rule to provide credit unions with greater access to liquidity to help ensure they remain operational throughout the crisis. This rule will make it easier and more attractive for credit unions to join the NCUA's Central Liquidity Facility (Facility). In addition, this rule makes several amendments to conform to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

DATES: This rule is effective on April 29, 2020, except for the amendment to § 725.6 in amendatory instruction 5, which is effective April 29, 2020 until January 1, 2022. Comments must be received on or before June 29, 2020.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF15, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Interim Final Rule: CLF'' in the transmittal.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov,* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted.

FOR FURTHER INFORMATION CONTACT: Owen Cole, Associate Director of the Office of Examination and Insurance; or Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Owen Cole can also be reached at (703) 518–6621, and Justin Anderson can be reached at (703) 518–6556.

SUPPLEMENTARY INFORMATION:

I. Background

The Facility, a mixed-ownership government corporation within the NCUA, established in 1979, serves as a liquidity source for its member credit unions.[1] Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encouraging savings, supporting consumer and mortgage lending, and providing basic financial resources to all segments of the economy.

Section 1795f of the Federal Credit Union Act (the FCU Act), among other things, gives the Board the authority to prescribe the manner in which the general business of the Facility shall be conducted and prescribe rules and regulations to carry out the Facility-related provisions of the FCU Act.[2] Under this authority, the Board is issuing this interim final rule to enhance liquidity for credit unions during the COVID–19 pandemic and to make regulatory changes that cohere to the CARES Act.[3]

The Board emphasizes that while some of the amendments in this rule are temporary, they will afford significant liquidity support to the entire credit union system. However, action is needed on the part of credit unions that are not already members of the Facility in order for this liquidity solution to reach its greatest potential. *The Board urges all natural person and corporate credit unions that do not already belong to the Facility to join.*

The Board underscores that growing the Facility's membership in turn enhances its ability to borrow increasingly greater amounts of funds to provide liquidity to the credit union system. By significantly increasing access to external funding, the Facility can better fulfill its central purpose to improve general financial stability by meeting the liquidity needs of credit unions. The Facility is able to borrow from the U.S. Treasury. The Facility's ability to borrow from the U.S. Treasury's Federal Financing Bank was an essential element of the NCUA's and the credit union system's ability to work through the last economic crisis.

The Board notes that several of the changes in this interim final rule are conforming changes based on the recently enacted CARES Act, which temporarily amends the FCU Act. The CARES Act specifically sunsets these changes to the FCU Act. As such, the changes in this rule that correspond to the CARES Act will also sunset in accordance with the CARES Act on December 31, 2020. To provide clarity and transparency, the Board has included these temporary changes in this rule and explains what will occur upon the sunset of the aforementioned amendments.

The specific amendments made by this interim final rule are detailed in the next section.

II. Amendments

The following is a section-by-section analysis of the changes in this interim final rule.

Part 725

A. Definitions

In accordance with the CARES Act, the Board is amending the definition of ''Liquidity needs'' to remove the words ''primarily serving natural persons.'' This change is intended to mirror the statutory change in the CARES Act, and clarifies that liquidity needs are not limited to only natural person credit unions, but may also include those of corporate credit unions or a corporate credit union group. This will allow corporate credit unions to obtain loans for their own liquidity needs. The Board notes that this amendment will sunset in accordance with the CARES Act on December 31, 2020.

[1] Public Law 95–630, 92 Stat 3641 (Nov.10, 1978), codified at 12 U.S.C. 1795, *et seq.*

[2] 12 U.S.C. 1795f.

[3] *Coronavirus Aid, Relief, and Economic Security Act,* Public Law 116–136, 134 Stat 281 (March 27, 2020).

B. Regular Membership Requirements

The Board is eliminating the six-month waiting period on obtaining Facility advances for a credit union that becomes a regular member. Currently § 725.3 provides that, with limited exception, any credit union that becomes a regular member of the Facility may not receive Facility advances, without approval of the NCUA Board, for a period of six months after becoming a member.

The Board believes it is important to remove this restriction in light of the overarching need to make such liquidity assistance timely. The advantages of accelerating liquidity-need loans to new members outweigh the practical reasons that having the waiting period affords to the Facility's operations.

C. Agent Membership

In accordance with the CARES Act, the Board is amending the nature of the requirement for a corporate credit union or group of corporate credit unions to subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in an unimpaired capital and surplus of all of the corporate credit union's or corporate credit union group's natural person credit union members. This change, which mirrors the statutory change in the CARES Act, allows the Board, in its sole discretion, to determine which grouping of natural person member credit unions of the applying corporate credit union or corporate credit union group are considered covered by the Agent's membership in the Facility. In turn, this approved group is the basis for calculating the amount of Facility capital stock the corporate credit union or corporate credit union group is required to purchase. This will provide a corporate credit union with the flexibility to subscribe to the capital stock of the Facility up to the maximum extent it can afford to do so.

The Board notes that this amendment will sunset in accordance with the CARES Act on December 31, 2020. Upon the sunset of this amendment, any corporate credit union or corporate credit union group that became an agent member under this provision must, within one-year from the sunset date, either:

1. Purchase Facility stock in accordance with the terms of the regulation as written post sunset of the CARES Act amendments; or

2. terminate its membership in the facility.

The Board believes that these two options take into account the temporary nature of the CARES Act amendments, while not causing undue disruption to the operations of a corporate credit union or corporate credit union group that joined the Facility under the CARES Act amendments. The Board, however, invites comments on the one-year time frame to complete the aforementioned actions. The Board requests specific comment on determining if this timeframe should be shorter or longer.

D. Agent Member Borrowing

To effectuate the intent of the CARES Act in a safe and sound manner, the Board is including a clarifying amendment to § 725.4. Such amendment clarifies that an agent member may borrow from the Facility for its own liquidity needs, but, to do so, such agent must first subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the Agent's own paid-in and unimpaired capital and surplus.[4] The Board believes this requirement will ensure that Facility advances for an agent's own needs are consistent with the design and intent of how the Facility grants extensions of credit to its natural person credit union members. The Board notes that agents have total discretion as to whether to subscribe to the capital stock and borrow for their own needs. This is a business decision for an agent to make and not doing so will not affect it's standing with the Facility or impact its ordinary duties and responsibilities in fulfilling the needs of its agent group. The Board believes expanding the liquidity resources of corporate credit unions, even for a temporary period, is an added measure of liquidity strength for the system as a whole.

In addition, the Board is amending § 725.17(b)(2) to clarify that an agent may apply for a Facility advance based on its own liquidity needs.

Finally, the Board notes that the foregoing amendments will sunset in accordance with requirements of the CARES Act on December 31, 2020. As such, the Board is including language to clarify the ramifications of the sunset of this provision. Specifically, this interim final rule provides that upon sunset of this provision, an agent must:

(1) Not request any additional Facility advances for its own liquidity needs; and

(2) continue to follow the terms of the Facility advance agreement entered into between the agent and the Facility.

The Board believes the inclusion of this provision appropriately accounts for the temporary nature of this provision, while assuring agents that loan agreements made during this period will not also be subject to a sunset provision or be terminated before maturity. The Board believes this strikes the appropriate balance between Congressional intent and the tenets of contract law.

In addition to the aforementioned changes, the Board is also making cohering changes to §§ 725.18(a) and 725.19(b) to clarify the requirements applicable to a Facility advance to an agent for such agent's own needs. The Board notes that such changes apply to these agent loans the same creditworthiness and collateral requirements that currently apply to Facility advances to regular members. The Board believes these changes are necessary because a Facility advance to an agent for its own needs will be similar to a facility advance to a regular member, and, therefore, should be subject to the same terms and conditions.

E. Termination of Membership

The Board is amending the waiting periods for a credit union to terminate its membership in the Facility between April 29, 2020 and January 1, 2022. Under the FCU Act and current § 725.6 of the NCUA's regulations, a credit union member may terminate its membership after a specified amount of time based on that credit union's stock subscription in the Facility. Currently, a member of the Facility may terminate its membership:

1. Six months after notifying the NCUA Board in writing of its intention to do so, if the member's stock subscription constitutes less than 5 percent of total subscribed Facility stock; or

2. Twenty-four months after notifying the NCUA Board in writing of its intention to do so, if the member's stock subscription constitutes 5 percent or more of total subscribed Facility stock.[5]

The Board is amending this section of part 725 to temporarily permit a credit union, regardless of its percentage amount of stock subscription, to withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(A) Six months from the date of its written notice to the NCUA Board; or

(B) December 31, 2020.

Further, any credit union, that remains a member after December 31, 2020, may, under this rule, withdraw

[4] A credit union is required to pay into the Facility one-half of the amount required by the regulations and to hold the other one-half in liquid assets on its balance sheet.

[5] 12 CFR 725.6.

from membership immediately upon notifying the Board in writing of its intent to do so. The Board notes that such immediate withdrawal period will expire on December 31, 2021. After December 31, 2021, the termination requirements of current paragraphs (a) and (b) of this section shall be reinstated and apply to all members. The Board believes that this flexibility is necessary to encourage the greatest number of eligible credit unions to join the Facility.

The Board notes that having waiting periods for stock redemptions is a provision that is designed to prevent unpredictable disruptions in the balance sheet and operations of the Facility. Ordinarily, such waiting periods provide flexibility to the Facility to manage transitions of membership in a way that makes its balance sheet and pro forma financial information more stable and predictable. These are important factors for any financial entity to have so that it can plan its needs and capacity with adequate reliability for its stakeholders. The Board is providing the above redemption flexibilities only during the current COVID–19 pandemic. Given the anticipated temporary nature of this pandemic and the need for increased liquidity during this event, the Board is comfortable that expediting membership termination is both manageable and necessary.

F. Collateral Requirements

The Board is reducing the amount of collateral required for certain assets used to secure each Facility advance and each agent loan. Currently, this section of the NCUA's regulations requires that each Facility advance and each agent loan be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to 110% of all amounts due under the applicable Facility advance or agent loan, or by guarantee of the NCUSIF. For the reasons described below, the Board is replacing the 110% requirement with a requirement that a credit union collateralize a Facility advance or Agent loan in accordance with the Facility collateral table posted on the NCUA's website, *www.NCUA.gov.* The collateral table varies the required collateral percentages based upon different types of assets, and in some cases requires less than 110%. Depending on the types of assets a member has available to secure an advance request, this may ease the collateral requirements somewhat and permit a greater amount of borrowing overall.

G. CARES Act Changes Not Included in This Interim Final Rule

The Board notes that the CARES Act includes two additional amendments to the FCU Act that are not reflected in this rule. Specifically, those changes are as follows.

It considerably increases the Facility's borrowing capacity. The FCU Act normally provides the Facility with the authority to borrow, provided that these obligations do not exceed twelve times the subscribed capital stock and surplus of the Facility (that is, the sum of its retained earnings and capital stock).[6] The CARES Act temporarily increases the multiplier from ''twelve times'' to ''sixteen times.'' This means that for every $1 of capital and surplus, the Facility may now borrow $16. As credit unions that join the Facility only have to pay in one-half of the capital stock subscription amount, this means that for every new dollar paid in of the capital stock subscription amount, the Facility can now borrow $32.[7] As there is currently no corresponding provision in the NCUA's regulations, the Board is not including any related regulatory change in this interim final rule.

Further, the legislation provides more clarity about the purposes for which the NCUA Board can approve liquidity-need requests by removing the phrase ''the Board shall not approve an application for credit the intent of which is to expand credit union portfolios.'' [8] The NCUA Board now has more flexibility and discretion to approve applications for Facility members that have made a reasonable effort to first utilize primary sources of funding. This change increases the transparency and efficiency of the loan-approval process by removing doubt about whether a credit union's portfolio is allowed to expand if it borrows from the Facility to meet liquidity needs. The Board notes that part 725 does not use the ''expand credit union portfolios'' language. Further, the Board believes the current construction of part 725 is flexible enough to encompass this change in the CARES Act without a corresponding regulatory change. However, the Board is including this discussion to alert the public of this additional flexibility provided by Congress.

[6] *See.* 12 U.S.C. 1795f(a)(4)(A).

[7] Credit unions have to subscribe to the Facility capital stock in the amount of one half of one percent of the credit union's six month average of paid-in and unimpaired capital and surplus (that is, the total of shares/deposits and undivided earnings). Credit unions only have to remit to the Facility one-half of the subscription amount—that is one-quarter of one-percent of paid-in and unimpaired capital and surplus. The other half may be held by the credit union on call of the NCUA Board.

[8] *See.* 12 U.S.C. 1795e(a)(1).

III. Regulatory Procedures

A. Administrative Procedure Act

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''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.''

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the Board notes that the COVID–19 crisis is unprecedented. It is a rapidly changing and difficult to anticipate how the disruptions caused by the crisis will manifest themselves within the financial system and how individual credit unions may be impacted. Because of the widespread impact of a pandemic and the speed with which disruptions have transmitted throughout the United States, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best of interests of the public and the federally insured credit unions that serve that public.

The Board views this crisis as one which has the potential to disrupt liquidity within the system. Liquidity needs are of a nature that if not addressed swiftly and decisively, can translate into rapid financial distress for individual institutions or even the broader system. These actions are proactive steps that are designed to alleviate potential liquidity strains and are undertaken with expedience to ensure the maximum intended effects are in place at the earliest opportunity.

In addition, the Board notes that the provisions in this rule are temporary in nature, and designed specifically to help credit unions affected by the COVID–19 pandemic. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or

recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause. Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection.

The NCUA is amending part 725 to eliminate the six-month waiting period on Facility advances for a credit union that becomes a new regular member. By removing this restriction, the NCUA can provide needed liquidity assistance in an expedited manner. The NCUA is also modifying the waiting period for a credit union to terminate its membership in the Facility with the intent of providing added flexibility to encourage the greatest number of eligible credit unions to join the Facility immediately to help the Agency and the system at large leverage these temporary measures and secure an adequate amount of external liquidity resources. By significantly increasing access to external funding, the Facility can better fulfill its central purpose to improve general financial stability by meeting the liquidity needs of credit unions.

The information collection requirements of part 725 are currently covered by OMB control number 3133–0061. These temporary amendments are estimated to increase the number of respondents from its current estimate of 5 annually to 269 during this period; with a total information collection burden of 691 hours.

NCUA has obtained emergency approval from the Office of Management and Budget for a 6-month period. During this time the Agency will accept public comments on the information collection requirements and take appropriate action in the final request for PRA approval.

OMB Control Number: 3133–0061.

Title of information collection: Central Liquidity Facility, 12 CFR part 725.

Estimated number of respondents: 269.

Estimated number of responses per respondent: 4.26.

Estimated total annual responses: 1,146.

Estimated burden per response: 0.60.

Estimated total annual burden: 691.

The NCUA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public records. Comments regarding the information collection requirements of this rule should be sent to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6018, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This interim final 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. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and

publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.[9] Accordingly, the NCUA is not required to conduct a regulatory flexibility analysis for the reasons stated above relating to the good cause exemption.

List of Subjects in 12 CFR Part 725

Credit unions, Reporting and recordkeeping requirements.

By the NCUA Board on April 13, 2020.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board is amending 12 CFR part 725 as follows:

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

■ 1. The authority citation for part 725 continues to read as follows:

Authority: 12 U.S.C. 1795f(a)(2).

■ 2. In § 725.2, revise paragraph (i) introductory text to read as follows:

§ 725.2 Definitions.

* * * * *

(i) *Liquidity needs* means the needs of credit unions for:

* * * * *

§ 725.3 [Amended]

■ 3. In § 725.3, remove and reserve paragraph (b).

■ 4. In § 725.4, revise paragraph (a)(2) to read as follows:

§ 725.4 Agent membership.

(a) * * *

(2) Subscribing to the capital stock of the Facility in an amount equal to:

(i) One-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of all the corporate credit union's or corporate credit union group's member natural person credit unions, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent (a natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription). Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility;

(ii) From April 29, 2020 until December 31, 2020, one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of such credit union members of the corporate credit union or corporate credit union group as the Board may determine in its sole discretion, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent (a natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription). Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility. A corporate credit union or corporate credit union group that became an Agent member of the Facility under this paragraph shall, after December 31, 2020, but before January 1, 2022, either:

(A) Purchase Facility stock in accordance with the terms of paragraph (a)(2)(i) of this section or

(B) Terminate its membership in the facility.

(iii) From April 29, 2020 until December 31, 2020, if borrowing for its own liquidity needs, one-half of 1 percent of the Agent's own paid-in and unimpaired capital and surplus. Upon approval of the application, the Agent shall forward funds equal to one-half of this stock subscription to the Facility. This amount shall be in addition to the amounts required by paragraph (a)(2)(i) or (ii) of this section, if a corporate credit union or corporate credit union group joined the facility as an Agent and intends to borrow for its own liquidity needs. Any corporate credit union or corporate credit union group that received a Facility advance for its own liquidity need under the temporary requirements set forth in this paragraph must, as of January 1, 2021 and thereafter:

(A) Not request any additional Facility advances for its own liquidity needs; and

(B) Continue to follow the terms of the Facility advance agreement entered into between the Agent and the Facility.

* * * * *

■ 5. In § 725.6, effective April 29, 2020 until January 1, 2022, paragraphs (a) and (b) are stayed and paragraph (e) is added.

The addition reads as follows:

§ 725.6 Termination of membership.

* * * * *

(e) The following requirements apply to a credit union's termination of membership in the Facility:

(1) A member, regardless of its amount of stock subscription, may withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(i) Six months from the date of its written notice to the NCUA Board; or

(ii) December 31, 2020.

(2) Any credit union that does not elect to withdraw from membership in the Facility during the time periods prescribed in paragraph (e)(1) of this section, may immediately withdraw from membership in the Facility after notifying the NCUA Board in writing of its intention to do so from January 1, 2021, to January 1, 2022. As of January 1, 2022, the requirements of paragraphs (a) and (b) of this section, as in effect on March 1, 2020, shall apply.

(3) The Facility will process requests under this paragraph (e) upon demand and deliver funds as soon as practicable, allowing for the time necessary for settlement and transfer of funds in these transactions.

■ 6. In § 725.17, revise paragraph (b)(2) to read as follows:

§ 725.17 Applications for extensions of credit.

* * * * *

(b) * * *

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

(2) The Agent's application shall be based on the following:

(i) Approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) Outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) Such other demonstrable liquidity needs as the NCUA Board may specify; or

(iv) The applicant Agent's own liquidity needs.

■ 7. In § 725.18, revise paragraphs (a) and (d) to read as follows:

§ 725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance or an Agent member for a Facility advance for such Agent member's own need, the Facility shall consider the creditworthiness of such member.

* * * * *

(d) A credit union (whether a Regular member of the Facility, Agent member, or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

■ 8. In § 725.19, revise paragraphs (a) and (b) to read as follows:

§ 725.19 Collateral requirements.

(a) Each Facility advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to an amount as required by the Facility's collateral table, published at *www.NCUA.gov,* or by guarantee of the National Credit Union Share Insurance Fund.

(b) The Facility may accept as collateral for each Facility advance to a Regular member or to an Agent member, for such Agent member's own needs, a security interest in all assets of the member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the Facility shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

* * * * *

[FR Doc. 2020–08101 Filed 4–28–20; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

RIN 1505–AC65

Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The interim rule establishes a fee for parties filing a formal written notice of a transaction for review by the Committee on Foreign Investment in the United States (CFIUS). In establishing a fee for such notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018, which amends section 721 of the Defense Production Act of 1950 to allow CFIUS to collect fees. This interim rule includes a request for additional public comment.

DATES:

Effective date: The interim rule is effective on May 1, 2020.

Comment date: The Department of the Treasury (Treasury Department) is seeking written comments from the public on the interim rule, which must be received by June 1, 2020.

ADDRESSES: Written comments on the interim rule may be submitted through one of two methods:

• *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.

• *Mail:* Send to U.S. Department of the Treasury, Attention: Laura Black, Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via *https://www.regulations.gov.* Please submit comments only and include your name and company name (if any), and cite ''*Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States*'' in all correspondence. In general, the Treasury Department will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 2020, the Department of the Treasury (Treasury Department) published a notice of proposed rulemaking amending 31 CFR part 800 (Part 800) and 31 CFR part 802 (Part 802) to establish filing fees. 85 FR 13586 (March 9, 2020). (The Office of the Federal Register made the proposed rule available for public inspection on March 4, 2020.) The proposed rule proposed establishing a filing fee for ''covered transactions'' under Part 800 and ''covered real estate transactions'' under Part 802 that are filed with the Committee on Foreign Investment in the United States (CFIUS or the Committee) as formal written notices. The proposed rule created a new subpart K on filing fees in each of Part 800 and Part 802, and made a limited number of revisions to other related sections of those regulations. Public comments on the proposed rule were due by April 3, 2020 and are discussed below. This interim rule establishes the filing fees for Part 800 and Part 802—effective May 1, 2020—and also allows the public an additional opportunity to comment on the rule.

In establishing a fee for formal written notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which amends section 721 of the Defense Production Act of 1950 (DPA) to allow CFIUS to collect fees. FIRRMA authorizes the collection of

fees with respect to covered transactions and covered real estate transactions for which a formal written notice is filed with the Committee—as opposed to, for example, transactions submitted through a declaration. FIRRMA directs that the fee be based on the value of the transaction, taking various factors into account. It also provides that such fees may not exceed an amount equal to the lesser of one percent of the value of the transaction, or $300,000, adjusted annually for inflation.

Through FIRRMA, Congress authorized CFIUS to collect fees for transactions filed by parties through written notices in order to offset the expenses of the Committee associated with conducting activities under section 721 of the DPA. Given the growing volume of work and resources devoted to CFIUS, the Treasury Department determined that implementing filing fees is appropriate at this time. As discussed in further detail below, the Treasury Department does not expect the filing fees to impact levels of foreign investment into the United States or decisions to file transactions with CFIUS more generally. The United States remains committed to its open investment policy, and the funding provided through the filing fees will support CFIUS in fulfilling its mission of protecting national security while continuing to welcome foreign investment.

II. Overview of Comments on the Proposed Rule

During the public comment period, the Treasury Department received written submissions on the proposed rule. All comments received by the end of the comment period are available on the public rulemaking docket at *https://www.regulations.gov.*

The Treasury Department considered each comment submitted on the proposed rule. Some of the comments were more general in nature, such as discussing the impact of the rule on foreign investment in the United States. The Treasury Department recognizes the vital importance of foreign investment to the U.S. economy. The Treasury Department drafted the proposed rule, and made revisions in issuing this interim rule, taking into consideration various factors including the effect on foreign investment, effect on small business concerns, and expenses of the Committee associated with conducting activities under section 721 of the DPA. As discussed in the preamble to the proposed rule, the Treasury Department considered different approaches to the fee structure and decided that the structure in the proposed rule and this interim rule was the most appropriate for reasons including proportionality, administration, clarity, and impact on parties' decision whether to file a notice. Overall, this filing fee structure allows the Committee to appropriately generate funding—consistent with Congressional intent—in order to support the work of the Committee, but at the same time, the proportional cost in terms of transaction value is maintained at a low level. This is discussed further below.

One commenter noted that the proposed rule would not establish filing fees for declarations, but that parties could submit a declaration on a transaction for which CFIUS subsequently requests a written notice. The commenter noted that this structure could create a financial incentive for CFIUS not to complete all action through the declaration process. The Treasury Department disagrees with this assertion. First, the approach in the proposed rule and this interim rule is consistent with what Congress authorized under FIRRMA—that is, the Committee may impose a filing fee for notices, but not for declarations. Second, it is in the Committee's interest—both financially and administratively—to complete all action with respect to appropriate transactions through the declaration process. The personnel and resource costs to the Committee of reviewing a notice are not insignificant and may often exceed the fee for filing a notice. Thus, there is no real financial incentive for CFIUS not to complete all action with respect to a transaction through the declaration process. Third, CFIUS is further bound by the requirement in FIRRMA that the total amount of fees collected may not exceed the costs of administering section 721. Finally, as noted above, foreign investment is vital to the U.S. economy. CFIUS is committed to completing all action with respect to benign transactions as quickly as possible and maintaining an open investment environment. The incentives weigh in favor of CFIUS completing all action with respect to transactions in a timely manner, as appropriate in light of national security considerations.

In addition to the comments on the substance of the rule, one commenter requested an extension of the public comment period for the proposed rule in light of the challenges posed by the novel coronavirus pandemic. The Treasury Department recognizes the challenges posed by the coronavirus pandemic during the public comment period for the proposed rule. Therefore, as discussed further below, this rule is being issued as an interim rule and the public will have until June 1, 2020 to provide additional comments. The Treasury Department will, however, begin to collect fees on May 1, 2020 to ensure that revenue collected in fiscal year 2020 is as closely aligned as possible to the estimates made in the Consolidated Appropriations Act, 2020. These fees will partially offset the ongoing expenses of the Committee, including workforce expansion and resource expenditure to support the full implementation of FIRRMA.

The section-by-section analysis below includes responses to other comments and notes edits that were made to the rule for consistency and clarity.

III. Summary of Comments and Changes from the Proposed Rule

a. Sections 800.1101/802.1101—Amount of Fee

Consistent with the proposed rule, §§ 800.1101 and 802.1101 set forth the fee amount based on the value of the transaction.

Commenters suggested that the Treasury Department impose no fee, or set the fees lower than those in the proposed rule. The commenters noted that filing fees could discourage foreign investment in the United States, and that money used for filing fees would detract from money that would otherwise go into U.S. business expansion. No specific data or examples were provided in support of these comments.

The interim rule does not make any changes to the fee structure or amounts. As explained in the preamble to the proposed rule, because the fees represent only a small amount (0.15 percent or less) of the overall value of a given transaction, the Treasury Department does not believe that the imposition of fees will impact the flow of foreign investment into the United States. In fact, the Treasury Department expects that parties may routinely expend more on legal and accounting fees in connection with a transaction. Additionally, the benefit of filing a notice and paying the fee is the ''safe harbor'' that may be obtained upon the conclusion of CFIUS review. This is of considerable value to transaction parties. Furthermore, transaction parties can take advantage of the declaration process, which does not require a fee.

One commenter requested that the Treasury Department create an exemption for ''low-risk'' foreign investors from specific ally and partner countries of the United States. The commenter suggested either relieving the relevant filers of the obligation to pay a fee or creating a separate fee structure with lower fees for these

foreign investors. The commenter asserted that, with respect to low threat investors, the administrative burden on CFIUS resources is relatively low and that investments by these investors would not require CFIUS to spend a considerable amount of time and money reviewing such transactions.

The interim rule does not make any changes in response to this comment. CFIUS reviews every transaction based on the particular facts and circumstances of the transaction. Every transaction filed with the Committee as a notice requires specific analysis, due diligence, and work product, regardless of whether the foreign person is from an ally or partner country. Therefore, creating an exemption from fees, or a lower fee structure, for certain foreign investors is not appropriate.

The interim rule clarifies that the filing fees take effect for formal written notices filed with the Committee on or after May 1, 2020. Parties that have filed a draft written notice pursuant to § 800.501(g) or § 802.501(g) prior to May 1, 2020, but file a formal written notice on or after May 1, 2020, will be required to pay the filing fee.

b. Sections 800.1102/802.1102—Timing of Payment

Consistent with the proposed rule, §§ 800.1102 and 802.1102 discuss the timing of acceptance of a formal written notice in connection with transactions where a fee is required. Payment must be received by the Treasury Department before a formal written notice will be accepted for review.

A commenter requested that the Treasury Department consider allowing a ''grace period'' for payment of the fee (*e.g.,* 15 days after acceptance of a written notice) when the Committee is not able to complete all action with respect to a transaction through a declaration and the parties subsequently file a written notice. The commenter explained that the grace period would reduce delay with respect to the Committee's review of the transaction.

The interim rule does not make any changes in response to this comment. Based on over a year of experience with parties filing a notice after a declaration, the Treasury Department does not anticipate that requiring payment of the fee at the time of filing a formal written notice will cause unnecessary delay. Parties filing a notice after a declaration typically take a few days, if not longer, to prepare and file the notice. Additionally, the Treasury Department will accept electronic payment of filing fees, which allows fast payment processing. Therefore, allowing a grace period for payment of the fee is unnecessary.

c. Sections 800.1103/802.1103—Valuation

The proposed rule described how to determine the value of a transaction for purposes of the fee at §§ 800.1103 and 802.1103.

One commenter requested clarification whether ''other ownership interests'' and ''in-kind consideration'' include intangible assets, such as intellectual property rights. In most cases, the value of a transaction will be the total value of all consideration that has been or will be paid in the context of the transaction by or on behalf of the foreign person that is a party to the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, services, or other in-kind consideration. This encompasses intangible assets, in whatever form. The interim rule adds a reference to intellectual property in the example at § 800.1103(f)(3) to further clarify this point.

One commenter requested that the ''value of the transaction'' be calculated on the basis of the target's U.S. business operations alone rather than the combination of U.S. and non-U.S. operations as proposed. The commenter argued that because CFIUS's jurisdiction is with respect to particular types of transactions involving a U.S. business or real estate, the calculation of transaction value for determining fees should follow the same principle.

The interim rule does not make any changes in response to this comment. FIRRMA directs that the fee shall be based on the ''value of the transaction,'' and the approach in the proposed rule and interim rule is consistent with the statute. Moreover, basing the filing fee on only the value of the U.S. business operations of the target company, rather than on the contemplated or completed transaction itself, could introduce undesirable complexity to the filing fee rule. Parties negotiate and arrive at a value for the overall transaction in the standard course of dealmaking, which is not always the case with respect to ascribing a value to a particular geographic portion of the target's business. It is important to note, however, that the Treasury Department recognizes there may be situations where a target company with global operations has a limited presence in the United States. In response, the proposed rule and interim rule include an exception for transactions where the value of the transaction is equal to or greater than $5,000,000, but the value of the interest acquired in the U.S. business is less than $5,000,000. In such cases, the fee will be $750.

One commenter requested that the rule take into account the unique characteristics of biotechnology companies, arguing that revenue (rather than valuation) is the true indicator of company size, or in the alternative, there should be a separate fee schedule for low or pre-revenue companies.

The interim rule does not make any changes in response to this comment. First, FIRRMA directs that the fee be based on the value of the transaction taking various factors into account, including the effect on small business concerns. Basing the fee on the transaction value, rather than the target company's revenue, is consistent with FIRRMA, as noted above, and an appropriate way to set the fee. The measure of the value of a transaction should be the amount of consideration that has been or will be paid, not solely the revenue of a company. In the event that a target company is a low revenue or pre-revenue business, the Treasury Department anticipates that the transaction parties will apportion the fee amount between the parties appropriately. Regardless of the target's revenue, the foreign investor is electing to acquire the assets or invest in the U.S. business, and therefore has some ability to pay. Moreover, in no event will the fee exceed 0.15 percent of the value of the transaction. Alternatively, parties have the option of submitting a declaration, which does not require a fee.

The interim rule includes some clarifying and technical edits in §§ 800.1103 and 802.1103. These edits include clarifications to § 800.1103(c)(2) to account for the possibility that more than one U.S. business might be contributed to a joint venture, in which case, the value of the transaction is the collective value of each U.S. business contributed. The Treasury Department is considering, and in particular welcomes comment on, alternative approaches to valuing a joint venture transaction. One alternative approach under consideration is to value a joint venture transaction on the basis of the foreign person's proportional ownership interest in the joint venture. Another approach is to base the value on the contribution made by the foreign person to the joint venture. In addition, references in subpart K of the rule to ''interests,'' ''assets,'' and ''rights'' were streamlined, as appropriate. For example, in § 800.1103(c)(3) ''interest'' is meant to be inclusive of any assets or rights acquired, as the case may be for a particular transaction. Clarifying edits were also made to some of the examples, now consolidated at §§ 800.1103(f) and 802.1103(i).

Finally, in § 800.1103(e), and the corresponding provision in § 802.1103(h), edits were made to clarify the treatment of multiple-phase transactions and transactions involving contingent equity interest. In a multiple-phase transaction, the value of the transaction includes the total value of each phase, as may be reasonably determined as of the date of the filing. For contingent equity interest, the rule describes how to value the consideration for the acquisition of the contingent equity interest as well as the consideration for the interest upon conversion, subject to certain factors. The examples at §§ 800.1103(f)(7) and (8), and 802.1103(i)(5) and (6), add further clarity.

d. Sections 800.1104/802.1104—Manner of Payment

No comments were received concerning this section. Accordingly, consistent with the proposed rule, §§ 800.1104 and 802.1104 provide the manner in which payment is to be made. Parties must pay by electronic payment, in U.S. dollars, and in accordance with the instructions available on the Treasury Department's website.

e. Sections 800.1105/802.1105—Refunds

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1105 and 802.1105 discuss the circumstances when refunds may be issued. The Treasury Department will not refund a filing fee except in the specific instances noted in the rule.

f. Sections 800.1106/802.1106—Waiver

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1106 and 802.1106 describe when a waiver of the filing fee in whole or in part may be issued.

g. Sections 800.1107/802.1107—Refilings

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1107 and 802.1107 discuss applicability of the filing fee in the context of refiled notices.

h. Sections 800.1108/802.1108—Rejection of Voluntary Notice

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1108 and 802.1108 discuss the process of rejecting a notice for insufficient payment of the fee.

IV. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Justification for Interim Rule

The proposed rule on filing fees was filed with the Office of the Federal Register on March 4, 2020 and made available for public inspection at that time. The public comment period ended 30 days later on April 3, 2020. The Treasury Department received five comment letters from the public, including one letter requesting an extension in light of the challenges posed by the novel coronavirus pandemic to the normal operations of potentially interested parties.

Although several public comments were timely submitted, the Treasury Department recognizes that some potentially interested parties may have been unable to comment because of the unique challenges posed by the coronavirus pandemic. While the Treasury Department has determined that publishing this rule now and making it effective on May 1, 2020, is appropriate for the reasons stated above, the Treasury Department also believes that it would benefit the public and the Committee to receive additional comments on the rule before it is made final. For that reason, an additional public comment period will commence concurrently with the filing of this rule with the Office of the Federal Register. The Treasury Department will consider additional comments submitted before finalizing this interim rule.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1505–0121.

The notice requirements in Part 800 and Part 802 were approved under the Paperwork Reduction Act with a per respondent burden of 130 hours and 116 burden hours, respectively. In the proposed rule, the Treasury Department invited public comments with respect to the amended reporting requirements under §§ 800.502(c)(1)(viii) and 802.502(b)(1)(ix). No comments were received. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* RFA) generally requires an agency to prepare an initial regulatory flexibility analysis unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the APA, or any other law. As set forth in the preamble to the proposed rule at Section III, because rules issued pursuant to the DPA, such as this rule, are not subject to the APA or another law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply. Nevertheless, for the reasons detailed in the RFA section of the proposed rule, the Secretary of the Treasury certified that the proposed rule, if implemented, will not have a ''significant economic impact on a substantial number of small entities,'' 5 U.S.C. 605(b). The Treasury Department also invited public comment on how the proposed rule would affect small entities.

Only one commenter discussed the proposed rule's analysis with respect to the potential impact on small businesses, particularly in the biotechnology industry. The commenter noted that an analysis of venture capital investment trends in the U.S. biotechnology industry suggests that biotechnology companies may be disproportionately impacted by the rule due to having characteristics of small businesses despite valuations being more typical of large businesses. The commenter did not offer additional details supporting the implicit assertion that biotechnology companies are small businesses or the conclusion that they are disproportionately impacted by the rule. Due to the limitations in available data, it is difficult to draw conclusions with respect to the biotechnology industry and the particular impact of this interim rule. In any case, as discussed in the proposed rule, the fee is only incurred when parties file a

formal written notice of a transaction with the Committee. (Even then, transactions under a certain size pay no fee or only a small fee of no more than 0.15 percent of the value of the transaction.) No fee is required for the submission of a declaration, which is available for any transaction under Part 800 and Part 802. Declarations will take less time and incur less cost for parties to complete. Additional information about declarations, including the procedures to file them and their content requirements, is available in the final CFIUS rules at 85 FR 3112 (Jan. 17, 2020) and 85 FR 3158 (Jan. 17, 2020).

For the reasons above, the Secretary of the Treasury certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This rule has been submitted to OIRA which has determined that the rule is not a ''major'' rule under the Congressional Review Act.

List of Subjects

31 CFR Part 800

Foreign investments in the United States, Investments, Investment companies, National defense, Fees.

31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and Recordkeeping requirements, Fees.

For the reasons set forth in the preamble, the Treasury Department amends 31 CFR parts 800 and 802 as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart E—Notices

§ 800.501 [Amended]

■ 2. Amend § 800.501:

■ a. In paragraph (a) by adding '', and paying the fee required under subpart K of this part'' after ''including the certification required under paragraph (l) of that section''; and

■ b. In paragraph (f) by adding '', and payment of the fee required under subpart K of this part,'' after ''including the certification required by § 800.502(l)''.

■ 3. Amend § 800.502 by revising paragraph (c)(1)(viii) to read as follows:

§ 800.502 Contents of voluntary notices.

* * * * *

(c) * * *

(1) * * *

(viii)(A) The value of the transaction in U.S. dollars, as determined under § 800.1103, and the parties' assessment of the applicable fee due under § 800.1101, including an explanation of the methodology used to determine such valuation and applicable fee; and

(B) If different than the value of the transaction provided in paragraph (c)(1)(viii)(A) of this section, a good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice.

* * * * *

■ 4. Amend § 800.503:

■ a. In paragraph (a)(1), by removing the word ''and'';

■ b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

■ c. By adding new paragraph (a)(2).

The addition reads as follows:

§ 800.503 Beginning of 45-day review period.

(a) * * *

(2) Confirmed that the applicable fee required under subpart K of this part has been received by the Department of the Treasury, or waived; and

* * * * *

■ 5. Amend § 800.504 by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5), respectively, and adding new paragraph (a)(3) to read as follows:

§ 800.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) * * *

(3) Reject any voluntary notice at any time upon determining that the filing fee paid by the parties was insufficient under subpart K of this part, subject to § 800.1108.

* * * * *

■ 6. Add subpart K to read as follows:

Subpart K—Filing Fees

Sec.
800.1101 Amount of fee.
800.1102 Timing of payment.
800.1103 Valuation.
800.1104 Manner of payment.
800.1105 Refunds.
800.1106 Waiver.
800.1107 Refilings.
800.1108 Rejection of voluntary notice.

Subpart K—Filing Fees

§ 800.1101 Amount of fee.

Except as otherwise provided in this subpart, the parties filing a formal written notice of a transaction with the Committee under § 800.501(a) on or after May 1, 2020, shall pay a filing fee as follows:

(a) Where the value of the transaction is less than $500,000: No fee;

(b) Where the value of the transaction is equal to or greater than $500,000 but less than $5,000,000: $750;

(c) Where the value of the transaction is equal to or greater than $5,000,000 but less than $50,000,000: $7,500;

(d) Where the value of the transaction is equal to or greater than $50,000,000 but less than $250,000,000: $75,000;

(e) Where the value of the transaction is equal to or greater than $250,000,000 but less than $750,000,000: $150,000;

(f) Where the value of the transaction is equal to or greater than $750,000,000: $300,000.

§ 800.1102 Timing of payment.

Subject to §§ 800.1106 through 800.1108, the Staff Chairperson shall not accept a formal written notice under § 800.503(a) until payment of any fee required under this subpart is received by the Department of the Treasury in the manner specified on the Committee's section of the Department of the Treasury website.

§ 800.1103 Valuation.

(a) Except as provided in paragraph (c) of this section, the value of the transaction for purposes of determining the required fee amount in this subpart means the total value of all consideration that has been or will be provided in the context of the transaction by or on behalf of the foreign person that is a party to the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, or services or other in-kind consideration.

(b) Determining the value of consideration:

(1) Where the consideration is or includes securities traded on a national securities exchange, the value of the securities is the closing price on the national securities exchange on which the securities are primarily traded on the trading day immediately prior to the date the parties file the formal written notice with the Committee under § 800.501(a), or if the securities were not traded on that day, the last published closing price.

(2) Where the consideration is or includes other non-cash assets, services, interests, or other in-kind consideration, the value of the assets, services,

interests, or other in-kind consideration is their fair market value as of the date the parties file the formal written notice.

(3) Where the transaction is or includes a lending transaction, the consideration includes the cash value of the loan, or similar financing arrangement, made available or provided by or on behalf of the foreign person that is a party to the transaction.

(4) Where the transaction is or includes the conversion of a contingent equity interest previously acquired by a foreign person that is a party to the transaction, the consideration includes what was paid by or on behalf of the foreign person to initially acquire the contingent equity interest, in addition to any other consideration paid or to be paid in connection with the conversion.

(c) Exceptions:

(1) To the extent the consideration to be provided by the foreign person has not been or cannot reasonably be determined as of the date the parties file the notice, the value of the transaction includes, with respect to the interest for which consideration has not been determined, the fair market value of the interest being acquired in the transaction as of the date the parties file the formal written notice.

Note 1 to § 800.1103(c)(1): The consideration amount may be determined notwithstanding minor standard adjustments that are to be made at closing.

(2) Where the transaction involves a merger or the contribution of one or more U.S. businesses to a joint venture, the value of the transaction is the fair market value of the U.S. business(es) being merged or contributed.

(3) Where the value of a transaction is $5,000,000 or more, but the transaction includes one or more non-U.S. businesses, and the value of the interest acquired in the U.S. business is less than $5,000,000, the filing fee under § 800.1101(b) is applicable. The value of the U.S. business, for purposes of this paragraph, is the fair market value of the assets of the U.S. business.

(d) Fair market value means the price that would be received in exchange for sale of an interest, or paid to receive a service or to transfer liability, in an orderly transaction between market participants.

(1) In determining fair market value, parties shall make a good faith estimate and generally may rely on the last valuation as presented in financial statements prepared in accordance with generally accepted accounting principles (GAAP) or other widely recognized accounting principles, such as the International Financial Reporting Standards, or the valuation of an independent appraiser; provided, however, that if no valuation has occurred within the prior two fiscal quarters, or if there have been significant changes to the fair market value since the last valuation, the parties shall make a good faith estimate at the time of filing the formal written notice, or, if the parties are filing after the completion of the transaction, the completion date of the transaction.

(2) In determining the fair market value of services, the parties may rely upon the value of services determined by the parties as set forth in an executed written agreement, or make an estimate at the time of filing the formal written notice based upon rates charged to third parties or upon recent industry reports or other sources of comparable commercial data; provided, however, if such sources are unavailable, the parties shall make a good faith estimate. If the parties are filing after completion of the transaction, the parties shall make an estimate of the fair market value as of the completion date.

(3) The Staff Chairperson is not bound by the parties' characterization of the transaction and its value or the parties' good faith approximation provided to the Committee under § 800.502(c)(1)(viii).

(e) Multiple-phase and contingent equity interest transactions:

(1) Where a transaction will be effectuated in multiple phases, the value of the transaction includes the total value of the multiple phases, as may be reasonably determined as of the date the parties file the formal written notice.

(2) Where a transaction is or includes the acquisition of contingent equity interest, the value of the transaction includes the consideration that was paid by or on behalf of the foreign person to acquire the contingent equity interest, and, if the conditions that lead to conversion will occur imminently, the conditions are within the control of the acquiring party, and the consideration for the interest that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition, any other consideration paid or to be paid in connection with the conversion.

Note 2 to § 800.1103(e)(2): See § 800.1103(b)(4) regarding consideration for a contingent equity interest where the interest has been converted to equity.

(f) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to acquire all of the issued and outstanding shares of Corporation B, a U.S. business, in exchange for $100,000,000 in cash. Assuming no other relevant facts, the value of the transaction is $100,000,000, and the filing fee is $75,000.

(2) *Example 2.* Corporation A, a foreign person, proposes to acquire all of the issued and outstanding shares of Corporation B, a U.S. business, in a two-for-one stock swap transaction whereby a holder of a share of Corporation B's stock is entitled to receive two shares of Corporation A's stock. Corporation A's stock is listed on the NASDAQ, a national securities exchange. In aggregate, the holders of Corporation B's stock will receive 10,000,000 shares of Corporation A's stock in the transaction. On the trading day immediately prior to the filing of the formal written notice, the closing price of Corporation A's stock on NASDAQ was $20 per share. Assuming no other relevant facts, the value of the transaction is $200,000,000, and the filing fee is $75,000.

(3) *Example 3.* Corporation B, a U.S. business, is issuing new shares that will represent 50 percent of its issued and outstanding shares. Corporation A, a foreign person, proposes to acquire these shares. As consideration, Corporation A will contribute to Corporation B certain inventory, machines, and intellectual property. The parties to the transaction estimate in good faith, based on the most recent quarterly financial statements of Corporation A, which were prepared in accordance with GAAP, that the fair market value of the assets contributed as consideration is $40,000,000. Assuming no other relevant facts, the value of the transaction is $40,000,000, and the filing fee is $7,500.

(4) *Example 4.* Corporation A and Corporation B are establishing a joint venture, JV Corp., which will be controlled by Corporation B, a foreign person. Corporation A contributes a U.S. business, the fair market value of which is $150,000,000, to JV Corp. Corporation B contributes $150,000,000 in cash to JV Corp. The value of the transaction is $150,000,000, which is equal to the value of the U.S. business being contributed. Assuming no other relevant facts, the filing fee is $75,000.

(5) *Example 5.* Corporation A, a foreign person, enters into a stock purchase agreement with Person Z to acquire 100 percent of the issued and outstanding shares of Corporation B, a U.S. business. The value of the consideration has not been determined because it will be payable only once Corporation B achieves certain development and sales milestones, and it will be 10 percent of Corporation B's revenue over a future five-year period. The parties estimate in good faith that the fair market value of 100 percent of the shares of Corporation B is

$30,000,000 based on a number of factors, including application of well-known accounting standards such as Financial Accounting Standards Board Statement 157, a recent valuation conducted by a third-party auditor, and a proposal to acquire Corporation B made by another bidder for approximately $30,000,000 in cash. Assuming no other relevant facts, the value of the transaction is $30,000,000, and the filing fee is $7,500.

(6) *Example 6.* Corporation A, a foreign person, proposes to acquire 100 percent of the assets of Corporation B, a foreign person, for $100,000,000. Corporation B has subsidiaries in several countries, including Corporation C, a U.S. business. The fair market value of Corporation C's assets is $1,000,000. Assuming no other relevant facts, under paragraph (c)(3) of this section, a $750 filing fee is required.

(7) *Example 7.* Corporation A, a foreign person, proposes to acquire 50 percent of the voting interest of Corporation B, a U.S. business. Under the terms of a stock purchase agreement, the transaction will be effectuated in two phases. First, Corporation A will acquire 25 percent of the voting interest of Corporation B in exchange for $30,000,000 (phase 1). Two months later, Corporation A will acquire the other 25 percent of the voting interest of Corporation B in exchange for another $30,000,000 (phase 2). Assuming no other relevant facts, the value of the consideration is $60,000,000 (the total consideration for both phases), and the filing fee is $75,000.

(8) *Example 8.* Corporation A, a foreign person, pays $5,000,000 to acquire 100,000 shares and call options from Corporation B, a U.S. business. The call options can be exercised after 90 days, and if exercised, Corporation A will have the right to acquire another 60,000 shares of Corporation B in exchange for an additional $3,000,000. Because the options may be exercised imminently, conversion of the call options is in the control of Corporation A, and the consideration for the interest acquired as a result of conversion can be reasonably determined, the value of the transaction includes the consideration for the shares and the call options as well as the consideration paid to exercise the options. Assuming no other relevant facts, the value of the consideration is $8,000,000, and the filing fee is $7,500.

(g) The determination of the value of the transaction for purposes of calculating the filing fee in no way limits the Committee's jurisdiction or its authority to review, investigate, mitigate, impose penalties regarding, or take any other action regarding any covered transaction.

§ 800.1104 Manner of payment.

Parties to a transaction must pay any filing fee by electronic payment. The filing fee must be paid in U.S. dollars. Instructions for paying filing fees are available on the Committee's section of the Department of the Treasury website.

§ 800.1105 Refunds.

(a) Except as provided in paragraphs (b) and (c) of this section, the Department of the Treasury shall not refund a filing fee in whole or in part.

(b) If the Committee determines that the transaction is not a covered transaction, the filing fee shall be refunded.

(c) In response to a petition by a party, if the Staff Chairperson determines, based on the information and representations contained in the formal written notice, as well as any other information provided by the parties, that a party or the parties to a transaction paid a filing fee in an amount greater than required at the time of filing, the Department of the Treasury shall refund the amount of overpayment to the party or parties who paid the filing fee.

§ 800.1106 Waiver.

If the Staff Chairperson determines that extraordinary circumstances relating to national security warrant, the Staff Chairperson may waive the filing fee in whole or in part and will notify the parties in writing. No waiver shall be implied, even where the Staff Chairperson does not reject a voluntary notice under § 800.1108 for failure to pay the required filing fee.

§ 800.1107 Refilings.

The parties to a transaction shall not be required to pay an additional filing fee in the event that the Staff Chairperson permits the parties to withdraw and refile a notice under § 800.509(c)(2), unless the Staff Chairperson determines that a material change to the transaction has occurred, or a material inaccuracy or omission was made by the parties in information provided to the Committee, that requires the Committee to consider new information, in which case the Staff Chairperson will inform the parties in writing.

§ 800.1108 Rejection of voluntary notice.

The Staff Chairperson may reject a voluntary notice under § 800.504(a)(3) upon a determination that the amount of the filing fee paid by the parties was insufficient under this subpart. Prior to rejecting a notice under § 800.504(a)(3), the Staff Chairperson shall inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the filing fee. If the Staff Chairperson does not reject a voluntary notice under § 800.504(a)(3) upon a determination that the amount of the filing fee payment paid by the parties was insufficient under this section, the balance of the fee remains payable unless the Staff Chairperson notifies the parties in writing that the payment has been waived in whole or in part.

PART 802—PROVISIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

■ 7. The authority citation for part 802 continues to read as follows:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677

Subpart E—Notices

§ 802.501 [Amended]

■ 8. Amend § 802.501:

■ a. In paragraph (a) by adding ‘‘, and paying the fee required under subpart K of this part’’ after ‘‘including the certification required under paragraph (h) of that section’’; and

■ b. In paragraph (f) by adding ‘‘, and payment of the fee required under subpart K of this part,’’ after ‘‘including the certification required by § 802.502(h)’’.

■ 9. Amend § 802.502 by revising paragraph (b)(1)(ix) to read as follows:

§ 802.502 Contents of voluntary notices.

* * * * *

(b) * * *

(1) * * *

(ix)(A) The value of the transaction in U.S. dollars, as determined under § 802.1103, and the parties' assessment of the applicable fee due under § 802.1101, including an explanation of the methodology used to determine such valuation and applicable fee; and

(B) If different than the value of the transaction provided in paragraph (b)(1)(ix)(A) of this section, a good faith approximation of the fair market value of the interest acquired in the covered real estate in U.S. dollars, as of the date of the notice.

* * * * *

■ 10. Amend § 802.503:

■ a. In paragraph (a)(1), by removing the word ‘‘and’’;

■ b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

■ c. By adding new paragraph (a)(2).

The addition reads as follows:

§ 802.503 Beginning of 45-day review period.

(a) * * *

(2) Confirmed that the applicable fee required under subpart K of this part has been received by the Department of the Treasury, or waived; and

* * * * *

■ 11. Amend § 802.504 by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5), respectively, and adding new paragraph (a)(3) to read as follows:

§ 802.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) * * *

(3) Reject any voluntary notice at any time upon determining that the filing fee paid by the parties was insufficient under subpart K of this part, subject to § 802.1108.

* * * * *

■ 12. Add subpart K to read as follows:

Subpart K—Filing Fees

Sec.
802.1101 Amount of fee.
802.1102 Timing of payment.
802.1103 Valuation.
802.1104 Manner of payment.
802.1105 Refunds.
802.1106 Waiver.
802.1107 Refilings.
802.1108 Rejection of voluntary notice.

Subpart K—Filing Fees

§ 802.1101 Amount of fee.

Except as otherwise provided in this subpart, the parties filing a formal written notice of a transaction with the Committee under § 802.501(a) on or after May 1, 2020, shall pay a filing fee as follows:

(a) Where the value of the transaction is less than $500,000: No fee;

(b) Where the value of the transaction is equal to or greater than $500,000 but less than $5,000,000: $750;

(c) Where the value of the transaction is equal to or greater than $5,000,000 but less than $50,000,000: $7,500;

(d) Where the value of the transaction is equal to or greater than $50,000,000 but less than $250,000,000: $75,000;

(e) Where the value of the transaction is equal to or greater than $250,000,000 but less than $750,000,000: $150,000;

(f) Where the value of the transaction is equal to or greater than $750,000,000: $300,000.

§ 802.1102 Timing of payment.

Subject to §§ 802.1106 through 802.1108, the Staff Chairperson shall not accept a formal written notice under § 802.503(a) until payment of any fee required under this subpart is received by the Department of the Treasury in the manner specified on the Committee's section of the Department of the Treasury website.

§ 802.1103 Valuation.

Except as provided in paragraph (e) of this section, the value of the transaction for purposes of determining the required fee amount in this subpart shall be determined as follows:

(a) For a transaction structured as a purchase, by the total value of all consideration that has been or will be provided in the context of the transaction by or on behalf of the foreign person that is a purchaser in the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, or services or other in-kind consideration.

(b) For a transaction structured as a lease, by the value of the sum of, as applicable:

(1) Any fixed payments to be paid by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor over the term of the lease;

(2) Any variable payments that depend on an index or a rate (such as a market interest rate) to be paid by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor, over the term of the lease, measured for purposes of this section by using the index or rate on the day immediately prior to the date the parties file the formal written notice; and

(3) Any non-cash consideration to be provided by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor, over the term of the lease, as may be reasonably determined as of the date the parties file the formal written notice.

(c) For a transaction structured as a concession, by the value of the sum of all rent, fees, and charges to be paid by the foreign person to the grantor and any non-cash consideration to be provided by such foreign person to, or for the benefit of, the grantor, over the term of a concession agreement, as may be reasonably determined as of the date the parties file the formal written notice.

(d) Determining the value of consideration:

(1) Where the consideration is or includes securities traded on a national securities exchange, the value of the securities is the closing price on the national securities exchange on which the securities are primarily traded on the trading day immediately prior to the date the parties file the formal written notice with the Committee under § 802.501(a), or if the securities were not traded on that day, the last published closing price.

(2) Where the consideration is or includes other non-cash assets, services, interests, or other in-kind consideration, including real property contributed by a foreign person that is party to a transaction involving the exchange of land or contribution to a joint venture, the value of the assets, service, interests, or other in-kind consideration is their fair market value as of the date the parties file the formal written notice.

(3) Where the transaction is or includes a lending transaction, the consideration includes the cash value of the mortgage, loan, or similar financing arrangement, made available or provided by or on behalf of the foreign person that is a party to the transaction.

(4) Where the transaction is or includes the conversion of a contingent equity interest previously acquired by a foreign person that is a party to the transaction, the consideration includes what was paid by or on behalf of the foreign person to initially acquire the contingent equity interest, in addition to any other consideration paid or to be paid in connection with the conversion.

(e) Exceptions:

(1) In the case of a purchase, to the extent the consideration to be provided by the foreign person has not been or cannot reasonably be determined as of the date the parties file the formal written notice, the value of the transaction includes, with respect to assets for which consideration has not been determined, the fair market value of the assets being purchased in the transaction as of the date the parties file the formal written notice.

Note 1 to § 802.1103(e)(1): The consideration amount may be determined notwithstanding minor standard adjustments that are to be made at closing.

(2) In the case of a lease or concession, where the consideration to be provided by the foreign person has not been or cannot reasonably be determined at the time of filing, or, where the parties cannot reasonably determine the value of rent, fees, charges, or services under paragraph (c) of this section, the filing fee required shall be that required under § 802.1101(b).

(f) The Staff Chairperson is not bound by the parties' characterization of the transaction and its value or their good faith approximation provided to the Committee under § 802.502(b)(1)(ix).

(g) Fair market value means the price that would be received in exchange for sale of an interest, or paid to receive a service or to transfer liability, in an orderly transaction between market participants.

(1) In determining fair market value, parties shall make a good faith estimate and generally may rely on the last

valuation as presented in financial statements prepared in accordance with generally accepted accounting principles or other widely recognized accounting principles, such as the International Financial Reporting Standards, or the valuation of an independent appraiser; provided, however, that if no valuation has occurred within the prior two fiscal quarters, or if there have been significant changes to the fair market value since the last valuation, the parties shall make a good faith estimate at the time of filing the formal written notice, or, if the parties are filing after the completion of the transaction, the completion date of the transaction.

(2) In determining the fair market value of services, the parties may rely upon the value of services determined by the parties as set forth in an executed written agreement, or make an estimate at the time of filing the formal written notice based upon rates charged to third parties or recent industry reports or other sources of comparable commercial data; provided, however, if such sources are unavailable, the parties shall make a good faith estimate. If the parties are filing after completion of the transaction, the parties shall make an estimate of the fair market value as of the completion date.

(h) Multiple-phase and contingent equity interest transactions:

(1) Where a transaction will be effectuated in multiple phases, the value of the transaction includes the total value of the multiple phases, as may be reasonably determined as of the date the parties file the formal written notice.

(2) Where a transaction is or includes the acquisition of contingent equity interest, the value of the transaction includes the consideration that was paid by or on behalf of the foreign person to acquire the contingent equity interest, and, if the conditions that lead to conversion will occur imminently, the conditions are within the control of the acquiring party, and the consideration for the interest that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition, any other consideration paid or to be paid in connection with the conversion.

Note 2 to § 800.1103(h)(2): See § 802.1103(d)(4) regarding consideration for a contingent equity interest where the interest has been converted to equity.

(i) Examples:

(1) *Example 1.* Corporation A, a foreign person, enters into an agreement for the purchase of a parcel of covered real estate (Parcel X) from Corporation B. In exchange for ownership of Parcel X, Corporation A forgives a debt owed to it by Corporation B that is valued at $5,000,000 and pays $35,000,000 to Corporation B. Assuming no other relevant facts, the value of the transaction is $40,000,000, and the filing fee is $7,500.

(2) *Example 2.* Corporation A, a foreign person, enters into an agreement to lease a parcel of covered real estate from Corporation B. Pursuant to the agreement, Corporation A will pay Corporation B a fixed annual payment of $300,000 for a term of three years, with an option to renew the lease at the end of the term. Assuming no other relevant facts, the value of the transaction is $900,000, and the filing fee is $750.

(3) *Example 3.* Corporation A, a foreign person, proposes to enter into a concession agreement with a U.S. public entity for the right to use certain covered real estate for the purpose of developing and operating terminal infrastructure at a covered port. The concession agreement is for a five-year term. Under the concession agreement, Corporation A will pay the U.S. public entity a use charge of $450,000 per year starting in the second year. The concession agreement also requires Corporation A to pay utility fees and common area maintenance charges of $5,000 per month for the full concession term. Assuming no other relevant facts, the value of the transaction is $2,100,000, based on the $1,800,000 use charge and $300,000 in utility fees. The filing fee is $750.

(4) *Example 4.* Corporation A, a foreign person, proposes to enter into an oil, gas and mineral lease with a U.S. public entity. Under the terms of the lease, Corporation A pays a lease bonus of $1,000 per acre as an inducement to execute the lease with respect to a 10-acre parcel of covered real estate. The lease has a 10-year term. Corporation A must pay a royalty of 12.5 percent with respect to oil or gas production from the leased parcel. In the absence of such production, the foreign person is obligated to pay a rental fee of $1,000 per acre per year for the first five years and $2,000 per acre thereafter. Assuming no other relevant facts, the value of the transaction is $160,000 and there is no filing fee.

(5) *Example 5.* Corporation A, a foreign person, proposes to purchase Plot X and Plot Y. The transaction will be completed in two phases. Corporation A will first acquire Plot X for $30,000,000 (phase 1). One month later, Corporation A will acquire Plot Y for another $30,000,000 (phase 2). Assuming no other relevant facts, the value of the consideration is $60,000,000 (the total consideration for both phases), and the filing fee is $75,000.

(6) *Example 6.* Corporation A, a foreign person, proposes to purchase Plot X and acquire an option to purchase Plot Y. Corporation A will acquire Plot X and the option related to Plot Y in exchange for $30,000,000. Corporation A informs its shareholders that within two months, it will exercise the option to purchase Plot Y in exchange for another $30,000,000. Because the option to convert is imminent and in the control of Corporation A, and the consideration can be reasonably determined, the value of the transaction includes the consideration to be paid in connection with the conversion. Assuming no other relevant facts, the value of the consideration is $60,000,000 (the total consideration for the purchase of Plot X and the option to purchase Plot Y), and the filing fee is $75,000.

(j) The determination of the value of the transaction for purposes of calculating the filing fee in no way limits the Committee's jurisdiction or its authority to review, investigate, mitigate, impose penalties regarding, or take any other action regarding any covered real estate transaction.

§ 802.1104 Manner of payment.

Parties to a transaction must pay any filing fee by electronic payment. The filing fee must be paid in U.S. dollars. Instructions for paying filing fees are available on the Committee's section of the Department of the Treasury website.

§ 802.1105 Refunds.

(a) Except as provided in paragraphs (b) and (c) of this section, the Department of the Treasury shall not refund a filing fee in whole or in part.

(b) If the Committee determines that the transaction is not a covered real estate transaction, the filing fee shall be refunded.

(c) In response to a petition by a party, if the Staff Chairperson determines, based on the information and representations contained in the formal written notice, as well as any other information provided by the parties, that a party or the parties to a transaction paid a filing fee in an amount greater than required at the time of filing, the Department of the Treasury shall refund the amount of overpayment to the party or parties who paid the filing fee.

§ 802.1106 Waiver.

If the Staff Chairperson determines that extraordinary circumstances relating to national security warrant, the

Staff Chairperson may waive the filing fee in whole or in part and will notify the parties in writing. No waiver shall be implied, even where the Staff Chairperson does not reject a voluntary notice under § 802.1108 for failure to pay the required filing fee.

§ 802.1107 Refilings.

The parties to a transaction shall not be required to pay an additional filing fee in the event that the Staff Chairperson permits the parties to withdraw and refile a notice under § 802.509(c)(2), unless the Staff Chairperson determines that a material change to the transaction has occurred, or a material inaccuracy or omission was made by the parties in information provided to the Committee, that requires the Committee to consider new information, in which case the Staff Chairperson will inform the parties in writing.

§ 802.1108 Rejection of voluntary notice.

The Staff Chairperson may reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee paid by the parties was insufficient under this subpart. Prior to rejecting a notice under § 802.504(a)(3), the Staff Chairperson shall inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the filing fee. If the Staff Chairperson does not reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee payment paid by the parties was insufficient under this section, the balance of the fee remains payable unless the Staff Chairperson notifies the parties in writing that the payment has been waived in whole or in part.

Dated: April 22, 2020.

Thomas Feddo,

Assistant Secretary for Investment Security.

[FR Doc. 2020–08916 Filed 4–28–20; 8:45 am]

BILLING CODE 4810–25–P

POSTAL SERVICE

39 CFR Part 113

New Mailing Standards for COVID–19 Related Category B Infectious Substances

AGENCY: Postal Service™.

ACTION: Temporary final rule.

SUMMARY: The Postal Service is revising its Hazardous, Restricted and Perishable Mail regulations by replacing Publication 52, *Hazardous, Restricted, and Perishable Mail,* Appendix C, Packaging Instructions 6C, currently incorporated by reference, to support the rapid deployment of coronavirus (COVID–19) diagnostic tests using the mail during this public health emergency. In addition to the updated packaging instructions, all shippers of COVID–19 related Infectious Substances Category B UN3373 must obtain authorization from the Postal Service prior to mailing. These measures are necessary to ensure that diagnostic kits potentially containing Category B Infectious Substances are packaged, marked and labelled properly to ensure safety and containment throughout transport.

DATES: *Effective:* April 27, 2020 until the Federal public health emergency first declared on March 13, 2020 is terminated (following procedures prescribed in 50 U.S. Code § 1622). The Postal Service will publish a document announcing the termination date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary J. Collins at (202) 268–5551 or Dale Kennedy at (202) 268–6592 or by email at *pcfederalregister@usps.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The United States Postal Service is currently experiencing a greater demand for the transportation of Infectious Substances, Category B UN3373 as a result of the ongoing COVID–19 pandemic. Due to the infectious nature of these materials, there exists a need for higher levels of awareness, safety and compliance in order to protect our employees, customers, and transportation partners.

When a package containing infectious substances is moved between the point of origin and its destination, it may be subjected to physical challenges, including movement, vibration, and changes of temperature, humidity and pressure. It is therefore, essential that the packaging used to contain infectious substances meets all required standards, and is able to withstand the normal conditions of transportation. It is the responsibility of the shipper to ensure they comply with all applicable regulations. The revisions will provide conformity and harmonization with other regulatory entities, prevent the shipment of fraudulent test kits in the mail, and reduce risk to employees and the general public by preventing exposure to this infectious substance.

The current packaging requirements incorporated by reference in Publication 52 Appendix C, Packaging Instruction 6C are replaced with new required shipper authorization and updated packaging requirements added as § 113.3. Section 113.3 will be in place until the end of this public health emergency.

The Postal Service will publish a document announcing the termination date in the **Federal Register**. If you want to know whether this rule has been terminated, email or call either person identified in **FOR FURTHER INFORMATION CONTACT**.

The specific requirements to be used in place of Appendix C, Packaging Instruction 6C to Publication 52, *Hazardous, Restricted, and Perishable Mail* adopted in this document will be published in *Postal Bulletin 22544* on April 23, 2020, and can be viewed at *http://about.usps.com/postal-bulletin.*

List of Subjects in Part 113

Administrative practice and procedure, Postal Service.

For the reasons set forth above, the Postal Service amends 39 CFR part 113 as follows:

PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 113.1 by adding a final sentence to read as follows:

§ 113.1 Scope and purpose.

* * * Follow the requirements of § 113.3 in place of Publication 52, Appendix C, Packaging Instruction 6C.

■ 3. Add § 113.3 to read as follows:

§ 113.3 Mailing Standards for COVID–19 related Category B Infectious Substances.

(a) *Required Shipper Authorization.* (1) All shippers of COVID–19 related Infectious Substances Category B must obtain an authorization from the Postal Service prior to mailing. It is the responsibility of the shipper to ensure that they are aware of, and comply with, all other applicable requirements and regulations for the mailing of these materials; and they must be able to provide evidence of compliance before a written request is submitted to the manager of Product Classification, Postal Service Headquarters.

(2) Under this section, only tests developed and being performed by laboratories certified under the Clinical Laboratory Improvement Amendments (CLIA) or equivalent clinical oversight regulations, and commercial tests and home collection kits authorized by

either the FDA or an Institutional Review Board will be considered for mailing.

(b) *Required Packaging.* The materials must be triple-packaged, meeting the packaging requirements in 49 CFR 173.199. Such materials must be properly packaged to withstand shocks, pressure changes, and other conditions related to ordinary handling in transit, and surrounded by absorbent material sufficient to protect the primary receptacle and to absorb the total amount of liquid should the primary receptacle leak or break. The outer packaging must be of adequate size to accommodate all required shipping information and marks and will include the size of the mark on each side must not be less than 50 mm (1.97 inches) in length, the width of the border lines at least 2 mm, and letter and numbers must be at least 6 mm (0.24 inches) high.

(c) *Package Drop Test.* The completed triple packaging must be capable of successfully passing the drop test in 49 CFR 178.609(d) at a drop height of at least 1.2 meters (3.9 feet). Following the drop test, there must be no leakage from the primary receptacle, which must remain protected by absorbent material, when required, in the secondary packaging.

(d) *Instructions.* Shippers must provide clear instructions to users regarding the procedures to be followed for preparing the samples and packaging used to transport an Infectious Substance Category B. Shippers must instruct users to adhere to all applicable mail related preparation requirements before mailing, to ensure the package is properly prepared for safe transportation.

(e) *Optional Outer Packaging.* A polybag covering may be acceptable as the outer packaging, providing that the interior triple packaging is complete, the selvage edge of the wrapping is less than 2 inches, all required markings and address information are applied both on the interior rigid box and the additional outer polybag wrapping.

(f) *Use of a Refrigerant (If Applicable).* (1) Only cold packs or dry ice may be used as a refrigerant and must be placed outside of the secondary packaging. Interior supports must be provided to secure the secondary packaging in the original position. If a cold pack is used, the packaging must be leak-proof. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in 49 CFR 173.217. The primary receptacle and secondary packaging must maintain their integrity at the temperature of the refrigerant used, as well as the temperatures and pressures of transport by aircraft they could be subjected to if refrigeration were lost, and sufficient absorbent material must be provided to absorb all liquid, including melted ice.

(2) When dry ice is used, the package must include the markings ''Carbon dioxide, solid'' or ''Dry ice'' and an indication that the material being refrigerated is used for diagnostic or treatment purposes (*e.g.,* frozen medical specimens). Marking requirements in USPS Packaging Instruction 9A are not applicable.

(g) *Other Allowance.* Only small quantities of Class 3, Class 8, Class 9, or other materials in Packing Groups II and III may be used to stabilize or prevent degradation of the sample, provided the quantity of such materials does not exceed 30 mL (1 ounce) or 30 g (1 ounce) in each inner packaging.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–08256 Filed 4–27–20; 11:15 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XY093]

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2020 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 1, 2020, through 2400 hours, A.l.t., December 31, 2020.

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.

The 2020 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 149 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020). The Regional Administrator has determined that the 2020 ITAC for Greenland turbot in the Aleutian Islands subarea of the BSAI is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2020 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for Greenland turbot in the Aleutian Islands subarea of the BSAI as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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) 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 directed fishing closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. Since the fishery opens May 1, 2020, it is important to immediately inform the industry to allow for the orderly conduct and efficient operation of other fisheries currently operating in this area; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 15, 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.

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

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

Dated: April 24, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–09120 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 83
Wednesday, April 29, 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 COMMERCE

International Trade Administration

19 CFR Part 361

[Docket ITA–2020–200408–0103]

RIN 0625–AB18

Aluminum Import Monitoring and Analysis System

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

ACTION: Proposed rule and request for public comment.

SUMMARY: The Department of Commerce (Commerce) is issuing, and requesting public comments on, a proposed rule to establish an Aluminum Import Monitoring And Analysis (AIM) system. Over the past decade, Commerce has operated the Steel Import Monitoring and Analysis (SIMA) system to monitor for import surges of specific steel products and to monitor for potential transshipment and circumvention of U.S. trade measures relating to these products. AIM, as proposed, will be similar to the existing SIMA system. Specifically, Commerce proposes to require import license applicants to identify the country where the aluminum used in the manufacture of the imported aluminum product was smelted and poured; to release this data on an aggregate basis, as appropriate; and to apply the licensing requirement to cover all imports of basic aluminum products, which are listed in Annex II.

DATES: To be assured of consideration, written comments must be received on or before 5 p.m. EST on May 29, 2020.

ADDRESSES: Submit comments through the Federal eRulemaking Portal at *https://www.Regulations.gov,* Docket ITA–2020–200408–0103. Comments may also be submitted by mail or hand delivery/courier, addressed to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave. NW Washington, DC 20230.

Commerce will consider all comments received before the close of the comment period. All comments responding to this notice will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov*. Commerce will not accept comments accompanied by a request that part or all the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any procedural questions should be addressed to E&C Communications Office at (202) 482–0063 or *ECcomms@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi at (202) 482–1930 or Brandon Custard at (202) 482–1823.

SUPPLEMENTARY INFORMATION:

Background

The SIMA System

AIM will operate in a similar manner as the SIMA system, which has operated under its current authority since March 11, 2005.

The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products into the United States. Steel import licenses, issued through the online SIMA licensing system, are required by U.S. Customs and Border Protection (CBP) for filing entry summary documentation, or its electronic equivalent, for imports of certain steel mill products into the United States. Through the monitoring tool, certain import data collected from the licenses are aggregated weekly and reported on the publicly available SIMA system website, *https://enforcement.trade.gov/steel/license/.* This tool provides valuable data regarding certain steel mill imports into the United States as early as possible and makes such data available to the public approximately five weeks in advance of official U.S. import statistics compiled by the U.S. Census Bureau (Census).

Section 232 Tariff on Imports of Aluminum Into the United States

On January 19, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (the Trade Expansion Act), as amended (19 U.S.C. 1862), the Secretary of Commerce (Secretary) transmitted to the President a report on his investigation into the effect of imports of aluminum articles on the national security of the United States.[1] The Secretary found and advised the President that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.[2] In Presidential Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States) (Proclamation 9704), the President concurred with the Secretary's findings and decided to adjust the imports of aluminum articles, as defined in clause 1 of Proclamation 9704, by imposing a 10 percent *ad valorem* tariff on such articles imported from most countries.[3]

Subsequently, in Presidential Proclamation 9893 of May 19, 2019 (Adjusting Imports of Aluminum Into the United States) (Proclamation 9893), the President stated that the United States successfully concluded discussions with Canada and Mexico on satisfactory alternative means to address the threatened impairment of the national security posed by aluminum imports from Canada and Mexico.[4] The United States agreed on a range of measures with Canada and Mexico to prevent the importation of aluminum that is unfairly subsidized or sold at dumped prices, to prevent the transshipment of aluminum, and to

[1] *See The Effect of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended,* U.S. Department of Commerce Report, dated January 11, 2018 (*https://www.commerce.gov/files/effect-imports-aluminum-national-security-investigation-conducted-under-section-232-trade*); *see also Adjusting Imports of Aluminum Into the United States,* Proclamation No. 9704, 83 FR 11619 (March 15, 2018) (*Presidential Proclamation No. 9704*).

[2] *Presidential Proclamation No. 9704,* 83 FR at 11619.

[3] *See Adjusting Imports of Aluminum Into the United States,* Proclamation No. 9704, 84 FR 11619, 11621 (March 8, 2018) (*Presidential Proclamation No. 9704*).

[4] *Presidential Proclamation No. 9893,* 84 FR at 23983.

monitor for and avoid import surges.[5] These measures are expected to allow imports of aluminum from Canada and Mexico to remain stable, at historical levels without meaningful increases, thus permitting the domestic capacity utilization to remain reasonably commensurate with the target level recommended in the Secretary's report.[6] Additionally, the President noted these measures will provide effective, long-term alternative means to address the contribution of these countries' imports to the threatened impairment of the national security.[7]

Furthermore, in Proclamation 9893, the President determined that, under the framework in the agreements, imports of aluminum from Canada and Mexico would no longer threaten to impair the national security, and thus the President decided to exclude Canada and Mexico from the tariff proclaimed in Proclamation 9704, as amended.[8] Finally, the President noted that the United States will monitor the implementation and effectiveness of these measures in addressing our national security needs, and that the President may revisit this determination, as appropriate.[9]

Explanation of Proposed Rule

Pursuant to his authority under section 301 of the Census Act, as amended (13 U.S.C. 301), the Secretary of Commerce proposes to establish a system of import licensing to facilitate the monitoring of imports of aluminum articles, including monitoring for import surges. The Secretary of Commerce has delegated the responsibility for issuing these regulations to the Assistant Secretary for Enforcement and Compliance. The International Trade Administration is thus proposing a rule, and requesting comments, to establish a web-based aluminum licensing and import monitoring system. AIM will operate in a similar way as the existing SIMA system and will be codified under 19 CFR 361. Minor changes have been proposed to regulations for the SIMA system which we propose to incorporate in AIM, if the modifications to the SIMA system are promulgated in a final rule.[10]

The license application of AIM will be comprised of three parts:

(1) An online registration system for aluminum importers;

(2) An automatic aluminum license issuance system; and

(3) An import monitoring website. Importers of basic aluminum products (listed in Annex II), which include all aluminum products currently subject to Section 232 tariff, will be required to obtain an aluminum import license for each shipment and must provide the license number to CBP as part of the submission of the entry summary, or its electronic equivalent. The only exceptions are the low-valued imports (*i.e.,* aluminum imports valued under $5,000 per shipment described below) or informal entries as described below.

AIM will be based on automatically granted import licenses that will be required to import covered aluminum products (including all aluminum products currently subject to Section 232 duties). Because Commerce grants import licenses prior to the submission of an importation's customs entry summary data (up to 2 months before release of Census data), this approach ensures that the aluminum import monitor will function as an early warning system—yielding public data about 5–6 weeks prior to import statistics released by Census. Finally, the proposed aluminum import monitoring system would enable Commerce to gather and publish data on where aluminum was ''smelted and poured,'' in keeping with changes that have been proposed to regulations for the SIMA system. *See* 19 CFR part 360 to understand how the current SIMA system is currently operated. Because the SIMA system has worked well, Commerce proposes to have AIM be similar for imports on certain aluminum products. Parties are encouraged to comment on any part of the proposed regulations. Commerce proposes to codify the Aluminum Regulations in 19 CFR part 361.

Aluminum Import Licensing System

Similar to the steel licensing system, the aluminum import licensing system will include both an online registration system for importers and an automatic aluminum import license issuance system. In order to obtain an aluminum import license, an importer or the importer's agent or customs broker, must first register with Commerce and be assigned a username. This username will be required to log on to the aluminum import license issuance system. Although a primary username will be issued to an importing company or brokerage house, all operating units within the company (*e.g.,* individual branches, divisions or employees) may have separate usernames associated with different email addresses that will be associated with the parent company. The aluminum import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

Any company or broker with a United States address may register and obtain a username. There is no fee to register and a username will be issued immediately if all registration fields are filled out. As part of the registration process, the importer, agent or customs broker will be required to provide certain general information. Such information will include the applicant company name, Employer Identification Number (EIN) or the CBP-issued importer number (where no EIN is available), address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for aluminum licenses. This information will be used solely for the purposes of administering the aluminum import licensing and monitoring programs. The information will not be released by Commerce, except as required by U.S. law. Commerce will begin registering and issuing user login names at least two weeks prior to the implementation date of the aluminum licensing program. The username will be needed to apply for the license.

Aluminum import licenses will be issued to registered importers, customs brokers or their agents through an automatic aluminum import licensing system. The separately issued username discussed above will be required for company registration in the system. There will be no fee charged to apply for the import licenses.

Similar to steel imports, aluminum import licenses will be issued automatically after the completion of the application form. In order to obtain the license, the applicant must report the following information about the aluminum import transaction:

i. Filer company name and address;
ii. Filer contact name, phone number, fax number and email address;
iii. Entry type (*i.e.,* Consumption, Foreign Trade Zone);
iv. Importer name;
v. Exporter name;
vi. Manufacturer name (filer may state ''unknown'');
vii. Country of origin;
viii. Country of exportation;
ix. Expected date of export;
x. Expected date of import;
xi. Expected port of entry;
xii. Current HTS number (from Chapters 76);
xiii. Country where aluminum was smelted and poured;

[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See Modification of Regulations Regarding the Steel Import Monitoring and Analysis System,* 85 FR 17515 (March 30, 2020).

xiv. Quantity (in kilograms) and
xv. Customs value (U.S. $).

Fields #1 and #2 above (*e.g.,* applicant company name and address and the applicant's contact information) will be generated automatically in the license form from the company registration information. Other information will be available from drop down lists in the application form (*e.g.,* Aluminum HTS numbers, country of origin/smelt, port of entry) and will not have to be typed. A sample copy of the proposed aluminum import license will be available for viewing on Enforcement and Compliance's website (*https://trade.gov/aluminum/*).

Upon completion of the application form, the importer, customs broker or the importer's agent will certify the form as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue an aluminum import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Applicants can print the license form themselves. If needed, copies of completed license forms can be retrieved by the user or requested from Commerce during normal business hours.

The aluminum import license will be required on every entry of covered aluminum product (except informal entries covered below). Like SIMA, a single license can cover multiple products as long as the information at the top of the form (*i.e.,* importer, exporter, manufacturer, and country of origin and exportation, and the expected dates of exportation and expected date of importation) are the same for the shipment. However, separate licenses will be required if any of the information above differs with respect to a given set of covered imported aluminum products. As a result, a single CBP entry may require more than one aluminum import license. The applicable license number(s) must cover the total quantity of aluminum entered and should match the information provided on the CBP entry summary. There is no requirement to present physical copies of the license forms at the time of entry summary; however, copies must be maintained in accordance with CBP's normal requirements. Licenses will be issued for single use and will be specific to a shipment.

Certain aggregate information collected from the license application system will be posted on the aluminum import surge monitoring website. Subject to comments received, only the aggregate information described below will be available to the public. All other information including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered business proprietary information and will not be released to the public.

Aluminum Import Monitoring System

Commerce will create a standalone aluminum import monitoring website. This website will report certain aggregate information on aluminum imports categories obtained from the aluminum licenses. Aggregate information will be reported on a monthly basis by country of origin, country of smelt and pour, and aluminum product category and will include import quantity (metric tons), import Customs value (U.S. dollars) and average unit value (dollars per metric ton). However, Commerce will not report information if it would reveal business proprietary information. Reported monthly import data will be refreshed each week with new data on licenses issued in the prior week. This data collected may be adjusted periodically for corrected, canceled or unused aluminum import licenses, if deemed appropriate for accurate monitoring purposes. Information provided in the public import monitor will mirror that available for steel.

The monitoring system will also present a range of historical data for comparison purposes. This will include comparisons to the previous month and to the same month in the previous year; three month rolling averages along with similar comparisons to the immediately preceding period, the same period from the preceding year; and monthly import data on each aluminum product category. The public import monitoring system for aluminum articles will be similar to the monitoring system for SIMA. Commerce welcomes comments regarding the format of the monitoring system for AIM, and will incorporate any changes that are feasible.

Duration of the Aluminum Import License

The aluminum import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or its electronic equivalent. The aluminum import license is valid for up to 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary data will be accepted. Special timing issues surrounding withdrawal of products from a warehouse, foreign trade zone issues, and temporary imports will be handled separately, as explained below.

Handling of Aluminum to Foreign Trade Zones (FTZs)

Commerce proposes to require a license for aluminum shipped into a U.S. FTZ. Because a CBP entry number would not be available for shipments entering the FTZ, the license required for entry into the zone will not require the CBP entry number. As with steel, a separate license will not be required upon withdrawal from the FTZ.

Informal Entries and Low-Value Aluminum Entries

No import license shall be required on informal entries of aluminum products, such as merchandise valued at less than $2,500. For additional information about informal entries, refer to 19 CFR 360.101(d) of the proposed regulatory text. For shipments containing less than $5,000 worth of aluminum, applicants can apply for a reusable Low-Value License; refer to 19 CFR 360.103(f) of the proposed regulatory text.

Interim Monitoring

The aluminum import monitor will provide information on U.S. imports of aluminum from all countries by broad product types in both value and volume measures. Once the license collection begins, additional data will be added to the aluminum monitor. The aluminum import monitor will be similar to the monitor available for steel imports. However, it will not encompass the preliminary Census data, which is incorporated into the steel monitor. Over the last 10 years, there have been advancements to Census's regular data release schedule for its public monthly trade statistics. Commerce believes that the early release preliminary data from Census is not critical to the early warning monitor because the aluminum import license data will be available. However, the Department intends to keep using preliminary Census data for purposes of steel monitoring.

Classifications

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is significant for purposes of Executive Order 12866.

Executive Order 13771

This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains the collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA). Similar requirements have been approved for steel by OMB (OMB No.: 0625–0245; Expiration Date: 01/31/2021). Based on Commerce's experience with similar burdens for steel and sample data for aluminum entries, Commerce estimates that public reporting for this collection of information will be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information. Commerce also estimates that the average registered user will complete 173 licenses per year.

Paperwork Reduction Act Data:

OMB Number: 0625–.

ITA Number:

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Registered Users: 1,750.

Estimated Time per Response: less than 10 minutes.

Estimated Total Annual Burden Hours: 46,428 hours.

Estimated Total Annual Costs: $0.00. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number.

Request for Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

All comments on the information collection will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, as directed under **ADDRESSES** and **DATES** as well as to OIRA at *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA). A summary of the factual basis for this certification is below.

This proposed rule will not have a significant economic impact on a substantial number of companies. This rule, if implemented, would: (1) Require import license applicants to specify certain information including the country where aluminum used in the manufacture of the imported aluminum product was smelted and poured; and (2) cover the following HTS codes: 7601, 7604, 7605, 7606, 7607, 7608, 7609, 7616.99.51.60, and 7616.99.51.70. The entities that would be impacted by this rule are importers and brokerage companies that import aluminum products. Based on statistics derived from current license applications for steel, of the approximately 557,143 licenses issued each year, Commerce estimates that less than two percent of the license applications would be filed by importers and brokerage companies considered to be small entities. AIM would cover about half of the number of SIMA's licenses based on statistics for one month's entry information.

Based on the current usage of the SIMA system, Commerce does not anticipate that this proposed rule will have a significant economic impact. AIM would be similar to the SIMA system. In most cases, brokerage companies will apply for the license on behalf of the aluminum importers. Many of the same brokerage firms that handle steel imports will likely handle aluminum imports. Most brokerage companies that are currently involved in filing documentation for importing goods into the United States are accustomed to CBP's automated entry filing systems. Today, CBP's filings are handled electronically. Therefore, the proposed license application should not be a significant obstacle to any firm. Should an importer or brokerage company need to register for an account or apply for a license non-electronically, a fax/phone option is available at Commerce during regular business hours. There will be no cost to register for a company-specific aluminum license account and no cost to file for the license. Each license form is expected to take less than 10 minutes to complete and collects much of the same information required for CBP entry summary. The import license is the only additional U.S. entry requirement that the importers or their representatives must fulfill in order to import each covered product shipment.

Commerce does not charge fees for licenses. Similar to the estimates used for the steel license program, Commerce estimates that the likely aggregate license costs incurred by small entities in terms of the time to apply for licenses as a result of this proposed rule would be less than two percent, or an estimated $18,571, of the estimated total $928,560 cost to all aluminum importers to process the on-line automatic licenses. These calculations are based on an hourly pay rate of $20.00 multiplied by the estimated 46,428 total annual burden hours. The vast majority of licenses are for large companies. The average cost of a single license is less than $4.17 based on the estimate that one license requires less than 10 minutes of the filer's time.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA.

Public reporting for this collection of information is estimated to be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information.

Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 361

Administrative Practice and Procedure, Business and Industry, Imports, Reporting and Recordkeeping Requirements, Aluminum.

Dated: April 8, 2020.

Jeffrey I. Kessler

Assistant Secretary for Enforcement and Compliance.

■ For the reasons stated in the preamble, the Department of Commerce proposes to add 19 CFR part 361 as follows:

19 CFR PART 361—ALUMINUM IMPORT MONITORING AND ANALYSIS SYSTEM

Sec.
361.101 Aluminum import licensing.
361.102 Online registration.
361.103 Automatic issuance of import licenses.
361.104 Aluminum import monitoring.
361.105 Duration of the aluminum import licensing requirement.
361.106 Fees.
361.107 Hours of operation.
361.108 Loss of electronic licensing privileges.

§ 361.101 Aluminum import licensing.

(a) *In general.* (1) All imports of basic aluminum products are subject to the import licensing requirements. These products are listed in Annex II. Registered users will be able to obtain aluminum import licenses on the Aluminum Import Monitoring and Analysis (AIM) website. This website contains two sections related to import licensing—the online registration system and the automatic aluminum import license issuance system. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the AIM system website.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.,* importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for aluminum entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one aluminum import license. The applicable license(s) must cover the total quantity of aluminum entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption.* All entries for consumption of covered aluminum products, other than the exception for ''informal entries'' listed in paragraph (d) of this section and the exception for shipments from Foreign Trade Zones into the commerce of the United States listed in paragraph (c) of this section, will require an import license prior to the filing of Customs entry summary documents, or its electronic equivalent. The license number(s) must be reported on the entry summary (Customs Form 7501), or its electronic equivalent, at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone entries.* All shipments of covered aluminum products into a foreign trade zones (FTZ), known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents, or its electronic equivalents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs Form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. A further aluminum license will not be required for shipments from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of covered aluminum products, such as merchandise valued at less than $2,500. This exemption applies to informal entries only; imports of aluminum valued at less than $2,500 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered aluminum products withdrawn for consumption from a bonded warehouse will require a license at the entry summary, consistent with the requirements for ''Entries for Consumption'' identified in paragraph (b) of this section, above.

§ 361.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic aluminum import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. boxes will not be accepted. A user identification number will be issued within two business days. Companies will be able to register online through the AIM website. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the aluminum import license issuance system. A single user identification number will be issued to an importer, customs broker or importer's agent. Operating units within the company (*e.g.,* individual branches, divisions or employees) will all use the same basic company user identification code but can supply suffixes to identify the branches. The aluminum import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: The filer company name, employer identification number (EIN) or Customs ID number (the Customs-issued importer number (where no EIN is available), U.S. street address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for aluminum licenses. It is the responsibility of the applicant to keep the information up-to-date. This information will not be released by Commerce, except as required by U.S. law.

§ 361.103 Automatic issuance of import licenses.

(a) *In general.* Aluminum import licenses will be issued to registered importers, customs brokers or their agents through an automatic aluminum import licensing system. The licenses will be issued automatically after the completion of the form.

(b) *Customs entry number.* Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from

information submitted as part of the registration process):

(i) Filer company name and address;

(ii) Filer contact name, phone number, fax number and email address;

(iii) Entry type (*i.e.,* Consumption, FTZ);

(iv) Importer name;

(v) Exporter name;

(vi) Manufacturer name (filer may state ''unknown'');

(vii) Country of origin;

(viii) Country of exportation;

(ix) Expected date of export;

(x) Expected date of import;

(xi) Expected port of entry;

(xii) Current HTS number (from Chapter 76);

(xiii) Country where aluminum was smelted and poured;

(xiv) Quantity (in kilograms) and

(xv) Customs value (U.S. $).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.,* product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue an aluminum import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the aluminum import license.* The aluminum import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ admissions, the filing of Customs form 214, or their electronic equivalents. The aluminum import license is valid for 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary data will be accepted.

(e) *Correcting submitted license information.* Users will need to correct licenses themselves if they determine that there was an error submitted. To access a previously issued license, a user must log on with his user identification code and identify the license number and the quantity (in kilograms) for the first product shown on the license. The information on the license should match the information presented in the entry summary data as closely as possible. This includes the value and quantity of the shipment, the expected date of importation, and the customs port of entry.

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered aluminum portion of an entry is less than $5000, applicants may apply to Commerce for a low-value license that can be used in lieu of a single-entry license for low-value entries.

§ 361.104 Aluminum import monitoring.

(a) Throughout the duration of the licensing requirement, Commerce will maintain an import monitoring system on the AIM website that will report certain aggregate information on imports of aluminum products obtained from the aluminum licenses, as described in paragraphs (b) and (c) of this section, provided that it does not reveal business proprietary information.

(b) Aggregate data will be reported on a monthly basis by country of origin, country of smelt and pour, and aluminum product category and will include import quantity (metric tons), import customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes.

(c) Reported monthly import data will be refreshed each week with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused aluminum import licenses, as appropriate.

§ 361.105 Duration of the aluminum import licensing requirement.

The licensing program will be in effect indefinitely. The licenses will be valid for 10 business days after the expiration of this program to allow for the final filing of required Customs documentation.

§ 361.106 Fees.

No fees will be charged for obtaining a user identification number, issuing an aluminum import license or accessing the aluminum import monitoring system.

§ 361.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at selected times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise Customs to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 361.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges without prior notice. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time needed to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by the U.S. Customs Service.

[FR Doc. 2020–07791 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–DS–P

Notices

Federal Register

Vol. 85, No. 83

Wednesday, April 29, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0048]

Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for the Release of Sericothrips staphylinus for Biological Control of Gorse

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared an environmental assessment and finding of no significant impact relative to permitting the release of *Sericothrips staphylinus* for the biological control of gorse, a spiny shrub, within the contiguous United States. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2327; email: *Colin.Stewart@usda.gov*.

SUPPLEMENTARY INFORMATION:

During the late 1800s, gorse was introduced into North America from Western Europe. Gorse (*Ulex eurpaeus*) is a spiny shrub found in eastern States, Washington, Oregon, California, and Hawaii. This plant is most often a pest of disturbed sites in open wild or less-developed areas where management is minimal or non-existent. Gorse's invasiveness is most prolific in the maritime climate within a few miles of the ocean, where sandy soils and rocky outcrops are especially vulnerable to invasion. Gorse's impacts include displacement of native plants, including forest tree saplings, reduction in the quality of wildlife habitats, increased fire hazard, interference in rights-of-way and recreation sites, and reduced livestock forage production.

The insect *Sericothrips staphylinus* was chosen as a potential biological control agent. Although specific information as to the extent of its range has been difficult to obtain, the native distribution of the agent is assumed to overlap with the majority of the range of gorse in Europe.

On August 20, 2019, we published in the **Federal Register** (84 FR 43099, Docket No. APHIS–2019–0048) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the release of *Sericothrips staphylinus* for the biological control of gorse within the contiguous United States.

We solicited comments on the EA for 30 days ending September 19, 2019. We received 10 comments by that date. Eight of those comments were in favor of the release of the biological control agent. Two commenters were not in favor of the biological control agent and raised concerns regarding the release of the insect. These comments are addressed in Appendix 5 of the final EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *Sericothrips staphylinus* for the biological control of gorse within the contiguous United States. The finding, which is based on the EA, reflects our determination that release of the *Sericothrips staphylinus* will not have a significant impact on the quality of the human environment. Concurrent with this announcement, we will issue a permit for the release of *Sericothrips staphylinus* for the biological control of gorse.The EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 8th day of April 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–09102 Filed 4–28–20; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0048.*

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

AGENCY: 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 (FACA), that a planning meeting of the North Carolina State Advisory Committee to the Commission will convene by conference call, on Thursday, May 14, 2020 at 11:00 a.m. (EST). The purpose of the meeting is to discuss its civil rights project on legal financial obligations.

DATES: Thursday, May 14, 2020 at 11:00 a.m. (EST).

Call-in Information: 1–206–800–4892 and conference call ID: 818972654#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and

conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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-in numbers: 1–206–800–4892 and conference call ID: 818972654#.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311. Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzldAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above phone number or email.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Civil Rights Project on Legal Financial Obligations
V. Next Steps
VI. Adjournment

Dated: April 24, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09101 Filed 4–28–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: 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 (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Thursday, April 30, 2020 at 2:00 p.m. (EDT). To review and vote on a statement of concern regarding detention facilities in Massachusetts.

DATES: Thursday, April 30, 2020 at 2:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 5259966 and conference ID: 1–888–254–3590.

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

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 5259966 and conference ID: 1–888–254–3590. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 5259966 and conference ID: 1–888–254–3590.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzllAAA,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Thursday, April 30, 2020; 2:00 p.m. (EDT)

1. Roll Call
2. Review and Edit Statement of Concer
3. Vote on Statement
4. Other Business
5. Open Comment
6. Adjourn

Dated: April 24, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09081 Filed 4–28–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee to discuss voting as a topic of study in the state

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 Missouri Advisory Committee (Committee) will hold a meeting on Thursday, May 7, 2020 at 3:30 p.m. (Central) for the purpose discussing voting as a topic of study in the state.

DATES: The meeting will be held on Thursday, May 7, 2020 at 3:30 p.m. (Central)

Public Call Information: Dial: 206–800–4892, Conference ID: 150420354.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@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 following call-in number: 206–800–4892, conference ID: 150420354. 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 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Missouri Advisory Committee link (*https://facadatabase.gov/committee/committee.aspx?cid=258&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion of Voting sub-topics

Next Steps

Public Comment

Adjournment

Dated: April 24, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09077 Filed 4–28–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: 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 certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) were sold in the United States at less than normal value during the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable April 29, 2020.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2019, Commerce published the *Preliminary Results* of this administrative review.[1] From February 3, 2020 through February 11, 2020, we conducted verification of the questionnaire responses of NTSF Seafoods Joint Stock Company (NTSF).[2] On February 13, 2020, we extended the deadline for the final results of this review to April 17, 2020.[3] Between March 18, 2020 and March 25, 2020, interested parties submitted case and rebuttal briefs.[4] On April 15, 2020, we fully extended the deadline for issuance of these final results to April 20, 2020.[5]

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed by interested parties in the Issues and Decision Memorandum. A list of the issues parties raised is attached as Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (CRU), Room B8024 of the main Commerce building, as well as 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.* 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 Issues and Decision Memorandum and the electronic version 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, and for the reasons explained in the Issues and Decision Memorandum, we applied certain changes to NTSF's antidumping margin. Accordingly, for these final results, Commerce also updated the antidumping margin assigned to the non-selected separate rate company, *i.e.,* Can Tho Import

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 56420 (October 22, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Verification of the Questionnaire Responses of NTSF Seafoods Joint Stock Company in the 2017–2018 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,'' dated March 13, 2020.

[3] *See* Memorandum, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated February 13, 2020.

[4] *See* Petitioners' Letter, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Case Brief,'' dated March 18, 2020; NTSF's Letter, ''Frozen Fish Fillets from Vietnam: NTSF's Case Brief,'' dated March 18, 2020; IDI's Letter, ''Administrative Review of AD Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (08/01/17–07/31/18): IDI Case Brief,'' dated March 18, 2020; Petitioners' Letter, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Brief,'' dated March 23, 2020; and NTSF's Letter, ''Certain Frozen Fish Fillets from Vietnam: Rebuttal Brief,'' March 23, 2020.

[5] *See* Memorandum, ''15th Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated April 15, 2020.

[6] *See* Memorandum, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the Fifteenth Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at 2–3.

Export Seafood Joint Stock Company (Caseamex). For a discussion of the above-referenced changes, *see* the ''Changes Since the Preliminary Results'' section of the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Golden Quality Seafood Corporation, Nam Viet Corporation, Hoa Phat Seafood Import-Export and Processing J.S.C., To Chau Joint Stock Company, Fatifish Company Limited, and Godaco Seafood Joint Stock Company had no shipments during the POR. Consistent with Commerce's refinement to its assessment practice in non-market economy (NME) cases, we completed the review with respect to the above-named companies.[7] 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 no shipment determination into question. Therefore, for these final results, we continue to find that these six companies did not have any reviewable transactions during the POR. As noted in the ''Assessment Rates'' section below, Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) for the above-named companies based on the final results of this review.

Separate Rates

In our *Preliminary Results,* we denied International Development and Investment Corporation (IDI) a separate rate.[8] Based on information on the record, and for the reasons explained in the Issues and Decision Memorandum, we continue to find that IDI is not eligible for a separate rate.[9] Thus, we find IDI to be part of the Vietnam-wide entity.

We continue to find that the non-individually-examined exporter Caseamex and individually-examined respondent NTSF have demonstrated eligibility for separate rates. As noted below, we have assigned Caseamex the rate established for NTSF.

Vietnam-Wide Entity

In the *Preliminary Results,* Commerce found that certain companies for which a review was requested did not establish eligibility for a separate rate.[10] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary finding. Therefore, Commerce continues to find that these companies are part of the Vietnam-wide entity.[11]

Final Results of the Review

The weighted-average dumping margins for the final results of this administrative review are as follows:

Exporter	Weighted-average margin (dollars/kilogram) [12]
NTSF Seafoods Joint Stock Company (NTSF)	0.15
Can Tho Import Export Seafood Joint Stock Company (Caseamex)*	0.15

* Caseamex is a separate rate respondent not individually examined.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

We calculated importer (or customer)-specific assessment rates for merchandise subject to this review on a per-unit (*i.e.,* per-kilogram) basis. Specifically, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and divided this amount by the total quantity sold to that importer (or customer) during the POR. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculate importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. If an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), Commerce will instruct CBP to liquidate that importer's (or customer's) entries of subject merchandise without regard to antidumping duties. Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales database submitted by NTSF during this review, Commerce will instruct CBP to liquidate such entries at the Vietnam-wide entity rate.

For the separate rate company that was not selected for individual review, *i.e.,* Caseamex, we assigned the company the margin of the mandatory respondent, NTSF. Where we determined that an exporter under review had no shipments of the subject merchandise to the United States during the POR, any suspended entries that entered during the POR under that exporter's case number will be liquidated at the Vietnam-wide rate.[13] Additionally, we intend to instruct CBP to liquidate entries containing subject merchandise exported by the Vietnam-wide entity at the Vietnam-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of $2.39 per kilogram; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

[8] *See Preliminary Results,* 84 FR at 56421.

[9] *See* Issues and Decision Memorandum at Comment 6.

[10] *See Preliminary Results,* 84 FR at 56421.

[11] *See* Appendix II.

[12] In the third administrative review of this order, Commerce determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15481 (March 24, 2008).

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

publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

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

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 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 of administrative review in accordance with sections 751(a)(l) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Separate Rates
VI. Discussion of the Issues
  Comment 1: Whether to Calculate a Margin for NTSF
  Comment 2: Selection of Surrogate Country
  Comment 3: Applying Adverse Facts Available (AFA) to NTSF Vinh Long's Farming Factors
  Comment 4: Surrogate Value (SV) for Movement Expenses
  Comment 5: Net-to-Gross-Weight Conversion for Movement Expenses
  Comment 6: Whether to Grant IDI a Separate Rate
VII. Recommendation

Appendix II

Vietnam-wide Entity

1. An Giang Agriculture and Food Import-Export Joint Stock Company (also known as Afiex, An Giang Agriculture and Foods Import-Export Joint Stock Company, An Giang Agriculture and Food Import-Export Company, An Giang Agriculture and Foods Import and Export Company, or An Giang Agriculture and Foods Import-Export Company)
2. An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
3. An Phu Seafood Corporation (also known as ASEAFOOD or An Phu Seafood Corp.)
4. Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
5. Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)
6. Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
7. Cuu Long Fish Joint Stock Company (also known as CL-Fish, CL–FISH CORP, or Cuu Long Fish Joint Stock Company)
8. Da Nang Seaproducts Import-Export Corporation (also known as Da Nang or Da Nang Seaproducts Import/Export Corp.)
9. East Sea Seafoods LLC (also known as ESS LLC, ESS, ESS JVC, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)
10. Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)
11. International Development & Investment Corporation (also known as IDI or International Development and Investment Corporation)
12. Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)
13. Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.)
14. Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)
15. Sunrise Corporation
16. TG Fishery Holdings Corporation (also known as TG)

[FR Doc. 2020–09089 Filed 4–28–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan to correct a ministerial error.

DATES: Applicable April 29, 2020.

FOR FURTHER INFORMATION CONTACT: Shanah Lee, 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) 482–6386.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, Commerce published its *Final Results* of the second administrative review of the AD order on CORE from Taiwan.[1] On March 20, 2020, Prosperity Tieh Enterprise Co., Ltd. (Prosperity), one of the respondents in this administrative review, timely submitted comments alleging a ministerial error in Commerce's *Final Results*.[2]

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Error

Commerce committed an inadvertent, unintentional error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) with respect to our treatment of certain U.S. sales that were invoiced prior to the imposition of section 232 duties but entered after the imposition of the 232 duties. Specifically, we inadvertently treated the amount that Prosperity charged its customers to cover 232 duties as the amount of 232

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[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 16613 (March 24, 2020) (*Final Results*).

[2] *See* Prosperity's Letter, ''Corrosion-Resistant Steel Products from Taiwan, 7/1/2017–6/30/2018 Administrative Review, Case No. A–583–856: Ministerial Error Comments,'' dated March 20, 2020.

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

duties paid, and therefore mistakenly reduced, rather than increased, U.S. price by that amount. Accordingly, Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), it made a ministerial error in the *Final Results.* Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the final margin assigned to Prosperity, which changes from 3.48 percent to 0.60 percent.[4]

Amended Final Results of the Review

As a result of correcting the ministerial error described above, Commerce determines that, for the period of July 1, 2017 through June 30, 2018, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
Prosperity Tieh Enterprise Co., Ltd	0.60

Disclosure

We intend to disclose the calculation performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Normally, Commerce would issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review, to liquidate shipments of subject merchandise produced and/or exported by Prosperity entered, or withdrawn from warehouse, for consumption during the July 1, 2017 through June 30, 2018 period of review. However, on April 8, 2020, the Court enjoined liquidation of entries produced and exported by Prosperity, and imported by Prosperity Tieh USA, that are subject to the *Final Results.*[5] Accordingly, Commerce will not instruct CBP to assess antidumping duties on those enjoined entries pending resolution of the associated liquidation.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or withdrawn from warehouse, for consumption on or after the March 24, 2020, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Prosperity will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for previously reviewed or investigated companies, including those for which Commerce may have determined they had no shipments during the POR, 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 or another completed segment of this proceeding, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the ''all-others'' rate of 3.66 percent established in the amended final of the less-than-fair-value investigation.[6] 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 the Secretary'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 orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

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

Dated: April 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–09104 Filed 4–28–20; 8:45 am]

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[4] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from Taiwan: Prosperity Tieh Enterprise Co., Ltd.—Amended Final Results Calculation in the 2017–2018 Antidumping Duty Administrative Review,'' dated concurrently with this decision.

[5] The Court issued a statutory injunction under case number 16–00138 (April 8, 2020).

[6] *See Corrosion-Resistant Steel Products from Taiwan: Notice of Court Decision Not in Harmony With Final Determination of Antidumping Duty Investigation and Notice of Amended Final Determination of Investigation,* 84 FR 6129 (February 26, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–114]

Certain Glass Containers From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain glass containers (glass containers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 29, 2020.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation

on October 21, 2019.[1] On February 19, 2020, Commerce postponed the preliminary determination in this investigation. The revised deadline is now April 22, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are glass containers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce explained that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Guangdong Huaxing Glass Co., Ltd	Guangdong Huaxing Glass Co., Ltd	24.90	14.36
Foshan Huaxing Glass Co., Ltd	Guangdong Huaxing Glass Co., Ltd	24.90	14.36
Qixia Changyu Glass Co., Ltd	Qixia Changyu Glass Co., Ltd	7.60	0.00
Anhui Longrui Glass Co., Ltd	Anhui Longrui Glass Co., Ltd	13.76	3.22
Xuzhou Ruijing Glass Products Co., Ltd	Golden Ace Industrial Co., Ltd	13.76	3.22
Shandong Huapeng Glass Co., Ltd	Happyann Crafts Int'l Co., Ltd	13.76	3.22
Shenyang Hongye Glass Containers Co., Ltd	Happyann Crafts Int'l Co., Ltd	13.76	3.22
Shandong Pharmaceutical Glass Co., Ltd	Hongkong Happyann Trading Company Limited	13.76	3.22
Shandong Jingbo Groups Co., Ltd	Hongkong Happyann Trading Company Limited	13.76	3.22
Taixing Jili Glass Products Co., Ltd	Hongkong Happyann Trading Company Limited	13.76	3.22
Shanxi Qi County Guanghua Glassware Co., Ltd	Meridian International Ltd	13.76	3.22
Hejian Jiarui Glassware Factory	Meridian International Ltd	13.76	3.22
Shijiazhuang Langxu Arts & Crafts Co., Ltd	Meridian International Ltd	13.76	3.22
Xuzhou Youcheng Glass Products Co., Ltd	Photo USA Electronic Graphic Inc	13.76	3.22
Zibo Deli Glass Products Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Shandong Fulong Glass Technology Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Shandong Hongda Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Zibo Shengjie Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Jinan Guanheping Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Xuzhou Jiuding Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Zibo Jiurun Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Shandong Zibo Boshan Jiuyuan Company	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Xuzhou Yichen Glass Product Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Laiwu Dongjing Industry & Trade Co., Ltd	Qingdao Gemmy Imp. & Exp. Co., Ltd	13.76	3.22
Shandong Dingxin Electronic Glass Group Co., Ltd	Qingdao Huoyan Phoenix Import & Export Co., Ltd	13.76	3.22
Zhejiang Caifu Glass Co., Ltd	Qingdao Huoyan Phoenix Import & Export Co., Ltd	13.76	3.22
Shangdong Changshengtai Glass Products Co., Ltd	Shandong Changshengtai Glass Products Co., Ltd	13.76	3.22

[1] *See Certain Glass Containers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 84 FR 56174 (October 21, 2019) (*Initiation Notice*).

[2] *See Certain Glass Containers from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 9458 (February 19, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Glass Containers from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Certain Glass Containers from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated April 3, 2020 (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice,* 84 FR 56174.

[8] *See* Policy Bulletin No. 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shandong Dingxin Electronic Glass Group Co., Ltd	Shandong Dingxin Electronic Glass Group Co., Ltd	13.76	3.22
Shandong Hongda Glass Ware Co., Ltd	Shandong Excel Light Industrial Products Co., Ltd	13.76	3.22
Shandong Hongda Glass Ware Co., Ltd	Shandong Glassware Corporation	13.76	3.22
Shangdong Changshengtai Glass Products Co., Ltd	Shandong Glassware Corporation	13.76	3.22
Shandong Luguan Glass Products Co., Ltd	Shandong Glassware Corporation	13.76	3.22
Jinan Yida Glass Products Co., Ltd	Shandong Glassware Corporation	13.76	3.22
Shandong Heishan Glass Group Co., Ltd	Shandong Heishan Glass Group Co., Ltd	13.76	3.22
Shandong Hongda Glass Products Co., Ltd	Shandong Honghan International Trading Co., Ltd	13.76	3.22
Shandong Jusheng Glass Co., Ltd	Shandong Honghan International Trading Co., Ltd	13.76	3.22
Xuzhou Zhuoxin Glass Products Co., Ltd	Shandong Honghan International Trading Co., Ltd	13.76	3.22
Shandong Huapeng Glass Co., Ltd	Shandong Huapeng Glass Co., Ltd	13.76	3.22
Zibo Hongda Glass Products Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Zibo Zhide Light Industry Products Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Shandong Fulong Glass Technology Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Xuzhou Ruijing Glass Products Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Cao County Jiefeng Crafts Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Zibo Longsheng Glass Products Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Zibo Boshan Shengjie Glass Products Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Shandong Baoxiang Glass Co., Ltd	Shandong Injoy Houseware Co., Ltd	13.76	3.22
Shandong Jiaye General Merchandise Co., Ltd	Shandong Jiaye General Merchandise Co., Ltd	13.76	3.22
Shandong Pharmaceutical Glass Co., Ltd	Shandong Pharmaceutical Glass Co., Ltd	13.76	3.22
Shandong Hongda Glass Factory	Shandong Shine Chin Glassware Co., Ltd	13.76	3.22
Shandong Juli Glass Co., Ltd	Shandong Top-Peak Enterprise Co., Ltd	13.76	3.22
Shandong Wenbao Technology Products Co., Ltd	Shandong Wenbao Technology Products Co., Ltd	13.76	3.22
Changxing Hua Zhong Glass Co., Ltd	Sinoglass Housewares Co., Ltd	13.76	3.22
Xuzhou Xupeng Glass Products Co., Ltd	Xuzhou Credible Glass Products Co., Ltd	13.76	3.22
Xuzhou Sanheshun Glass Products Co., Ltd	Xuzhou Credible Glass Products Co., Ltd	13.76	3.22
Shandong Pharmaceutical Glass Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Taizhou Paishen Printing Industry Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Runtong Cap Manufacturing Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Jiuding Glass Products Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Juli Bottle Cap Factory	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Yangzhou Jiangyang Plastic Products Factory	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Yiwu Hongyuan Glass Products Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Zhending Glass Products Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Rongjian Glass Products Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Tepu Glass Products Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Zibo Zhulifei International Trade Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Nantong Shunyu Packing Materials Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Ningbo Letao Packing Co., Ltd	Xuzhou Das Packing Solutions Co., Ltd	13.76	3.22
Xuzhou Supeng Yongxu Glass Products Co., Ltd	Xuzhou Huihe International Trade Co., Ltd	13.76	3.22
Yamamura Glass Qinhuangdao Co., Ltd	Yamamura Glass Qinhuangdao Co., Ltd	13.76	3.22
Feicheng Jingying Glass Products Co., Ltd	Zibo Ace International Co., Ltd	13.76	3.22
Zibo Boshan Shengjie Glass Products Co., Ltd	Zibo Ace International Co., Ltd	13.76	3.22
Zibo Anto Glass Industry Co., Ltd	Zibo Anto Glass Industry Co., Ltd	13.76	3.22
Shandong Heishan Glass Group Co., Ltd	Zibo Comm-Mountain Glassware Co., Ltd	13.76	3.22
Yantai NBC Glass Packaging Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Shandong Taishan Shengliyuan Glass Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Shanghai Esjoi Industry Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Longkou Shengda Glass Products Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Shandong Pharmaceutical Glass Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Qingdao Yutai Pharmaceutical Packaging Technology Co., Ltd.	Zibo Creative International Trade Co., Ltd	13.76	3.22
Shandong Jingbo Group Co., Ltd	Zibo Creative International Trade Co., Ltd	13.76	3.22
Shandong Huapeng Glass Co., Ltd	Zibo Derola Houseware Co., Ltd	13.76	3.22
Hebei Xinji Tianyu Glass, Ltd	Zibo Derola Houseware Co., Ltd	13.76	3.22
Zibo Hongda Glass Products Co., Ltd	Zibo E&T General Merchandise Co., Ltd	13.76	3.22
Xuzhou Hengyi Glass Products Co. Ltd	Zibo Fecund Trading Co., Ltd	13.76	3.22
Xuzhou Yichen Glass Products Co., Ltd	Zibo Fortune Trading Co., Ltd	13.76	3.22
Zibo Longsheng Glass Products Co., Ltd	Zibo Grandeur Light Industrial Products Co., Ltd	13.76	3.22
Shandong Hongda Glass Products Co., Ltd	Zibo Green Light Industrial Co., Ltd	13.76	3.22
Shandong Baoxiang Glass Co., Ltd also known as Zibo Gongmao Glass Factory.	Zibo Green Light Industrial Co., Ltd	13.76	3.22
Zibo Haichang Light Industry Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Shandong Longyu Glass Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Zibo Hesheng Glass Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Xuzhou Xindong Glass Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Zibo Jintian Light Industry Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Zhangqiu City Huacheng Glass Products Factory	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Qingdao Golden Sunshine Paper Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shandong Yiyuan Oukai Glass Products Co., Ltd	Zibo Hicheon Homeware Corp., Ltd	13.76	3.22
Shandong Hongda Glassware Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Feicheng Jingying Glass Products Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Shandong Changshengtai Glass Products Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Jinan Yida Glassware Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Jiangsu Luobote Glass Technology Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Jiangsu Zheng Mao Glass Technology Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Shandong Luguan Glass Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Shandong Mount Tai Sheng Li Yuan Glass Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Xuzhou Heng Yi Glassware Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Jiangsu Honghua Glass Technology Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Xuzhou Shengbang Glass Technology Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Xuzhou Sheng Shi Glass Products Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Shandong Baoxiang Glass Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Zibo Longyu Glass Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Shandong Yueshi Glass Products Co., Ltd	Zibo Intrue Light Industrial Products Co., Ltd	13.76	3.22
Zibo Lijiang Light Industrial Products Co., Ltd	Zibo Lijiang Light Industrial Products Co., Ltd	13.76	3.22
Zibo Boshan Shengjie Glass Products Co., Ltd	Zibo Lucky Ship International Trading Co., Ltd	13.76	3.22
Jiangsu Rongtai Glass Products Co., Ltd	Zibo Lucky Ship International Trading Co., Ltd	13.76	3.22
Jinan Yida Glass Products Co., Ltd	Zibo Lucky Ship International Trading Co., Ltd	13.76	3.22
Shandong Luguan Glass Products Co., Ltd	Zibo Lucky Ship International Trading Co., Ltd	13.76	3.22
Qingdao Weipaike Glass Trading Co., Ltd	Zibo Meienlanda International Trading Co., Ltd	13.76	3.22
Xuzhou Hongrun Glass Products Co., Ltd	Zibo Melory Import & Export Trade Co., Ltd	13.76	3.22
Jinan Yida Glass Products Co., Ltd	Zibo Melory Import & Export Trade Co., Ltd	13.76	3.22
Shangdong Mounttai Sheng Li Yuan Glass Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Shandong Hongda Glassware Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Shandong Longyu Glassware Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Xuzhou Supengyongxu Glss Products Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Shandong Aolian Packaging Joint Stock Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Shandong Changshengtai Glass Products Co, Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Shandong Luguan Glassware Co., Ltd	Zibo Redisland General Merchandise Co., Ltd	13.76	3.22
Shandong Xukun Zhaoming Co., Ltd	Zibo Redisland General Merchandise Co., Ltd	13.76	3.22
Jinan Yaotai Light Industrial Products Co., Ltd	Zibo Sailing Pacific Import And Export Co., Ltd	13.76	3.22
Zibo Shirley Light Industrial Products Co., Ltd	Zibo Shelley Trading Co., Ltd	13.76	3.22
Hebei Fangyuan Glass Products Co., Ltd	Zibo Sunfect International Trade Co., Ltd	13.76	3.22
Shandong Changshengtai Glass Products Co., Ltd	Zibo Top Arts Co., Ltd	13.76	3.22
Zibo Top Glass Industry Co., Ltd	Zibo Top Glass Industry Co., Ltd	13.76	3.22
ZiBo Boshan Shengjie Glass Product Co., Ltd	Zibo Top-Peak Enterprises Ltd	13.76	3.22
Zibo Truely Light Industrial Products Co., Ltd	Zibo Truely Light Industrial Products Co., Ltd	13.76	3.22
Shandong Hongda Glassware Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Xuzhou Juhui Glassware Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Xuzhou Dazheng Glassware Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Xuzhou Haoboyang Glass Products Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Zibo Guge Glass Products Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Hejian Fuling Glassware Co., Ltd	Zibo Uni-Shine Industry Co., Ltd	13.76	3.22
Xuzhou Rongheng Glass Products Co., Ltd	Zibo Yadong Import and Export Trade Co., Ltd	13.76	3.22
Zibo Boshan Shengjie Glass Products Co., Ltd	Zibo Yadong Import and Export Trade Co., Ltd	13.76	3.22
Zibo Yede Light Industrial Products Co., Ltd	Zibo Yadong Import and Export Trade Co., Ltd	13.76	3.22
Shandong Longyu Glass Products Co., Ltd	Zibo Yadong Import and Export Trade Co., Ltd	13.76	3.22
Shandong Hongda Glass Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Baoquan Light Industrial Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Shandong Juli Glass Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Boshan Shengjie Glass Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Xuzhou Xi'ao Glass Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Shandong Pingping Anan Trading Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Xuzhou Yichen Glass Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Shandong Taishan Shengliyuan Glass Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Mingxuan Light Industrial Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Yufeng Arts & Crafts Factory	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Jiewei Light Industrial Products Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Boshan Fujie Metal Crafts Factory	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Cixi Shunrun Plastic Product Factory	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Xuanye Industry and Trade Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Xuzhou Tianyi Zhigai Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Zibo Xinshun Light Industrial Products Factory	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Cixi Xinju Plastic Product Factory	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Yiwu Hongzhi Jewelry Co., Ltd	Zibo Yuedai Shangmao Company Ltd	13.76	3.22
Shandong Fulong Glass Technology Co., Ltd	Zibo Zhaohai Light Industrial Products Co., Ltd	13.76	3.22
Shandong Taishan Shengliyuan Glass Co., Ltd	Zibo Zhaohai Light Industrial Products Co., Ltd	13.76	3.22
Changshengtai Glass Products Co., Ltd	Zibo Zhaohai Light Industrial Products Co., Ltd	13.76	3.22

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
China-wide Entity	China-wide Entity	255.68	245.14

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which NV exceeds U.S. price, as indicated in the table above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rates. Any such adjusted rates may be found in the Preliminary Determination section's table of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for export subsidies at the time that the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of the preliminary determination, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of hearing participants from the party; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce will determine the date, time, and medium for conducting the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 13 and 15, 2020, pursuant to 19 CFR 351.210(e), Qixia Changyu and Huaxing requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist,

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[11] *See* Qixia Changyu's Letter, ''Certain Glass Containers from the People's Republic of China: Request for Postponement of the Final Determination,'' dated April 13, 2020; *see also* Huaxing's Letter, ''Certain Glass Containers from the People's Republic of China: Request to Extend Final Determination and Provisional Measures,'' dated April 15, 2020.

Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: April 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ''mold seams,'' ''joint marks,'' or ''parting lines;'' and (3) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of the Final Determination
V. Scope Comments
VI. Scope of the Investigation
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Adjustment Under Section 777(A)(f) of the Act
X. Adjustments to Cash Deposit Rates for Export Subsidies
XI. Recommendation

[FR Doc. 2020–09090 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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

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

ACTION: Notice of solicitation.

SUMMARY: Notice is hereby given that ONMS will solicit applications to fill non-governmental seats on its 14 established national marine sanctuary advisory councils and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils), under the National Marine Sanctuaries Act and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Executive Order, respectively. Note, the list of 15 established advisory councils in the Contact Information for Each Site section includes the advisory council established for the Proposed Lake Ontario National Marine Sanctuary and excludes an advisory council for the recently designated Mallows Bay-Potomac River National Marine Sanctuary since an advisory has not yet been established. Vacant seats, including positions (*i.e.,* primary and alternate), for each of the advisory councils will be advertised differently at each site in accordance with the information provided in this notice. This notice contains web page links and contact information for each site, as well as additional resources on advisory council vacancies and the application process.

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

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

FOR FURTHER INFORMATION CONTACT: For further information on a particular advisory council or available seats, please contact the site as identified in this notice's **SUPPLEMENTARY INFORMATION** section on Contact Information for Each Site, below. For general inquiries related to this notice or ONMS advisory councils established pursuant to the National Marine Sanctuaries Act or Executive Order 13178, contact Katie Denman, Office of National Marine Sanctuaries Policy and Planning Division (*katie.denman@noaa.gov;* 240–533–0702).

SUPPLEMENTARY INFORMATION:

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

Office of National Marine Sanctuaries (ONMS)

ONMS serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida

Keys, and from Lake Huron to American Samoa. The network includes a system of 14 national marine sanctuaries and Papahanaumokuakea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. Advisory councils are community-based advisory groups established to provide advice and recommendations to ONMS on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the site. Pursuant to Section 315(a) of the National Marine Sanctuaries Act, 16 U.S.C. 1445A(a), advisory councils are exempt from the requirements of the Federal Advisory Committee Act. Additional information on ONMS and its advisory councils can be found at *http://sanctuaries.noaa.gov.*

Advisory Council Membership

Under Section 315 of the NMSA, advisory council members may be appointed from among: (1) Persons employed by federal or state agencies with expertise in management of natural resources; (2) members of relevant regional fishery management councils; and (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources. For the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Section 5(f) of Executive Order 13178 (as amended by Executive Order 13196) specifically identifies member and representative categories.

The charter for each advisory council defines the number and type of seats and positions on the council; however, as a general matter, available seats could include: Conservation, education, research, fishing, whale watching, diving and other recreational activities, boating and shipping, tourism, harbors and ports, maritime business, agriculture, maritime heritage, and citizen-at-large.

For each of the advisory councils, applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lakes resources; and possibly the length of residence in the area affected by the site. Applicants chosen as members or alternates should expect to serve two- or three-year terms, pursuant to the charter of the specific national marine sanctuary advisory council or Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council. More information on advisory council membership and processes, and materials related to the purpose, policies, and operational requirements for advisory councils can be found in the charter for a particular advisory council (*http://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the *National Marine Sanctuary Advisory Council Implementation Handbook* (*http://sanctuaries.noaa.gov/management/ac/acref.html*).

Contact Information for Each Site

- Channel Islands National Marine Sanctuary Advisory Council: Channel Islands National Marine Sanctuary, University of California, Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106; 805–893–6437; *https://channelislands.noaa.gov/sac/council_news.html.*
- Cordell Bank National Marine Sanctuary Advisory Council: Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950; 415–464–5260; *http://cordellbank.noaa.gov/council/applicants.html.*
- Florida Keys National Marine Sanctuary Advisory Council: Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040; 305–809–4700; *http://floridakeys.noaa.gov/sac/apps.html.*
- Flower Garden Banks National Marine Sanctuary Advisory Council: Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551; 409–621–5151; *http://flowergarden.noaa.gov/advisorycouncil/recruitment.html.*
- Gray's Reef National Marine Sanctuary Advisory Council: Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2345; *http://graysreef.noaa.gov/management/sac/council_news.html.*
- Greater Farallones National Marine Sanctuary Advisory Council: Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129; 415–561–6622; *https://farallones.noaa.gov/manage/sac_recruitment.html.*
- Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA Inouye Regional Center, NOS/ONMS/HIHWNMS, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–879–2818; *https://hawaiihumpbackwhale.noaa.gov/council/council_app_accepting.html.*
- Monitor National Marine Sanctuary Advisory Council: Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; 757–599–3122; *https://monitor.noaa.gov/advisory/news.html.*
- Monterey Bay National Marine Sanctuary Advisory Council: Monterey Bay National Marine Sanctuary, 99 Pacific Street, Building 455A, Monterey, CA 93940; 831–647–4201; *http://montereybay.noaa.gov/sac/recruit.html.*
- National Marine Sanctuary of American Samoa Advisory Council: National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, P.O. Box 4318, Pago Pago, American Samoa 96799; 684–633–6500; *https://americansamoa.noaa.gov/council/recruitment/.*
- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: NOAA Inouye Regional Center, NOS/ONMS/PMNM, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–725–5800; *http://www.papahanaumokuakea.gov/new-about/council/apply/.*
- Olympic Coast National Marine Sanctuary Advisory Council: Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362; 360–457–6622; *http://olympiccoast.noaa.gov/involved/sac/recruitment.html.*
- Proposed Lake Ontario Sanctuary Advisory Council; NOAA Office of National Marine Sanctuaries, 4840 South State Road, Ann Arbor, MI 48108; 734–741–2270; *https://sanctuaries.noaa.gov/lake-ontario/advisory/members.html.*
- Stellwagen Bank National Marine Sanctuary Advisory Council: Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; 781–545–8026; *http://stellwagen.noaa.gov/management/sac/recruitment.html.*
- Thunder Bay National Marine Sanctuary Advisory Council: Thunder Bay National Marine Sanctuary, 500 West Fletcher Street, Alpena, MI 49707; 989–356–8805; *http://thunderbay.noaa.gov/management/advisory_council_recruitment.html.*

Paperwork Reduction Act:

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0397) for the collection of public information related to the processing of ONMS national marine sanctuary advisory council applications across the National Marine Sanctuary System. Soliciting applications for sanctuary advisory councils fits within the estimated reporting burden under that control number. See *https://www.reginfo.gov/public/do/PRASearch* (Enter Control Number 0648–0397). Therefore, ONMS will not request an update to the reporting burden certified for OMB control number 0648–0397

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to: Office of National Marine Sanctuaries, 1305 East West Highway, N/NMS, Silver Spring, Maryland 20910.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), *44 U.S.C. 3501 et seq.,* unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is #0648–0397.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration .

[FR Doc. 2020–09112 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA125]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Crowley Kotzebue Dock Upgrade Project in Kotzebue, Alaska

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 Crowley Fuels, LLC for authorization to take marine mammals incidental to the Crowley Kotzebue Dock Upgrade in Kotzebue, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS 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 29, 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.Davis@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: Leah Davis, 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.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined

that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

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

Summary of Request

On January 13, 2020, NMFS received a request from Crowley Fuels, LLC (Crowley) for an IHA to take marine mammals incidental to pile driving activities at the Crowley Kotzebue Dock. The application was deemed adequate and complete on April 9, 2020. Crowley's request is for take of a small number of nine species of marine mammals, by Level B harassment only. Neither Crowley nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Crowley is proposing to upgrade their existing sheet pile bulkhead dock for vessel-based fuel and cargo distribution in Kotzebue, Alaska, as the existing bulkhead at the dock is corroding and has reached the end of its useful service life. Crowley is proposing to construct a new dock wall on the water ward side of the existing dock. Vibratory pile driving would introduce underwater sounds that may result in take, by Level B harassment, of marine mammals across approximately 52.5 km^2 (20.3 mi^2) in Kotzebue Sound. Crowley is not proposing to conduct any demolition of the current facility.

Crowley's Kotzebue Dock provides berthing for the company's bulk fueling operations. The dock also provides essential access for community barges, cargo-loading, transloading, subsistence harvest, and other community events; all of which are necessary operations to the City of Kotzebue, its residents, and adjacent villages supported by Kotzebue's connections to marine-based transportation.

Dates and Duration

The proposed IHA would be effective from June 1, 2020 to May 31, 2021. Work would take place between June and September 2020 with approximately 87 days of in-water work during daylight hours. Pile driving is expected to occur for approximately 100 minutes per day. Project activities are planned to avoid traditional ice seal harvest windows in an effort to avoid negative impacts to subsistence hunting.

Specific Geographic Region

The Crowley Kotzebue Dock Upgrade Project is located in Qikiqtaġruq (Kotzebue) on the northernmost shoreline of the Baldwin Peninsula between Kotzebue Sound and Hotham Inlet (Figure 1). Kotzebue Sound is an embayment on the western coast of Alaska of the Chukchi Sea, which is itself an embayment of the Arctic Ocean (extending from Wrangel Island to Point Barrow and south to the Bering Strait). The Sound is an extremely shallow marine waterbody (averaging less than 20 meters deep) bounded by the Seward Peninsula to the south and west, the Baldwin Peninsula to the east, and the Noatak River delta and Cape Krusenstern to the north. Marine waters here are warmer than usual for the Chukchi Sea and are affected by the Alaska Coastal current and by the significant freshwater input of the Selawik, Noatak, and Kobuk Rivers. Basin sediments in the Sound are typically gravelly mud or sandy mud (Audubon, 2010).

Figure 1: Project Location in Kotzebue, AK

Detailed Description of Specific Activity

The new dock will be constructed with an OPEN CELL SHEET PILE® (OCSP) structure, a bulkhead utilizing flat-web sheet piles, fabricated connector wyes, and anchor piles. This type of bulkhead is a flexible steel sheet pile membrane supported by soil contact with the embedded steel pile tail walls. No demolition is planned for this project, so the new sheet pile bulkhead will provide additional protection for the existing fuel header system and associated piping. A new potable water service and 120/208-volt power service will be provided at the south end of the new dock.

The dock will be constructed one cell at a time, with only one hammer operating at a time. Temporary piles for bulkhead template structures will be installed to aid with sheet pile cell construction and will be removed after the permanent sheet piles or support piles have been installed. Temporary template piles will be either steel pipe piles (18-inch or smaller) or H-piles (14-inch or smaller). Temporary template piles will be driven with a vibratory hammer. All piles are expected to be installed using land-based crane and a vibratory hammer. Crowley anticipates that the largest size vibratory hammer used for the project will be an APE 200–6 (eccentric moment of 6,600 inch-pounds) or comparable vibratory hammer from another manufacturer such as ICE or HPSI. Crowley estimates that no more than 10 template piles will be installed per day. Temporary piles will be removed following bulkhead construction using vibratory extraction methods. Means and methods for extraction will be similar to temporary pile installation.

The new sheet pile bulkhead dock consists of 14 OCSP cells. Crowley will install the sheet piles in pairs using the vibratory hammer on land. After all the piles for a sheet pile cell have been installed, Crowley will place clean gravel fill within the cell. This process will continue sequentially until all of the sheet pile cells are installed and backfilled. Fourteen-inch H-pile anchor

piles with welded connectors to secure the structure will be installed at the end of each sheet pile tail wall using a vibratory hammer on land.

Crowley will transport gravel fill from an off-site quarry to the project site using loaders, dump trucks, and dozers within the project footprint as needed. It will be placed within the cells from the shore (or occasionally a barge) using the same equipment and will be finished using roller compactors and graders. Because the gravel fill will be placed behind the sheet piles, we do not expect it to result in take of marine mammals, and it will not be discussed further in this notice.

Twenty-four-inch pipe piles will be installed at nine locations along the dock face to support mooring bollards. Bollard piles will be driven into completed, compacted cells using a vibratory hammer on land. Therefore, we do not expect pile driving of the bollard piles to result in in-water impacts to marine mammals, and we do not discuss bollard piles further in this document.

A new potable water service and 120/208-volt power service will be provided near the south end of the new dock. The potable water service will consist of a buried two-inch diameter HDPE line. The power service will be routed in a buried conduit from the nearby Crowley Dock Office. We do not expect installation of these services to result in impacts to marine mammals, and we do not consider them further in this document.

TABLE 1—IN-WATER SOUND SOURCE LEVELS AND QUANTITIES FOR PROJECT ACTIVITIES

Pile size	Quantity	Source level (at 10m)			Literature source
		dB RMS	dB SEL	dB peak	
Temporary Template Piles (18-inch Steel Pipe Piles)	[a] 170	158.0	.....	.....	Caltrans, 2015.[b]
ALTERNATE Temporary Template pile (14-inch H-pile).	[a] 170	158.8	.....	.....	Caltrans, 2015.[c]
Anchor Piles (14″ HP14x89 or Similar)	15	158.8	.....	.....	Caltrans, 2015.[c]
Sheet Piles (20-inch PS31 or Similar)	650	160.7	.....	.....	Unisea, 2015.

[a] Each pile will be installed and removed.
[b] Average of three 18-inch pipe piles at Prichard Lake Pumping Plant.
[c] Port of Alaska Test Pile Project.

TABLE 2—AIRBORNE SOURCE LEVELS

Source	Source level [a]	Literature source
Temporary Template Piles (18-inch Steel Pipe Piles)	87.5	Laughlin (2010).
ALTERNATE Temporary Template Pile (14-inch H-pile)	87.5	Laughlin (2010).[b]
Anchor Piles (14″ HP14x89 or Similar)	87.5	Laughlin (2010).[b]
Sheet Piles (20-inch PS31 or Similar)	96.4	Laughlin (2010).[c]
Bollard Piles	92.1	NAVFAC (2015).[d]
Gravel Fill	96.4	Laughlin (2010).[c]

[a] Source levels for airborne noise sources are reported in dBL5EQ re: 20 μPa (micropascal) @15 meters.
[b] Data for airborne noise levels of vibratory driving of 18-inch piles from Laughlin (2010) was measured at 87.5 dBL5EQ re: 20 μPa at 15 meters. This source level is used as a proxy for the 14-inch H piles.
[c] Data for airborne noise levels from sheet pile driving and gravel fill were not available, so the source level for vibratory installation of 30-inch piles from Laughlin (2010) was used as a proxy.
[d] Airborne noise levels for vibratory driving of 24-inch pipe piles were measured during the Bangor Test Pile Program at 92 RMS LEQ dB re: 20 μPa at 15.2 meters (NAVFAC 2015).

Occasionally individual seals haul out on beach areas northeast of the project. However, anticipated source levels for airborne noises are not anticipated to exceed disturbance thresholds for non-harbor seal pinnipeds beyond the 10-meter shutdown zone that will be implemented during all project activities, so we do not expect Level B harassment takes from airborne sounds.

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

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or 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. 2018 SARs and draft 2019 SARs (*e.g.,* Muto *et al.,* 2019). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2018 SARs (Muto *et al.,* 2019a, Carretta *et al.,* 2019a) and draft 2019 SARs (Muto *et al.,* 2019b, Carretta *et al.,* 2019b) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

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	139
Family Balaenopteridae (rorquals):						
Minke whale	*Balaenoptera acutorostra*	Alaska	-/- ; N	NA (see SAR, NA, see SAR)	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-/- ; N	39,258 (0.229, NA, 1992)	UND	139
		Eastern Chukchi Sea	-/- ; N	20,752 (0.7, 12,194, 2012)	244	67
Killer whale	*Orcinus orca*	Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	-/- ; N	587 c (NA, 587, 2012)	5.87	1
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Bering Sea	-/- ; Y	48,215 (0.223, NA, 1999)	UND	0.2
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Bearded seal	*Erignathus barbatus*	Beringia	T/D ; Y	see SAR (see SAR, see SAR, 2013	See SAR	557
Ringed seal	*Phoca (pusa) hispida*	Alaska	T/D ; Y	see SAR (see SAR, see SAR, 2013	5,100	863
Spotted seal	*Phoca largha*	Alaska	-/- ; N	461,625 (see SAR, 423,237, 2013)	12,697	329
Ribbon seal	*Histriophoca fasciata*	Alaska	-/- ; N	184,697 (see SAR, 163,086, 2013)	9,785	3.9

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

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS'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.

As indicated above, all nine species (with 10 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 2 of the IHA application. While Eastern North Pacific Alaska Resident Stock killer whales, bowhead whales, fin whales, humpback whales, and narwhals could potentially occur in the area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

NMFS was unable to locate evidence supporting the presence of resident killer whales within Kotzebue Sound. Based on evidence of predation on marine mammals, NMFS expects killer whales within the Sound to be from transient stocks. Additionally, Bowhead whales (Braham *et al.,* 1984), humpback whales, and fin whales (Clarke *et al.,* 2013) do not typically occur within the area that may incur noise from this project above thresholds that may result in Level B harassment of these species. As noted in the *Specific Geographic Region* section, Kotzebue Sound is relatively shallow, further reducing the likelihood for these species to occur. The narwhal occurs in Canadian waters and occasionally in the Alaskan Beaufort Sea and the Chukchi Sea, but it is considered extralimital in U.S. waters and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters (Reeves *et al.,* 2002); however, we do not expect narwhals to occur in Kotzebue Sound during the project period.

In addition, the polar bear (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) may occur in the project area. However, both species are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

Gray whales are distributed throughout the North Pacific Ocean and are found primarily in shallow coastal waters (NMFS, 2019d and Carretta *et al.,* 2019). There are currently two populations of gray whales in the North Pacific Ocean: The eastern North Pacific population and the endangered western North Pacific Population.

Only the eastern North Pacific populations range extends into the project areas. Most whales in the eastern population spend the summer and fall months feeding in the Chukchi, Beaufort, and northwestern Bering Seas (Carretta *et al.,* 2019). Despite the shallow waters, gray whales feed in the outer area of Kotzebue Sound between May and November (Audubon, 2010). Gray whales were reported as present and feeding (sometimes in large numbers) in Kotzebue Sound and a gray whale was harvested by whale hunters at Sisualiq in 1980 (Frost *et al.,* 1983).

There have been five reports of gray whale strandings within inner Kotzebue Sound between 2010 and 2019, including one in Hotham Inlet. An additional unidentified large whale was reported stranded south of Cape Blossom in 2018 (Savage, pers. comm. 2019).

We are unaware of any information indicating that Kotzebue Sound is an area of particular biological importance for gray whales. Clarke *et al.* (2015) identified ''biologically important areas'' for cetaceans in the Arctic region,

including reproductive, feeding, and migratory areas, as well as areas where small and resident populations reside. The authors did not identify Kotzebue Sound as an important area for gray whales.

Minke Whale

Minke whales are widely distributed throughout the northern hemisphere and are found in both the Pacific and Atlantic oceans. Minke whales in Alaska are considered migratory and typically occur in the Arctic during the summer months, and near the equator during winter months (NMFS, 2019e). There have been reports of Minke whales as sometimes present in Kotzebue Sound during the summer months. Two individuals beached in the mouth of the Buckland River in autumn during the late 1970s (Frost *et al.,* 1983). Minke whales are believed to calve in the winter months (NMFS, 2019e); however, little is known about their breeding areas. We are unaware of any information indicating that Kotzebue Sound is an area of particular biological importance for minke whales. Clarke *et al.* (2015) identified ''biologically important areas'' for cetaceans in the Arctic region, including reproductive, feeding, and migratory areas, as well as areas where small and resident populations reside, and no areas were identified for minke whales.

Beluga Whale

Five beluga whale stocks occur in Alaska: The Eastern Chukchi Sea Stock, the Beaufort Sea Stock, the Eastern Bering Sea Stock, the Bristol Bay Stock and the Cook Inlet Stock. While each stock is unique and isolated from one another genetically and/or physically there is some crossover of the Eastern Chukchi Sea and the Beaufort Sea Stock during the late summer. The Eastern Chukchi Sea is the primary stock in the project area; however, the Beaufort Sea Stock may also occur in the project area.

Beluga whales are distributed throughout seasonally ice-covered Arctic and subarctic waters of the Northern Hemisphere both offshore and in coastal waters (Muto *et al.,* 2019). Factors including ice cover, tidal conditions, access to prey, temperature, and human interactions affect the seasonal distribution (Muto *et al.,* 2019).

The Beaufort Sea and Eastern Chukchi Sea Stocks of beluga whales migrate seasonally between the Bering and Beaufort/Chukchi Seas (Muto *et al.,* 2019). The Beaufort Sea Stock leaves the Bering Sea in early spring and move through the Chukchi Sea and into the Canadian waters of the Beaufort Sea. In late fall this stock returns to the Bering Sea. The Eastern Chukchi Sea Stock move into the Chukchi Sea and western Beaufort Sea for the summer months and migrate to the Bering Sea in the fall. Belugas from the Eastern Chukchi Sea Stock are known to move into coastal areas in late June until about mid-July (Muto *et al.,* 2019).

Acoustic surveys for beluga in the northeastern Chukchi Sea detected them in every month between April and November (Delarue *et al.,* 2011). As ice begins to break up between late May and mid-June, belugas move into Kotzebue Sound from the northwest to Sisualiq Spit and then down the Baldwin Peninsula to Escholtz Bay. Belugas continue to move throughout the Sound until winter (Northwest Arctic Borough [NAB], 2016; Audubon, 2010). Reports of belugas at Sisualiq include groups of 75–100 individuals, described as moving clockwise into the Sound. Along the west coast of Baldwin peninsula, they have been reported in groups of 200–300, culminating in groups of 1,000 or more in Eschscholtz Bay and near the Chamisso Islands (Frost *et al.,* 1983).

Belugas return to their birth areas during the summer where they give birth every two to three years. They give birth in the warmer waters during the summer where the calves, lacking blubber to protect them from cold water, can remain in warmer, shallow waters of tidal flats and estuaries. Females reach breeding age between 9 and 14 years, slightly earlier than males. Mating is believed to occur in the late winter and early spring months, either during the migration or at the wintering grounds (NMFS, 2019f). Belugas in Kotzebue Sound are known to concentrate to give birth in Eschscholtz Bay, with smaller numbers giving birth in Selawik Lake or Goodhope Bay (NAB, 2016). The NAB subsistence mapping project identified Kotzebue as an important use area for beluga feeding and birthing (both outside of the calculated Level B harassment zone for this project) as well as rearing.

Subsistence users and researchers have recently noted a significant decrease in the distribution and activity of beluga whales in the Sound. They suspect that an increase in killer whale activity within the bay may be responsible as evidence indicates that increased predation may be encouraging silence in the belugas that remain. (Huntington *et al.,* 2016b, Eurich, 2016).

Killer Whale

Killer whales occur in every ocean of the world (NMFS, 2019b); however, killer whales occur at higher densities in colder waters of both hemispheres (Muto *et al.,* 2019). Killer whales occur throughout the North Pacific and along the entire coast of Alaska. Resident killer whales have large ranges and in the North Pacific occur year-round in ice-free waters of the Chukchi and Bering Seas, the Aleutian Islands and the Gulf of Alaska (Wynne, 2017).

Five killer whale stocks occur in Alaskan waters: The Eastern North Pacific (ENP) Alaska Resident Stock; the ENP Northern Resident Stock; the ENP Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock; the AT1 Transient Stock; and the West Coast Transient Stock (Muto *et al.,* 2019). None of the stocks have ranges shown extending into the Chukchi Sea (Muto *et al.,* 2019); however, sightings of killer whales have been reported in Kotzebue Sound in the 1980s and recently in 2008 (Eruich, 2016; Lowry *et al.,* 1987). The ENP Alaska Resident Stock and the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock are the only stocks with a known range into the Bering Sea, and the transient stock's range may extend into the Chukchi Sea and Kotzebue Sound.

Killer whales have been reported hunting beluga whales and even grey or minke whales in Eschscholtz Bay and the mouth of the Buckland River as early as the 1970s (Frost *et al.,* 1983). Recently, subsistence users and researchers have noted a significant decrease in the distribution and activity of beluga whales in the Sound. They believe that an increase in killer whale activity within the Bay may be responsible as evidence indicates that increased predation may be encouraging silence in the belugas that remain (Huntington *et al.,* 2016b, Eurich 2016).

Photo identification of individuals spotted in the southern Chukchi sea during transect surveys (during which at least 37 individuals were spotted six times) identified transient type killer whales. Based on reports of predation of belugas and harbor porpoises, it appears likely individuals found in the southern Chukchi Sea and Kotzebue Sound are of the transient, mammal-eating population of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock (Clarke *et al.,* 2013).

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoises range from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. NMFS currently recognizes three stocks of harbor porpoise within this range (Muto *et al.,* 2019). The Bering Sea stock occurs within the project area, ranging from throughout the Aleutian Islands

and into all waters north of Unimak Pass.

The harbor porpoise frequents nearshore waters and coastal embayments throughout their range, including bays, harbors, estuaries, and fjords less than 650 feet (198 m) deep (NMFS, 2018g). The presence of harbor porpoises was detected in Kotzebue Sound between September and November and between January and March during acoustic monitoring in 2014 & 2015. Porpoises had not previously been reported under the ice in the Chukchi (Whiting *et al.,* 2019).

Bearded Seal

There are two recognized subspecies of the bearded seal: *Erignathus barbatus barbatus and E. b. nauticus.* The *E.b. nauticus* subspecies occurs in the project area and consists of two DPSs: Beringia and Okhotsk. The Alaska Stock of bearded seals is defined as the portion of the Beringia DPS found in U.S. Waters (Muto *et al.,* 2019).

Bearded seals have a circumpolar distribution and their normal range extends from the Arctic Ocean to Sakhalin Island or from 80° N to 45° N. In U.S. waters, bearded seals occur across the continental shelf throughout the Bering, Chukchi, and Beaufort Seas (Muto *et al.,* 2019).

Many bearded seals spend the winter months in the Bering Sea and then move north through the Bering Strait between late April and June. They then continue into the Chukchi Sea where they spend the summer months along the fragmented and drifting ice pack. Bearded seals have been observed in the Chukchi Sea year-round when sea ice coverage was greater than 50 percent. Juveniles may not migrate north to follow the ice, as most adults do, and may remain along the coasts of the Bering and Chukchi Seas. Apart from these juveniles, seasonal distribution appears to be correlated with the ice pack (Muto *et al.,* 2019). Bearded seals are most common in the Sound during spring, before the more aggressive spotted seals arrive and drive them from the area until the juveniles return to the sound in fall (Huntington *et al.,* 2016). Juvenile (birth-year) seals tend to remain in Kotzebue Sound near Sisualiq Spit and the mouth of the Noatak River through the summer (NAB, 2016).

Recently mapped ranges show adult bearded seals in Kotzebue Sound from March until June and returning in October and November (Audubon, 2010). The NAB (2016) has identified the project area, and more broadly, Kotzebue Sound, as a bearded seal important use area for feeding and migration. Additionally, they identified a high-density feeding area north of the project area, along Sisualiq Spit (see application, Figure 5).

Bearded seals consume a diet consisting primarily of benthic organisms such as demersal fishes and epifaunal and infaunal invertebrates (Muto *et al.,* 2019). Bearded seals feed throughout Kotzebue Sound, but prime feeding grounds are off the Chamisso Islands, where clam and shrimp are abundant (Huntington *et al.,* 2016).

The primary threat to bearded seals is a loss of sea-ice habitat due to climate change. Lack of suitable ice cover with access to shallow feeding areas during summer months during which bearded seals whelp, nurse, and molt potentially decreases food availability and increases predation rates. The potential for habitat modifications due to ocean acidification also pose a potential risk to bearded seals due to changes in prey availability, although this possibility is complex and less threatening to bearded seals due to their apparent dietary flexibility. Increases in shipping and habitat modification for development also pose a potential future risk to bearded seal survival (Muto *et al.,* 2019). Observations of low-snow years found that decreased snow protection around pupping dens left seal pups vulnerable to shore predators, such as jaegers, ravens, and fox (Huntington *et al.,* 2016).

Ringed Seal

Of five recognized subspecies of ringed seals, *P. h. hispida* is the only subspecies occurring in Alaska (Muto *et al.,* 2019). Ringed seals occur throughout Arctic waters in all ''seasonally ice-covered seas.'' In winter and early spring when sea ice is at its maximum coverage, they occur in the northern Bering Sea, in Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort Seas. Seasonal movement patterns are not well documented; however, they generally winter in the Bering and Chukchi Seas and are believed to migrate north in spring as the seasonal ice melts and retreats. Presumably, they continue moving north and spend summers in the pack ice of the northern Chukchi and Beaufort Seas. They may also appear on nearshore ice remnants in the Beaufort Sea. Movement becomes increasingly restricted in the fall as freeze-up progresses, and seals are thought move south and west from summer grounds in the Beaufort Sea along with the ice pack (Muto *et al.,* 2019).

Cooperative satellite tagging efforts between local hunting experts and biologists have found that, while ringed seals are present in Kotzebue Sound year-round, juveniles are more likely to travel long distances while adults stay closer to the Sound. Ringed seals are common in the Sound during spring before the more aggressive spotted seals arrive, driving them from the area until they return to the Sound in fall (Huntington *et al.,* 2016). Recently mapped ranges show ringed seals in Kotzebue Sound from February until June and returning in October and November (Audubon, 2010).

The NAB (2016) has identified the project area, and more broadly, Kotzebue Sound, as an important use area for ringed seal feeding. Additionally, they identified a high-density feeding area south of the project area, along the southern end of Baldwin Peninsula (see application, Figure 6).

The primary threat to ringed seals is a loss of sea-ice habitat due to climate change. Observations of low-snow years found that decreased snow protection around pupping dens left seal pups vulnerable to shore predators, such as jaegers, ravens, and fox (Huntington *et al.,* 2016). Lack of suitable ice cover with access to shallow feeding areas during summer months during which ringed seals whelp, nurse, and molt potentially decreases food availability and increases predation rates. The potential for habitat modifications due to ocean acidification also pose a potential risk to ringed seals due to changes in prey availability. Increases in shipping and habitat modification for development also pose a potential future risk to ringed seal survival (Muto *et al.,* 2019).

Spotted Seal

Spotted seals are an important resource for Alaska Native subsistence hunters. Approximately 64 Alaska Native communities in western and northern Alaska, from Bristol Bay to the Beaufort Sea, regularly harvest ice seals (Ice Seal Committee, 2016).

Spotted seals occur along the continental shelf of the Bering, Chukchi, and Beaufort Seas in Alaska. They also occur in the Sea of Okhotsk south to the western Sea of Japan and northern Yellow Sea. Spotted seals are grouped into three Distinct Population Segments (DPS) based on their breeding area: The Bering Sea DPS, the Okhotsk DPS and the Southern DPS. The Alaska Stock of spotted seals is defined as the portion of the Bering Sea DPS that is U.S. waters. The Bering Sea DPS includes breeding areas in the Bering Sea and portions of the East Siberian, Chukchi, and Beaufort Seas (Muto *et al.,* 2019).

The distribution of spotted seals correlate seasonally to the life periods when spotted seals haul out land and

when the spotted seals haul out on sea ice for whelping, nursing, breeding and molting. From the late-fall through spring, spotted seals occur where sea ice is available for them to haul out. From summer through fall, the seasonal sea ice has melted and spotted seals use land for hauling out (Muto *et al.,* 2019). An estimated 69,000–101,000 spotted seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017). In 1976 aerial surveys of spotted seals in the Bering Sea, densities ranged between 0.013 and 1.834 seals per seals per km^2 (Braham *et al.,* 1984).

Spotted seals haul out between June and December in Krusenstern Lagoon, the Noatak River delta, the tip of the Baldwin Peninsula, and Cape Espenberg (Audubon, 2010). Subsistence users report that spotted seals move into the area in July, following fish runs into the Sound and up the Noatak River (NAB, 2016). Spotted seals in the Chamisso Islands were reported in groups of up to 20, but they may reach groups of over 1,000 at Cape Espenberg (Frost *et al.,* 1983).

The NAB (2016) has identified the project area, and more broadly, Kotzebue Sound, as an important use area for spotted seal feeding, birthing, and rearing. Specifically, the project overlaps with a high-density feeding that extends from Kotzebue across the channel to Sisualiq Spit (see application, Figure 6). Additionally, NAB has identified two important haulouts, one adjacent to the project area to the south, and one north of the project area at the mouth of the Noatak River.

Ribbon Seal

Ribbon seals range from the North Pacific Ocean and Bering Sea into the Chukchi and western Beaufort Seas in Alaska. Ribbon seals occur on Bering Sea from late March to early May. From May to mid-July, the ice recedes, and ribbon seals move further north into the Bering Strait and the southern part of the Chukchi Sea (Muto *et al.,* 2019). An estimated 6,000–25,000 ribbon seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017).

Ribbon seals reach breeding age between one and five years of age and give birth to a single pup on offshore season sea ice in April and early May. Weaning of most ribbon seal pups is completed by mid-May. Mating occurs soon after weaning (NMFS, 2019h).

Ribbon seals are becoming increasingly rare in Kotzebue Sound (Huntington *et al.,* 2016) Range mapping of the ribbon seal shows them present in the project vicinity from June to December; however, they typically concentrate further offshore, outside of the Sound (Audubon, 2010).

Unusual Mortality Events (UME)

A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' Currently, there are ongoing investigations in Alaska involving gray whales and ice seals.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an Unusual Mortality Event (UME), though a cause has not yet been determined. More information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast.*

Since June 1, 2018, elevated ice seal strandings have occurred in the Bering and Chukchi seas in Alaska. This event has been declared an Unusual Mortality Event (UME), though a cause has not yet been determined. More information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska.*

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 based on 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 4.

TABLE 4—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. Nine marine mammal species (five cetacean and four phocid pinniped species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* gray whale and minke whale), two are classified as mid-frequency cetaceans (*i.e.,* beluga whale and killer whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

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

In-water construction activities associated with the project would include vibratory pile driving and pile removal and impact pile driving. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than one second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS, 2018). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

The likely or possible impacts of Crowley's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from Crowley's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving and removal noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive),

likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (Tursiops truncatus), beluga whale (Delphinapterus leucas), harbor porpoise (Phocoena phocoena), and Yangtze finless porpoise (Neophocoena asiaeorientalis)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (Phoca largha) and ringed (Pusa hispida) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires vibratory pile driving in this project. There would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. 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).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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.

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

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

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

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, 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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

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

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. Occasionally individual seals haul out on beach areas northeast of the project site. However, as noted previously, anticipated source levels for airborne noises are not anticipated to exceed disturbance thresholds for non-harbor seal pinnipeds beyond the 10-meter shutdown zone that will be implemented for all activities, so we do not expect Level B harassment takes due to airborne sounds. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

Crowley's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal

habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During vibratory pile driving, elevated levels of underwater noise would ensonify the area where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

In-Water Construction Effects on Potential Foraging Habitat

Crowley's project involves installing a new sheet pile bulkhead on the water ward side of the existing, degrading dock. The total seafloor area affected from installing the new bulkhead is a very small area compared to the vast foraging area available to marine mammals in Kotzebue.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is possible. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Kotzebue Sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed (and removed in the case of the temporary templates). The sediments on the sea floor will be disturbed during pile driving; however, suspension will be brief and localized and is unlikely to measurably affect marine mammals or their prey in the area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Impacts to potential foraging habitat are expected to be temporary and minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey

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

The most likely impact to fish from pile driving activities at the project site would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of Crowley's project. However, studies show that crustaceans, such as euphausiid and copepod prey species, are not particularly sensitive to noise, including loud noises from operation of seismic airguns (Wiese 1996). While these prey species do use sound for important behaviors, including predator detection (Chu *et al.,* 1996), we expect that the vibratory pile driving noise from Crowley's project would be inconsequential to invertebrate populations.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish or invertebrate habitat, or populations of fish or invertebrate species. Thus, 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 be by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS for individual marine mammals resulting from exposure to acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we

describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

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

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa rms (microPascal, root mean square) for continuous (*e.g.,* vibratory pile-driving) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Crowley's proposed project includes the use of continuous (vibratory pile driving) sources only, and therefore the 120dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria 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). Crowley's proposed project includes the use of non-impulsive (vibratory pile driving) sources.

These thresholds are provided in Table 5. 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 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset Acoustic Thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 52.5 km^2 (20.3 mi^2), and the calculated distance to the farthest behavioral harassment isopleth is approximately 5.2 km (2.0 mi).

The project includes vibratory pile installation and removal. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in Table 6. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 6—SOUND SOURCE LEVELS FOR PILE DRIVING

Pile size	Source level (dB RMS SPL at 10m)	Literature source
Template Piles (18″ pipe piles) [a]	158.0	Pritchard Lake Pumping Plant, 2014 [b]
Alternate Template Piles (14″ H piles) [a]	158.8	URS Corporation, 2007 [c]
Anchor Piles (14″ H piles) [b]	158.8	URS Corporation, 2007 [c]
Sheet Piles	160.7	PND, 2016

[a] As noted in the *Detailed Description of Specific Activity* section, Crowley has not determined the exact type of template pile they will use. As such, we conservatively conducted the impact analysis with the maximum potential pile sizes that they may choose to use.
[b] Source level is the average of three 18-inch pipe piles installed at Pritchard Lake Pumping Plant. Data originally provided by Illingworth and Rodkin, Inc. and accessed in Caltrans, 2005.
[c] Port of Anchorage Test Pile Driving Program. Accessed in Caltrans, 2015. The applicant averaged the vibratory installation levels from Table I.4–9, normalized to a consistent 10-foot distance. The applicant rejected any source levels more than one standard deviation from the average (Piles 2 and 12 Down).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log10 (R1/R2),$$

where

TL = transmission loss in dB
B = transmission loss coefficient
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Crowley's Kotzebue dock are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 7—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

(All calculations were completed in User Spreadsheet tab A.1: Vibratory Pile Driving with a weighting factor adjustment of 2.5kHz.)

	Template piles (18-in pipe pile)	Alternate template piles (14-in H-piles)	Anchor piles (14-in H-piles)	Sheet piles
Source Level (RMS SPL)	158	158.8	158.8	160.7
Number of Piles within 24-h Period	10	10	10	9
Duration to Drive a Single Pile (minutes)	10	10	10	10
Propagation (xLogR)	15	15	15	15
Distance From Source Level Measurement (m)	10	10	10	10

TABLE 8—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS.

Activity	Level A harassment zone (m)					Level B harassment zone (m) [a]
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds	
Template Piles (18-in Pipe Pile)	6	1	9	4	<1	3415
Alternate Template Piles (14-in H-piles)	7	1	10	4	<1	3861
Anchor Piles (14-in H-piles)	7	1	10	4	<1	3861
Sheet Piles	9	1	13	5	<1	5168

[a] All Level B harassment zones were calculated using practical spreading (15logR) and a 120dB re 1 μPa rms threshold.

TABLE 9—ESTIMATED AREA ENSONIFIED ABOVE THE LEVEL B HARASSMENT TAKE THRESHOLD, AND ESTIMATED DAYS OF CONSTRUCTION FOR EACH ACTIVITY

(The estimated days of construction for each activity include a 10 percent contingency period to account for potential construction delays.)

Pile size	Estimated area ensonified above level B harassment take threshold (km^2)	Estimated duration (days)
Template Piles (18-in Pipe Pile)	24.8	[a] 37
Alternate Template Piles (14-in H-piles)	32.1	[a] 37
Anchor Piles (14-in H-piles)	32.1	2
Sheet Piles	52.5	48
All Activities		87

[a] Includes both installation and removal.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate.

Gray Whale

Gray whales were reported as present and feeding (sometimes in large numbers) in Kotzebue Sound, and a gray whale was harvested by whale hunters at Sisualiq in 1980 (Frost *et al.,* 1983). Additionally, between 2010 and 2019, there were five reports of gray whale strandings within inner Kotzebue Sound, including one in Hotham Inlet. An additional unidentified large whale was reported stranded south of Cape Blossom in 2018 (Savage, pers. comm. 2019). NMFS was unable to locate data describing frequency of gray whale occurrence, group size, or density within the project area.

Crowley plans to construct 14 cells in the proposed dock, and construction of each is expected to require approximately one week; however, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances. NMFS expects that a gray whale or group of gray whales may enter the project area periodically throughout the duration of the construction period, averaging one gray whale per week. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to issue 15 Level B harassment takes of gray whale.

The largest Level A harassment zone for low-frequency cetaceans extends 8.5m from the source during vibratory pile driving of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, especially in combination with the already low frequency of gray whales entering the area, is expected to eliminate the potential for Level A harassment take of gray whale. Therefore, Crowley did not request Level A harassment takes of gray whale, nor is NMFS is proposing to authorize any.

Minke Whale

Minke whales were reported as sometimes present in Kotzebue Sound during the summer months and two individuals beached in the mouth of the Buckland River in autumn during the late 1970s (Frost *et al.,* 1983). NMFS was unable to locate additional, more recent data describing frequency of minke whale occurrence, group size, or density within the project area.

Crowley plans to construct 14 cells in the proposed dock, and construction of each is expected to require approximately one week; however, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances. NMFS estimates that a minke whale may enter a Level B harassment zone every other week throughout the duration of the construction period. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to issue eight Level B harassment takes of minke whale.

The largest Level A harassment zone for low-frequency cetaceans extends 8.5m from the source during vibratory pile driving of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, especially in combination with the already low likelihood of minke whales entering the area, are expected to eliminate the potential for Level A harassment take of minke whale. Therefore, Crowley did not request Level A harassment takes of minke whale, nor is NMFS is proposing to authorize any.

Beluga Whale

Reports of belugas at Sisualiq Spit, directly across from Kotzebue, include groups of 75–100 individuals, described as moving clockwise into the Sound. Along the west coast of Baldwin peninsula, they have been reported in groups of 200–300, culminating in groups of 1,000 or more in Eschscholtz Bay and near the Chamisso Islands (Frost *et al.,* 1983).

Beluga whales from the Beaufort Sea and Eastern Chukchi Sea stocks have the potential to be taken by Level B harassment. Crowley estimates that 100 beluga whales may be taken, by Level B harassment, on each project day, for a total of 8,700 Level B harassment takes (100 beluga whales × 87 estimated in-water work days = 8,700 Level B harassment takes). NMFS expects that this is a conservative estimate; however, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to issue 8,700 Level B harassment takes of beluga whale.

The largest Level A harassment zone for mid-frequency cetaceans extends 0.8m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of beluga whale. Therefore, takes of beluga whale by Level A harassment have not been requested, and are not proposed to be authorized.

Killer Whale

Photo identification of individuals spotted in the southern Chukchi sea during transect surveys (during which at least 37 individuals were spotted six times) identified transient type killer whales. Sightings reported included two sightings of 14 whales each in July, 3 sightings of 18 whales each in August, and one sighting of 5 whales in September, with an average group size of 15 animals (Clarke *et al.,* 2013).

Due to Crowley's project's remote location at the fringes of the known range of the stock, it is unlikely that more than one or two pods would be located in the region during construction. Crowley conservatively estimates, and NMFS agrees, that 15 Gulf of Alaska, Aleutian Islands, and Bering Sea Transient killer whales may be present in the Level B harassment zone on a maximum of 25 percent of project days, given the transient nature of the animals. Therefore, NMFS proposes to authorize Level B harassment take of 15 individuals on 22 project days (25% of total expected days (87 days)) for a total of 330 Level B harassment takes.

The largest Level A harassment zone for mid-frequency cetaceans extends 0.8m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of killer whale. Therefore, takes of killer whale by Level A harassment were not requested, and are not proposed to be authorized.

Harbor Porpoise

The harbor porpoise frequents nearshore waters and coastal embayments throughout their range, including bays, harbors, estuaries, and fjords less than 650 feet (198 m) deep (NMFS, 2019g). Harbor porpoises have been detected in Kotzebue Sound between September and November and between January and March during acoustic monitoring in 2014 & 2015. Porpoises had not previously been reported under the ice in the Chukchi (Whiting *et al.,* 2019). NMFS was unable to locate a density or group size for Kotzebue Sound, and therefore used the maximum harbor porpoise group size (four animals) from the Distribution and Relative Abundance of Marine Mammals in the Eastern Chukchi and Western Beaufort Seas, 2018 Annual Report (Clarke *et al.,* 2019). NMFS estimates that approximately two groups of four harbor porpoises may be present during each week of construction for a total of 120 Level B harassment takes of harbor porpoise (4 animals in a group × 2 groups per week × 15 weeks = 120 Level B harassment takes).

The largest Level A harassment zone for high-frequency cetaceans extends 12.6m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the small size of the Level A harassment zones, and the associated duration component, is expected to eliminate the potential for Level A harassment take of harbor porpoise. Therefore, Crowley did not request takes of harbor porpoise by Level A harassment, nor is NMFS proposing to authorize any.

Bearded Seal

Aerial surveys of ringed and bearded seals in the Eastern Chukchi Sea in May and June reported relatively few bearded seals within inner Kotzebue Sound, as bearded seals typically congregate on offshore ice rather than nearshore. In 1976 aerial surveys of bearded seals in the Bering Sea, densities ranged between 0.006 and 0.782 seals per seals per km^2. Bearded seals were typically spotted in groups of one to two individuals with occasional larger groupings in denser areas (Braham *et al.,* 1984). Bengtson *et al.,* 2005 includes bearded seal densities calculated from aerial surveys in May and June 1999 and May 2000, however, the density for the project area was zero in both years. However, data shows that at least some bearded seals are nearby from June to September, and could potentially enter the project area (Bengtson *et al.,* 2005, Quakenbush *et al.,* 2019). Therefore, NMFS determined that 0.782 (Braham *et al.,* 1984) is the most appropriate density, considering those available.

Given the known association between ice cover and bearded seal density, NMFS estimates that bearded seal density will be highest when the project begins in June, and will taper off as the ice melts (Quakenbush *et al.,* 2019). As such, NMFS has estimated take for the month of June separately from the remainder of the expected project period (July through September).

As noted in the *Detailed Description of Specific Activity* section, Crowley will construct the dock upgrade one cell at a time, with construction of each cell requiring approximately one week. In an effort to separate out work that will occur in June, NMFS made several assumptions: (1) NMFS assumes that the best density available is 0.782 (Braham *et al.,* 1984); (2) While there are 14 cells and construction of each is expected to require approximately one week, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances; (3) NMFS assumes that each cell will require the same number of each pile type, and therefore the same duration for installation (and removal of template piles), despite known differences in design among some cells; and (4) NMFS assumes that construction will require approximately 87 in-water workdays.

NMFS calculated the assumed days per cell for each activity (Table 10) by considering the proportion of the assumed project days for each activity out of the 87 total project days in comparison to the assumed days per cell out of the expected duration of seven days to complete a cell (see assumption (2), above). (*i.e.* Assumed Project Days/87 days = Assumed Days per Cell/7 days). NMFS calculated the Anticipated Days in June by multiplying the Assumed Days per Cell × 4 weeks of June.

NMFS calculated take for each activity during the month of June (Table 10) by multiplying the anticipated days in June × area of Level B harassment zone (km^2) × density (0.782 km^2). Given these assumptions and takes per activity (Table 10), NMFS estimates approximately 1045 bearded seal takes in the month of June (sum of Takes per Activity in Table 10).

TABLE 10—NMFS ASSUMPTIONS FOR BEARDED SEAL JUNE TAKE ESTIMATE

Pile type	Assumed project days	Assumed days per cell	Anticipated days in June	Area of level B harassment zone (km^2)	Take per activity
Template Piles [a]	[b] 37	3.0	12	32.1	385
Anchor Piles (14-in H-piles)	2	0.2	0.8	32.1	20

TABLE 10—NMFS ASSUMPTIONS FOR BEARDED SEAL JUNE TAKE ESTIMATE—Continued

Pile type	Assumed project days	Assumed days per cell	Anticipated days in June	Area of level B harassment zone (km²)	Take per activity
Sheet Piles	48	3.9	15.6	52.5	640

[a] Conservatively assumes 14-inch H-piles rather than 18-inch pipe piles.
[b] Includes installation and removal.

During the months of July to September, NMFS expects that the number of bearded seals in the project area will be much lower due to the lack of sea ice. NMFS considered the relative number of ringed and bearded seals locations reported in Quakenbush *et al.,* (2019, Figures 7, 30, and 55), and estimates that approximately twice as many bearded seals (two to four) are likely to occur in the project area than ringed seals (one to two), because tagging studies show that nearly all of the ringed seals spend the summer north of Point Hope (Figures 30 and 55). NMFS estimates that approximately 14 Level B harassment takes of bearded seals takes may occur each week. Given the assumed 15 weeks of construction, and four assumed weeks of construction in June, NMFS estimates that Crowley will conduct pile driving activities for 11 weeks from July through September. To estimate bearded seal takes during that period, NMFS multiplied the estimated weekly take estimate by the estimated number of weeks of construction, for a total of 154 Level B harassment takes from July to September (14 bearded seals × 11 weeks of construction = 154 Level B harassment takes).

Therefore, throughout the entire project period, NMFS estimates, and proposes to authorize 1,199 Level B harassment takes of bearded seals (1,045 estimated takes in June + 154 estimated takes from July to September = 1,199 Level B harassment takes).

The largest Level A harassment zone for phocids extends 5.2m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of bearded seals. Therefore, takes of bearded seal by Level A harassment have not been requested, and are not proposed to be authorized.

Ringed Seal

Ringed seals are distributed throughout Arctic waters in all ''seasonally ice-covered seas.'' In winter and early spring when sea ice is at its maximum coverage, they occur in the northern Bering Sea, in Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort Seas. In years with particularly extensive ice coverage, they may occur as far south as Bristol Bay (Muto *et al.,* 2019). In 1976 aerial surveys of ringed seals in the Bering Sea, densities ranged between 0.005 and 0.017 seals per seals per km² (Braham *et al.,* 1984). Surveys of seals in their breeding grounds in the Sea of Okhotsk in 1964 found densities of 0.1 to 2 seals per km² (CNRC, 1965). Bengtson *et al.,* 2005 includes ringed seal densities calculated from aerial surveys in May and June 1999 and May 2000. Densities for the waters surrounding Kotzebue ranged from 3.82 (2000) to 5.07 (1999).

Given the known association between ice cover and ringed seal density, NMFS estimates that ringed seal density will be highest when the project begins in June, and will taper off as the ice melts (Quakenbush *et al.,* 2019). As such, NMFS has estimated take for the month of June separately from the remainder of the expected project period (July through September).

As noted in the *Detailed Description of Specific Activity* section, Crowley will construct the dock upgrade one cell at a time, with construction of each cell requiring approximately one week. In an effort to separate out work that will occur in June, NMFS made several assumptions: (1) NMFS assumes that the best density available 5.07 animals/km² (Bengtson *et al.,* 2005); (2) While there are 14 cells and construction of each is expected to require approximately one week, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances; (3) NMFS assumes that each cell will require the same number of each pile type, and therefore the same duration for installation (and removal of template piles), despite known differences in design among some cells; and (4) NMFS assumes that construction will require approximately 87 in-water workdays.

NMFS calculated the assumed days per cell for each activity (Table 11) by considering the proportion of the assumed project days for each activity out of the 87 total project days in comparison to an assumed days per cell out of the expected duration of seven days to complete a cell (see assumption (2), above). (*i.e.* Assumed Project Days/87 days = Assumed Days per Cell/7 days). NMFS calculated the Anticipated Days in June by multiplying the Assumed Days per Cell × 4 weeks of June.

NMFS calculated take for each activity during the month of June (Table 11) by multiplying the anticipated days in June × area of Level B harassment zone (km²) × density (5.07/km²). Given these assumptions (Table 11), NMFS estimates 6,235 ringed seal takes in the month of June (sum of Takes per Activity in Table 11).

TABLE 11—NMFS ASSUMPTIONS FOR RINGED SEAL JUNE TAKE ESTIMATE

Pile type	Assumed project days [b]	Assumed days per cell	Anticipated days in June	Area of level B harassment zone (km²)	Take per activity
Template Piles [a]	[b] 37	3.0	12	32.1	1,953
Anchor Piles (14-in H-piles)	2	0.2	0.8	32.1	130
Sheet Piles	48	3.9	15.6	52.5	4,152

[a] Conservatively assumes 14-inch H-piles rather than 18-inch pipe piles.
[b] Includes installation and removal.

During the months of July to September, NMFS expects that the number of ringed seals in the project area will much lower due to the lack of sea ice. NMFS considered the relative number of ringed and bearded seals locations reported in Quakenbush *et al.* (2019, Figures 30, and 55), and estimates that approximately twice as many bearded seals (two to four) are likely to occur in the project area than ringed seals (one to two). NMFS estimates that approximately seven Level B harassment takes of ringed seals takes may occur each week. Given the assumed 15 weeks of construction, and four assumed weeks of construction in June, NMFS estimates that Crowley will conduct pile driving activities for 11 weeks from July through September. To estimate ringed seal takes during that period, NMFS multiplied the estimated weekly take estimate by the estimated number of weeks of construction, for a total of 77 Level B harassment takes (7 ringed seals × 11 weeks of construction = 77 Level B harassment takes from July to September).

Therefore, throughout the entire project period, NMFS estimates, and proposes to authorize 6,312 Level B harassment takes of ringed seals (6,235 estimated takes in June + 77 estimated takes from July to September).

The largest Level A harassment zone for phocids extends 5.2m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of ringed seals. Therefore, takes of ringed seal by Level A harassment have not been requested, and are not proposed to be authorized.

Spotted Seal

From the late-fall through spring, spotted seals are distributed where sea ice is available for hauling out. From summer through fall, the seasonal sea ice has melted and spotted seals haul out on land (Muto *et al.,* 2019). An estimated 69,000–101,000 spotted seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017). In 1976 aerial surveys of spotted seals in the Bering Sea, densities ranged between 0.013 and 1.834 seals per seals per km² (Braham *et al.,* 1984). According to Audubon (2010), spotted seals haul out between June and December in Krusenstern Lagoon, the Noatak River delta, the tip of the Baldwin Peninsula, and Cape Espenberg. Subsistence users report that spotted seals move into the area in July, following fish runs into the Sound and up the Noatak River (NAB, 2016). Spotted seals in the Chamisso Islands were reported in groups of up to 20, but they may reach groups of over 1,000 at Cape Espenberg (Frost *et al.,* 1983).

To calculate estimated Level B harassment takes, Crowley used a density of 1.834 spotted seals/km² (Braham *et al.,* 1984). NMFS was not able to locate information to support a separate take calculation for June from the remainder of the work period, as was done for the other ice seals. Therefore, NMFS calculated Level B harassment takes by multiplying 1.834 spotted seals/km² × the area ensonified above the Level B harassment threshold during each pile driving activity × estimated days of construction for each activity (Table 9) for a total of 6,917 Level B harassment takes. Given that the Braham *et al.,* 1984 density is from the Bering Sea, and Boveng *et al.,* 2017 states that spotted seals from the Bering Sea use the Chukchi Sea during the open water period, NMFS expects that this Bering Sea density provides an appropriate estimate for Kotzebue during the project period. Additionally, the estimated group size of up to 20 individuals at the Chamisso Islands is over 50km from the project site, and NMFS expects that the count of 1,000 animals at Cape Epsenberg (Frost *et al.,* 1983) is an outlier. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to issue 6,917 Level B harassment takes of spotted seal.

The largest Level A harassment zone for phocids extends 5.2m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of spotted seals. Therefore, takes of spotted seal by Level A harassment have not been requested, and are not proposed to be authorized.

Ribbon Seal

Ribbon seals range from the North Pacific Ocean and Bering Sea into the Chukchi and western Beaufort Seas in Alaska. They occur in the Bering Sea from late March to early May. From May to mid-July the ice recedes, and ribbon seals move further north into the Bering Strait and the southern part of the Chukchi Sea (Muto *et al.,* 2019). An estimated 6,000–25,000 ribbon seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017). In 1976 aerial surveys of ribbon seals in the Bering Sea, maximum reported densities were 0.002 seals per seals per km² (Braham *et al.,* 1984). Range mapping of the ribbon seal shows them present in the project vicinity from June to December; however, they typically concentrate further offshore, outside of the Sound (Audubon, 2010).

To calculate estimated Level B harassment takes, Crowley used a density of 0.002 ribbon seals/km² (Braham *et al.,* 1984). NMFS recognizes that this density estimate is from the Bering Sea, but was unable to locate more local or recent data describing frequency of ribbon seal occurrence, group size, or density within the project area. Crowley calculated a Level B harassment take estimate by multiplying 0.002 ribbon seals/km² × the area ensonified above the Level B harassment threshold during each pile driving activity × estimated days of construction for each activity, for a total of eight Level B harassment takes. Given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to issue eight Level B harassment takes of ribbon seal.

The largest Level A harassment zone for phocids extends 5.2m from the source during vibratory installation of the sheet piles (Table 8). Crowley is planning to implement a 10m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of ribbon seals. Therefore, takes of ribbon seal by Level A harassment have not been requested, and are not proposed to be authorized.

TABLE 12—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Level B harassment take	Stock abundance	Percent of stock
Gray Whale	Eastern North Pacific	15	26,960	.06

TABLE 12—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK—Continued

Common name	Stock	Level B harassment take	Stock abundance	Percent of stock
Minke Whale	Alaska	8	N/A	N/A
Killer Whale	Gulf of Alaska, Aleutian Islands, and Bering Sea Transient	330	587	56.2
Beluga Whale	Beaufort Sea	8,700	39,258	22.1
	Eastern Chukchi Sea		20,752	4.3
Harbor Porpoise	Bering Sea	120	48,215	0.2
Bearded Seal	Alaska	1,199	N/A	N/A
Ringed Seal	Alaska	6,312	N/A	N/A
Spotted Seal	Alaska	6,917	461,625	1.5
Ribbon Seal	Alaska	8	184,697	0.004

Potential Effects of Specified Activities on Subsistence Uses of Marine Mammals

The activity may impact the availability of the affected marine mammal stocks or species for subsistence uses. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Proposed Mitigation section. Last, the information from this section and the Proposed Mitigation section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

Residents of Qikiqtaġruq (Kotzebue), Ipnatchiaq (Deering), Nunatchiaq (Buckland), Nuataaq (Noatak), and Nuurvik (Noorvik) harvest marine mammals from Kotzebue Sound during all seasons. Traditional harvests include bowhead and beluga whales and all four seal species discussed in this notice, as well as subsistence fishing. Additionally, a gray whale harvest at Sisualiq Spit was reported to the Alaska Department of Fish & Game (ADF&G) in 1980 (Frost *et al.,* 1983).

Beluga whales are routinely hunted throughout the Sound in spring and summer (NAB, 2016). Traditional hunting grounds for beluga (sisuaq) are directly across from Kotzebue at Sisualiq Spit (Huntington *et al.,* 2016). Recently, regional hunters have reported a significant change in the presence of beluga whales in the Sound. There are no longer sufficient whales to make a traditional, coordinated drive hunt on Sisualiq Spit, and Belugas are no longer common in Eschscholtz Bay, either. Hunters attribute the decrease to a variety of factors, including engine noise (both air and vessel traffic have increased), lack of coordinated hunts, and killer whale pressure (Huntington *et al.,* 2016b). Impacts from Crowley's project are not expected to reach the traditional beluga harvest grounds.

Bowhead whales are harvested mostly by the residents between Kivalina and Point Hope (NAB, 2016). We do not expect Crowley's project to impact bowhead whales, given that the whales are primarily targeted outside of the Sound, and the project is not expected to impact their prey or migratory behavior.

Bearded and ringed seals are the most commonly harvested seals in the Kotzebue Sound area (Huntington *et al.,* 2016). Bearded seals are the primary focus for Kotzebue Sound hunters in the spring, with harvests occurring near Cape Krusenstern and Goodhope Bay. Hunt effort for bearded seals appears equal in spring and fall (NAB, 2016). In thinner ice years, there is less suitable denning habitat for ice seals and more danger for seal hunters to camp out and to approach the seals. Hunters report that there is no longer ice for hunting bearded seals into July, as there was in the 1980s.

Huntington *et al.,* (2016) report that bearded and ringed seals are hunted from ice breakup until the spotted seals arrive and chase them from the area. The NAB (2016) also reported harvest efforts for spotted and ribbon seals in Kotzebue Sound. With the exception of bearded seals, there were limited hunting efforts in the spring (March–May) with nearly twice as much harvest effort in the fall (September–November) and significantly less hunting in summer (June–August).

Ribbon seals have always been infrequent in Kotzebue Sound, but are becoming increasingly more rare (Huntington *et al.,* 2016). They are not harvested for human consumption, but their hides are harvested and meat and blubber used as dog food. Generally, hunters reported that there is less need for seal hunting than in the past because they are needed less for sled dog feed and sealskin storage containers (Huntington *et al.,* 2016).

Project activities mostly avoid traditional ice seal harvest windows (noted above) and are generally not expected to negatively impact hunting of seals. However, as noted above, some seal hunting does occur throughout the project period. The project could deter target species and their prey from the project area, increasing effort required for a successful hunt. Construction may also disturb beluga whales, potentially causing them to avoid the project area and reducing their availability to subsistence hunters as well. Additionally, Crowley's dock provides essential water access for subsistence harvests, so construction at the dock has the potential to reduce access for subsistence hunters.

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. 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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, Crowley will employ the following mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

Additionally, Crowley is required to implement all mitigation measures described in the biological opinion (not yet issued).

The following mitigation measures would apply to Crowley's in-water construction activities.

Establishment of Shutdown Zones—Crowley will establish a 10-meter shutdown zone for all construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

The placement of protected species observers (PSOs) during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level B Harassment—Crowley will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 120 dB rms threshold during vibratory pile driving). Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Kotzebue will allow PSOs to observe marine mammals within the Level B harassment zones. However, due to the large Level B harassment zones (Table 8), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, work can commence and continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

Crowley provided a draft Plan of Cooperation (POC) to affected parties on November 12, 2019. It includes a description of the project, community outreach that has already been conducted, and project mitigation measures. Crowley is working on their plan for continuing coordination with subsistence communities throughout the project duration. The POC is a live document and will be updated

throughout the project review and permitting process.

Crowley will coordinate with local subsistence groups to avoid or mitigate impacts to beluga whale harvests. Additionally, project activities avoid traditional ice seal harvest windows, and are not expected to negatively impact hunting of bearded or ringed seals. Crowley will coordinate with local communities and subsistence groups throughout construction to avoid or mitigate impacts to ice seal harvests.

Based on our evaluation of Crowley's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated February 2020. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience. PSOs may also substitute Alaska native traditional knowledge for experience. (NMFS recognizes that PSOs with traditional knowledge may also have prior experience, and therefore be eligible to serve as the lead PSO.); and
- Crowley must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Three PSOs will be present during all pile driving/removal activities. A PSO will be have an unobstructed view of all water within the shutdown zone. All three PSOs will observe as much of the Level B harassment zone as possible. PSO locations are as follows (also included in Figure 2 of the 4MP, dated February 2020):

(1) At or near the site of pile driving;

(2) Along the shore, north of the project site; and

(3) Along the shore, south of the project site.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations;

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the Alaska regional stranding coordinator (907–586–7209) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

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.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed where the proposed activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state that upon receipt of a complete monitoring plan, and at its discretion, NMFS will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan (50 CFR 216.108(d)).

NMFS established an independent peer review panel (PRP) to review Crowley's Monitoring Plan for the proposed project in Kotzebue. NMFS provided Crowley's monitoring plan to the PRP and asked them to answer the following questions:

1. Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated below? If not, how should the objectives be modified to better accomplish the goals below?

2. Can the applicant achieve the stated objectives based on the methods described in the plan?

3. Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish the objectives?

4. Are there techniques not proposed by the applicant (*i.e.,* additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish the objectives?

5. What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (*i.e.,* 90-day report and comprehensive report)?

The PRP met in March 2020 and will provide a final report to NMFS containing recommendations for Crowley's monitoring plan in April 2020. The PRP's full report will be posted on NMFS' website when available, at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* NMFS will consider all of the recommendations made by the PRP, and will incorporate appropriate changes in to the monitoring requirements of the IHA, if issued. Additionally, NMFS will publish the PRP's findings and recommendations in the **Federal Register** notice announcing the final IHA, if issued.

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, the majority of our analyses apply to all of the species listed in Table 12, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if

individuals of these species are present in zones ensonified above the thresholds for Level B harassment, identified above, when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. No mortality or serious injury is anticipated given the nature of the activity, and no Level A harassment is anticipated due to Crowley's construction method and planned mitigation measures (see Proposed Mitigation section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and removal, although even this reaction has been observed primarily only in association with impact pile driving, which Crowley does not plan to conduct. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is expected to occur over just 87 in-water work days, with an estimated 100 minutes of pile driving per work day over a period of approximately 11 hours.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. We do not expect pile driving activities to have significant consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and invertebrates, are not expected to cause significant or long-term negative consequences.

As previously noted, the NAB subsistence mapping project identified Kotzebue Sound as an important use area for beluga feeding, birthing, rearing, and migration (Figure 8 in Crowley's application, originally from NAB, 2016). While the locations identified as important birthing areas do not overlap with calculated Level B harassment zone, the feeding, rearing, and migration important areas directly overlap with the Level B harassment zone. The area of the feeding, rearing, and migration important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable beluga whale habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Therefore, take of beluga whales using the feeding, rearing, and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

The NAB (2016) subsistence mapping project also identified Kotzebue Sound as an important use area for bearded seal feeding and migration (Figure 5 in Crowley's application). The area of the feeding and migratory important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable bearded seal habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Additionally, as previously described, we expect that most bearded seals will have left the area during the project period. Therefore, take of bearded seal using the feeding and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

The NAB (2016) subsistence mapping project also identified Kotzebue Sound as an important use area for ringed seal feeding, including a high density feeding area south of the project area (Figure 6 in Crowley's application). The area identified as important for high density feeding does not overlap with the calculated Level B harassment zone. The area of the feeding important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable ringed seal habitat outside of these important use areas. Additionally, as previously described, NMFS expects that most ringed seals will have left the area during the project period. Therefore, take of ringed seal using the feeding and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

Additionally, the NAB subsistence mapping project identified Kotzebue Sound as an important use area for spotted seal feeding, birthing, rearing, and migration, as well as important haul outs (Figure 9 in Crowley's application, originally from NAB, 2016). While the locations identified as important birthing areas do not overlap with calculated Level B harassment zone, the feeding, rearing, and migration important use areas directly overlap with the Level B harassment zone, and one key haulout is adjacent to the Level B harassment zone. However, the area of the feeding (including high density feeding), rearing, and migration important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use area and the overall area of suitable spotted seal habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Therefore, take of spotted seals using the feeding and migratory important use areas and important haul outs, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

As previously described, UMEs have been declared for both gray whales and ice seals, however, neither UME provides cause for concern regarding population-level impacts to any of these stocks. For gray whales, the estimated abundance of the Eastern North Pacific stock is 26,960 (Carretta *et al.,* 2019) and the stock abundance has increased approximately 22% in comparison with 2010/2011 population levels (Durban et al., 2017). For bearded seals, the minimum estimated mean M/SI (557) is well below the calculated partial PBR (8,210). This PBR is only a portion of that of the entire stock, as it does not included bearded seals that overwinter and breed in the Beaufort or Chukchi Seas (Muto *et al.,* 2019). For the Alaska

stock of ringed seals and the Alaska stock of spotted seals, the M/SI (863 and 329, respectively) is well below the PBR for each stock (5,100 and 12,697, respectively) (Muto *et al.,* 2019). No injury, serious injury, or mortality is expect or proposed for authorization, and Level B harassment takes of gray whale and ice seal species will be reduced to the level of least practicable adverse impact through the incorporation of the proposed mitigation measures. As such, the proposed Level B harassment takes of gray whales and ice seals would not exacerbate or compound upon the ongoing UMEs.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury or PTS is anticipated or authorized;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species; and
- While impacts would occur within areas that are important for feeding, birthing, rearing, and migration for multiple stocks, because of the small footprint of the activity relative to the area of these important use areas, and the scope and nature of the anticipated impacts of pile driving exposure, we do not expect impacts to the reproduction or survival of any individuals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of instances of take for each species or stock proposed to be taken as a result of this project is included in Table 12. Our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment. The number of animals proposed to be taken for the Eastern North Pacific gray whale stock, Alaska minke whale stock, Beaufort Sea and Eastern Chuckchi Sea beluga whale stocks, Bering Sea harbor porpoise stock, and Alaska stocks of bearded, ringed, spotted and ribbon seals stocks discussed above would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

For beluga whale, the percentages in Table 12 also conservatively assume that all takes of beluga whale will be accrued to a single stock, when multiple stocks are known to occur in the project area. Additionally, we expect that most beluga whale takes will be of the same individuals, given that the calculated Level B harassment zone is an extremely small portion of each stock's overall range (Muto *et al.,* 2019a) and, therefore, the percentage of the stock taken is expected to be lower than that indicated in Table 12.

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,232 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.,* 2006). Given seven proposed takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted.

For the Alaska stock of bearded seals, a lack of an accepted stock abundance value did not allow for the calculation of an expected percentage of the population that would be affected. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), an abundance estimate is currently only available for the portion of bearded seals in the Bering Sea (Conn *et al.,* 2012). The current abundance estimate for the Bering Sea is 301,836 bearded seals. Given the proposed 1,199 Level B harassment takes for the stock, comparison to the Bering Sea estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows less that, at most, less than one percent of the stock is expected to be impacted.

The Alaska stock of ringed seals also lack an accepted stock abundance value, and therefore, we were not able to calculate an expected percentage of the population that may be affected by Crowley's project. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), the abundance estimate available, 171,418 animals, is only a partial estimate of the Bering Sea portion of the population (Conn *et al.,* 2014). As noted in the SAR, this estimate does not include animals in the shorefast ice zone, and the authors did not account for availability bias. Muto *et al.* (2019) expect that the Bering Sea portion of the population is actually much higher. Given the proposed 6,312 Level B harassment takes for the stock, comparison to the Bering Sea partial estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows less that, at most, less than 4 percent of the stock is expected to be impacted.

The expected take of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whales, as a proportion of the population abundance, would be 58.8 percent if all takes were assumed to occur for unique individuals. However, it is unlikely that all takes would occur to unique individuals. The stock's SAR shows a distribution that does not extend north beyond the Bering Sea. Therefore, we expect that the individuals in the project area represent a small portion of the stock, and that it is likely that there will be multiple takes of a small number of individuals within the project area. As such, it is highly unlikely that more than one-third of the stock would be exposed to the construction noise.

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

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR

216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Bowhead whale are primarily targeted outside of the Sound, and the project is not expected to impact any prey species or migratory behavior. Beluga whales have been traditionally harvested in abundance at Sisualiq, and project impacts are not expected to reach traditional harvest areas. Additionally, project activities avoid traditional ice seal harvest windows. While some hunting continues throughout the summer, we do not anticipate that there would be impacts to seals that would make them unavailable for subsistence hunters. Additionally, Crowley will coordinate with local communities and subsistence groups to avoid or mitigate impacts to beluga whale and ice seal harvests, as noted in the Proposed Mitigation section.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Crowley's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Region's Protected Resources Division Office.

NMFS is proposing to authorize take of bearded seal (Beringia DPS) and ringed seal (Arctic subspecies), which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska Region 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 Crowley Fuels, LLC for conducting the Crowley Kotzebue Dock Upgrade Project in Kotzebue, Alaska 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 project. In particular, we request comment on the marine mammal density and group size information used to inform the proposed take calculation. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 23, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09040 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA126]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Alameda Marina Shoreline Improvement Project

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 Pacific Shops, Inc. (Pacific Shops) for authorization to take marine mammals incidental to the Alameda Marina Shoreline Improvement Project in Alameda, CA over two years. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-year renewals 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 29, 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.Davis@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. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* 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: Leah Davis, 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.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of IHAs) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

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

Summary of Request

On November 25, 2019, NMFS received a request from Pacific Shops, Inc. (Pacific Shops) for two IHAs to take marine mammals incidental to construction activities at the Alameda Marina in Alameda, CA over two years. The applicant expects to conduct vibratory pile removal and vibratory and impact installation during Year 1, and vibratory and impact pile installation during Year 2. The application was deemed adequate and complete on April 9, 2020. Pacific Shops' request is for take of a small number of six species of marine mammals, by Level B harassment. Neither Pacific Shops nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

The IHAs, if issued, will be effective from June 1, 2020 to May 31, 2021 for Year 1 activities, and June 1, 2021 to May 31, 2022 for Year 2 activities.

Description of Proposed Activity

Overview

Pacific Shops is proposing to conduct improvements to the Alameda Marina and its shoreline in Alameda, CA over a two-year construction period. The project will address climate resiliency and rehabilitate existing shoreline and marina facilities so that the shoreline meets current seismic resistance criteria and addresses sea level rise risk. The project will update the existing marina facilities, reconfigure some of the existing marina piers, and provide the public with more aquatic recreational opportunities. The construction activities include vibratory and impact pile driving and removal which will ensonify the Oakland Estuary over approximately 68 days in year 1, and 98 days in year 2.

Dates and Duration

Pacific Shops anticipates that construction for the Alameda Marina Shoreline Improvement Project will occur over two years. The proposed IHAs would each be effective for one year beginning June 2020 and June 2021, respectively. Pile driving and/or removal are expected to occur on up to 200 minutes per day, depending on the pile type, and will occur primarily during daylight hours. Fishery regulatory authorities recommend that Pacific Shops close off the cofferdam (see details below) during low tide, which could occur outside of daylight hours. Pacific Shops estimates that in-water construction will occur over approximately 68 days in Year 1, and 98 days in Year 2.

Specific Geographic Region

The project site is entirely within the Oakland Estuary (Estuary), in the City and County of Alameda, California. Alameda is southeast of Treasure Island, Yerba Buena Island, and the San Francisco-Oakland Bay Bridge, by approximately 3 km (1.9 mi). The Estuary is connected to the Central San Francisco Bay (Central Bay) on the west end and San Leandro Bay on the east end. From the Central Bay to the project area, the Estuary is only approximately

492 ft (150 m) wide, and is relatively shallow throughout (ranging from 50 ft (15 m) in the shipping channel to 30 ft (9 m) deep in the project area (BCDC 1994, 2018)).

The geographic, bathymetric, and ecological characteristics of the Estuary limit its use by marine mammals. The geography of the Estuary limits tidal flushing, and the industrial history of the Estuary has led to an accumulation of toxins in the sediment: substrates in the Oakland Inner Harbor and turning basin contain contaminants that are harmful to sensitive marine organisms (Shreffler *et al.* 1994). There are no eelgrass beds in the project area within the Estuary. This lack of foraging habitat along with the compromised substrate quality limit prey resources for marine mammals.

Figure 1-- Alameda Marina Shoreline Improvement Project Site

Detailed Description of Specific Activity

Pacific Shops' planned construction includes work on many components of the Marina. Please see Figures 2 and 3 in the IHA application for a detailed map of Alameda Marina and the location of proposed construction components.

Demolition Activities

During Year 1, Pacific Shops is proposing to remove several degraded wharves, piers, and pier studs (the shoreline portion of a previously removed pier), collectively referred to here as ''pile-supported structures.'' These structures include the boat elevator wharf, boat lift wharf, Pier 4 stud, Pier 6 stud, and a pier outboard of the Promenade Wharf (see Application, Figure 2). Generally, the pile-supported structures are comprised of piles supporting a wooden platform of timber joists/girders that are covered with timber deck boards. The removal methods for these pile-supported structures will all be similar, and involve removal of the deck boards, followed by the timber joists/girders and shoring beams, and finally the support piles. Deck boards will be removed by hand working from the northern end of the structure back towards the shore. Once the deck is removed, the underlying timber joists/girders will be dismantled from the estuary-side toward the landside.

Pacific Shops is proposing to remove piles associated with the pile supported structures and with Seawall 1 (Table 1). All piles will be either vibrated out or cut off at the mudline and removed. The applicant will decide in-situ whether to vibrate-out or cut off the piles depending on the condition of the pile. The applicant may first attempt to vibrate the pile out, but if it is so deteriorated that it cannot be removed, the pile will be cut it off at the mudline. Table 1 includes a summary of structures proposed for removal, and the type and number of piles to be removed. Please see Figure 2 of Pacific Shops' application for the location of each structure at Alameda Marina.

TABLE 1—SUMMARY OF PILES TO BE REMOVED WITH A VIBRATORY HAMMER IN YEAR 1

Structure	Type of pile	Number of piles
Seawall 1	16-in Timber	150
Pier 4 Stud	16-in Timber	16
Pier 6 Stud	16-in Timber	20
Boat Elevator Wharf	16-in Timber	7
	12-in Square Concrete	12
Boat Lift Wharf	16-in Timber	25
	12-in Square Concrete	7
Pier Outboard of Promenade Wharf	16-in Timber	60
Building 13 Wharf	16-in Timber	3
Building 14 Wharf	16-in Timber	20
Total	16-in Timber	301
	12-in Square Concrete	19

Pile Installation

The contractor will install sheet piles with a crane or excavator-mounted vibratory hammer to a design depth. Sheet pile installation will be conducted from both land and water. The contractor estimates that they will install approximately 20 sheet piles per day, each of which will take approximately 10 minutes (min) to install. Vibratory hammering will be conducted year-round.

The contractor will initially install all steel pipe piles with a vibratory hammer through the top soft soils until the vibration cannot advance the pile further into the substrate. In some cases, the contractor may be able to achieve final depths for steel piles using a vibratory hammer only. The contractor will use a crane or excavator-mounted impact hammer to complete pipe pile installation and drive to final depths. The contractor will use a bubble curtain during all impact driving of steel piles. Pipe pile installation will be conducted from both land and water.

The contractor will install concrete piles with an impact hammer. Concrete pile installation will be conducted from both land and water.

TABLE 2—SUMMARY OF PILES TO BE INSTALLED IN YEAR 1

Structure	Type of pile	Number of piles	Hammer type
Seawall 4	Steel Sheet Pile	149	Vibratory.
Seawall 6	Steel Sheet Pile	106	Vibratory.
Promenade Wharf	16-in Square Concrete	39	Impact.
Building 5 Wharf	16-in Square Concrete	1	Impact.
Building 13 Wharf	36-in Steel Pipe	2	Vibratory & Attenuated Impact.
	16-in Square Concrete	1	Impact.
Cofferdam	Steel Sheet Pile	[a] 214	Vibratory.
Total	Steel Sheet Pile	469	Vibratory.
	16-in Square Concrete	41	Impact.
	36-in Steel Pipe	2	Vibratory & Attenuated Impact.

[a] 107 steel sheet piles will be installed and later removed (part of cofferdam), and are accounted for in 214 of these piles, as SLs are considered to be the same for both activities. The applicant has not yet determined the exact sheet pile they will be using.

TABLE 3—SUMMARY OF PILES TO BE INSTALLED IN YEAR 2

Structure	Type of pile	Number of piles	Hammer type
Seawall 1	Steel Sheet Pile	233	Vibratory.
	Wide Flange Beam	117	Vibratory & Attenuated Impact.
Seawall 1A	Steel Sheet Pile	26	Vibratory.
	Wide Flange Beam [a]	13	Vibratory & Attenuated Impact.
Building 14 Wharf	36-in Steel Pipe	1	Vibratory & Attenuated Impact.
Headwalk	14-in Square Concrete	19	Impact.
Boat Hoist Deck	24-in Square Concrete	8	Impact.
	30-in Steel Pipe	1	Vibratory & Attenuated Impact.
Total	Steel Sheet Pile	259	Vibratory.
	Wide Flange Beam [a]	130	Vibratory & Attenuated Impact.
	30-in Steel Pipe	1	Vibratory & Attenuated Impact.
	36-in Steel Pipe	1	Vibratory & Attenuated Impact.
	14-in Square Concrete	19	Impact.
	24-in Square Concrete	8	Impact.

[a] Wide flange beams are steel beams with two parallel "flanges" that are longer than the central piece connecting them. They have an H-shaped cross-section. The contractor will select the specific wide flange beams at the time of construction.

Wharf Refurbishment

Pacific Shops plans to refurbish the Promenade Wharf, Building 5 Wharf, Building 13 Wharf, and Building 14 Wharf (see application, Figure 2). In addition to the pile removal and installation activities outlined above, Pacific Shops will remove and replace or reinforce miscellaneous support framing, bracing, and connectors (*i.e.,* joists/girders, blocking, and hardware). NMFS does not expect these above-water activities to result in marine mammal harassment, and they are not considered further in this notice.

The contractor will install new prestressed concrete piles adjacent to existing severely deteriorated piles, and will jacket timber piles with moderate deterioration. Pile jacketing involves encasing existing piles in a circular plastic case and filling the space between the pile and plastic case with cement grout. NMFS does not expect pile jacketing to result in marine mammal harassment and we do not consider it further in this notice.

The contractor will replace deteriorated beams with new beams of the same size and new piles will be added to the wharves for lateral restraint (steel pipe piles and wide flange beams). The contractor will construct structural connections between the new piles and the deck beam frame. Finally, the contractor will place the wharf deck boards over the frame.

Some limited falsework will likely be required for access, which will span between the existing beams and piles. Falsework will likely consist of hanging a temporary scaffold system under the existing wharf to prevent debris generated during the refurbishment of the wharf from falling into the water.

NMFS does not expect the installation of structural connections, deck boards, and falsework to result in marine mammal harassment, and we do not consider them further in this notice.

Seawall Maintenance

Pacific Shops is proposing repairs that will strengthen the walls and address projected sea level rise. They anticipate completing seawall repairs prior to the removal of some existing seawall materials. Seawall maintenance has been broken up into four segments: Seawall 1 spans Pier 7 to Pier 3 (700 LF); Seawall 1A is directly east of Pier 3 (80 LF); Seawall 4 is south of East Pier (280 LF); and Seawall 6 is east of the graving dock (*i.e.,* dry dock) (200 LF).

The contractor will repair Seawall 4 and Seawall 6 in Year 1 and will consist of new steel sheet piles with reinforced concrete caps and tie-rods (Table 2). Seawall 1 and Seawall 1A will be repaired in Year 2. Repairs will consist of new steel sheet piles or combi-wall (combination of steel wide flange beams and steel sheet piles) with a reinforced concrete cap at its top (Table 3).

The new sheet piles (steel sheet piles) or combi-wall at Seawalls 1 and 1A will be driven to the design tip elevation seaward of the existing timber seawall. Wide flange beams and sheet piles will typically tip in a dense sand layer approximately 25 to 35 ft (7.6 to 10.6m) below mudline. The contractor will install the sheet piles using a vibratory hammer. If wide flange beams are used, the contractor will first use a vibratory hammer, and then use an impact hammer to complete beam installation and drive to final depths. The reinforced concrete cap will be cast in place along the top of the piles of the new seawall.

To repair Seawalls 4 and 6, Pacific Shops will construct new wall segments consisting of steel sheet piles with a concrete cap beam on the outside face of the existing seawall. The contractor will install the steel sheet piles and concrete cap in a manner similar to that described for Seawalls 1 and 1A. Following the installation of the steel sheet pile wall, the contractor will excavate soil behind the wall to the depth of the existing tie-rod for inspection of the steel and concrete deadman anchor components. Deteriorated components of the deadman anchor and the associated connection components will be replaced as needed. The existing deadman anchor will be tied to the new concrete cap beam above the sheet pile wall using a steel tie-rod. Excavation and replacement of deadman anchor components, as needed, will occur completely out of water.

NMFS does not expect construction of the concrete caps, excavation behind the seawall, or potential replacement of the deadman anchor and associated components to result in take of marine mammals. Therefore, we do not consider them further in this notice.

Outfall Installation

The Master Plan stormwater management system will include outfall repair and installation with new inlets and pipelines of appropriate size to convey runoff and run-on. This stormwater management system will continue to discharge directly to the Estuary through six outfalls located either in revetments or in seawalls that range in size from 18-in to 36-in-diameter (45.7 cm to 91.4 cm) pipelines.

The Project includes the installation of one new outfall in the Estuary, located in the shoreline between Pier 3 and Pier 2 (see Application, Figure 3). The outfall is located along the revetment and will be a cast-in-place concrete structure consisting of a

headwall, wingwalls, and riprap. The outfall will include a tide valve to prevent backwater into the storm drain system.

The contractor will install a sheet pile cofferdam to facilitate outfall repair and installation. The sheet pile cofferdam wall will be embedded in shoreline substrate immediately downstream from the outfall using a vibratory hammer. The contractor expects to install the final cofferdam piles during low tide, if possible, as recommended NMFS Southwest Region, to minimize impacts to fish. The contractor will remove some riprap and sediment from the cofferdam footprint prior to cofferdam installation. Once the cofferdam is installed, soil and riprap will be excavated from the location of the new outfall using a landside excavator. Once the contractor has excavated and cleared the existing material, they will construct forms for the new headwall and wingwalls and pour concrete into the forms. After the headwall and wingwalls have cured enough to hold the slope, the contractor will place riprap in upland areas and within the Estuary. The contractor will remove the forms and sheet pile cofferdam after the concrete has reached design strength, allowing the headwall and wingwalls to cure. The contractor will stabilize the shoreline with riprap, and install the tidal flap gate.

NMFS does not expect construction of the headwall and wingwalls (poured concrete), installation of the rip rap, or insallation of the tidal flap gate to result in marine mammal harassment. Therefore, we do not consider these activities further in this notice.

Marina Infrastructure Removal/ Reconfiguration

Pacific Shops plans to reconfigure the existing 529-slip marina to reduce points of land access as a measure of safety, to improve access and operation of the docks, and to create a new waterlife park in the remnant graving dock. The existing marina uses will remain unchanged with no additional slips. Pacific Shops plans to modify existing marina infrastructure, including removing Pier 2 slip covers, installing floating docks in the existing graving dock, and reconfiguring gangways and headwalks. Gangways provide pedestrian access from land to the floating docks and headwalks are pile-supported floating portions of a dock that provide pedestrian access to slips.

The contractor will reuse existing support piles for marina infrastructure to the greatest extent possible; however, they will remove some existing piles for dock reconfiguration, as previously described in the Pile Removal section. The contractor will reconfigure Pier 1 slips to accommodate larger vessels and the East Pier slips will be moved toward the channel to accommodate the new waterfront park. The contractor will install new support piles for the new headwalks (Table 3).

The contractor will complete the bulk of marina reconfiguration work from land. New sections of headwalks, gangways, and docks will be constructed in an upland location, hoisted onto the water and floated into place. Existing features that require demolition will be disconnected from the current fixed dock, floated to the edge of the marina, hoisted onto land, and demolished in an upland location.

Only the headwalk reconfiguration involves pile driving. NMFS does not anticipate that Pier 2 slipcover removal, gangway reconfiguration, and floating dock installation will result in marine mammal harassment. Therefore, we do not consider those activities further in this notice.

Boat Hoist Deck

The contractor will replace three existing boat hoists with a new 3-ton boat hoist (approximately 42 ft by 50 ft (12.8 m by 15.2 m) in area). The new boat hoist, located on the west side of the project site (see application, Figure 4), will lift sailboats into and out of the Estuary. It requires a new, pile-supported deck.

The new deck will be 2,100ft^2, (195m^2) with 270 ft^2 (25m^2) over land and 1,830 ft^2 (170 m^2) over water. The new deck will be supported by eight 24-in square prestressed concrete piles and one 30-in cylindrical steel pipe pile (Table 3). The single 30-in steel pipe pile supporting the hoist platform deck will be initially installed with a vibratory hammer; an attenuated impact hammer will be used to complete pile installation and drive to final depths. The 24-in concrete piles will be impact-driven their entire length without attenuation.

Pacific Shops does not plan to conduct pile driving with multiple hammers concurrently.

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 4 lists all species with expected potential for occurrence in Alameda, CA 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 SARs (*e.g.,* Carretta *et al.,* 2019). All values presented in Table 4 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *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*).

TABLE 4—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE MAY OCCUR

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 Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose Dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	>2.0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	San Francisco/Russian River	-, -, N	9,886 (0.51, 2019)	66	0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Northern fur seal	*Callorhinus ursinus*	California	-, D, N	14,050 (N/A, 7,524, 2013)	451	1.8
		Eastern North Pacific	-, D, N	620,660 (0.2, 525,333, 2016)	11,295	399
Family Phocidae (earless seals):						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	179,000 (N/A, 81,368, 2010)	4,882	8.8
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43

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

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[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.

Harbor seal and California sea lion spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing take of these species. For bottlenose dolphin, harbor porpoise, northern fur seal, and northern elephant seal, occurrence is such that take is possible, and we have proposed authorizing take of these species also. All species that could potentially occur in the proposed survey areas are included in Pacific Shops' IHA application (see application, Table 4). While gray whale and humpback whale could potentially occur in the area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. In recent years there have been an increased number of gray whales in the San Francisco Bay, but they primarily occur in the western and central Bay (W. Keener, pers. comm. 2019), and none have been reported in the Estuary (NMFS 2019a, 2019b). Humpbacks have regularly been seen inside the Bay, primarily in the western Bay, from April through November since 2016 (W. Keener, pers. comm. 2019), and sometimes venture up the Delta waterway (*e.g.,* Gulland *et al.* 2008), but have not been recorded in the Estuary (NMFS 2019a, 2019b). Additionally, both gray whales and humpback whales are not expected to enter the project area due to the narrow channel width and shallow water depths.

Bottlenose Dolphin

The California coastal stock of common bottlenose dolphin is found within 0.6 mi (1 km) of shore (Defran and Weller 1999) and occurs from northern Baja California, Mexico to Bodega Bay, CA. Their range has extended north over the last several decades with El Niño events and increased ocean temperatures (Hansen and Defran 1990). Genetic studies have shown that no mixing occurs between the California coastal stock and the offshore common bottlenose dolphin stock (Lowther-Thieleking *et al.* 2015). Bottlenose dolphins are opportunistic foragers: Time of day, tidal state, and oceanographic habitat influence where they pursue prey (Hanson and Defran 1993). Dive durations up to 15 minutes have been recorded for trained Navy bottlenose dolphins, (Ridgway *et al.* 1969), but typical dives are shallower and of a much shorter duration (approximately 30 seconds [sec]; Bearzi *et al.* 1999, Mate *et al.* 1995).

Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Harbor Porpoise

Harbor porpoise occur along the US west coast from southern California to the Bering Sea (Allen and Angliss 2013, Barlow and Hanan 1995, Carretta *et al.* 2009, 2014). They rarely occur in waters warmer than 62.6 degrees Fahrenheit (17 degrees Celsius; Read 1990). The San Francisco–Russian River stock is found from Pescadero, 18 mi (30 km) south of the San Francisco Bay, to 99 mi (160 km) north of the Bay at Point Arena (Carretta *et al.* 2014, Chivers *et al.* 2002). In most areas, harbor porpoise occur in small groups of just a few individuals.

Harbor porpoise occur frequently outside the Bay and re-entered the Bay beginning in 2008 (Stern *et al.* 2017). They now commonly occur year-round within the Bay, primarily on the west and northwest side of the Central Bay near the Golden Gate Bridge, near Marin County, and near the city of San Francisco (Duffy 2015, Keener *et al.* 2012, Stern *et al.* 2017). In the summer of 2017 and 2018, mom-calf pairs and small groups (1–4 individuals) were seen to the north and west of Treasure Island, and just south of YBI (Yerba Buena Island) (Caltrans 2018a, 2019; M. Schulze, pers. comm. 2019). Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Harbor porpoise must forage nearly continuously to meet their high metabolic needs (Wisniewska *et al.* 2016). They consume up to 550 small fish (1.2–3.9 in [3–10 cm]; *e.g.* anchovies) per hour at a nearly 90

percent capture success rate (Wisniewska *et al.* 2016).

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.* 1993). They return south the following spring (Heath and Perrin 2008, Lowry and Forney 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.* 1990, Melin *et al.* 2008).

California sea lions have occupied docks near Pier 39 in San Francisco, about 9.2 mi (14.9 km) from the project area, since 1987. The highest number of sea lions recorded at Pier 39 was 1,701 individuals in November 2009. Occurrence of sea lions here is typically lowest in June (during pupping and breeding seasons) and highest in August. Approximately 85 percent of the animals that haul out at this site are males, and no pupping has been observed here or at any other site in the Bay. Pier 39 is the only regularly used haulout site in the project vicinity, but sea lions occasionally haul out on human-made structures such as bridge piers, jetties, or navigation buoys (Riedman 1990).

Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson and Bartholomew 1967). No pupping has been observed at the Pier 39 site or any other site in San Francisco Bay under normal conditions (USACE 2011). Although there has been documentation of pupping on docks in the Bay, this event was during a domoic acid event. There is no reason to anticipate that any domoic events will occur during the project construction activities. Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.,* 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry et al,. 1992), and they remain away until spring (March–May), when they migrate back to the breeding colonies. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong 2000; Melin *et al.* 2008).

Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Northern Fur Seal

Two northern fur seal stocks may occur near the Bay: the California and Eastern North Pacific stocks. The California stock breeds and pups on the offshore islands of California, and forages off the California coast. The Eastern Pacific stock breeds and pups on islands in the North Pacific Ocean and Bering Sea, including the Aleutian Islands, Pribilof Islands, and Bogoslof Island, but females and juveniles move south to California waters to forage in the fall and winter months (Gelatt and Gentry 2018). Breeding and pupping occur from mid- to late-May into July. Pups are weaned in September and move south to feed offshore California (Gentry 1998).

Both the California and Eastern North Pacific stocks forage in the offshore waters of California, but usually only sick or emaciated juvenile fur seals seasonally enter the Bay. The Marine Mammal Center (TMMC) occasionally picks up stranded fur seals around YBI and Treasure Island (NMFS, 2019b). Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Northern Elephant Seal

Northern elephant seals are common on California coastal mainland and island sites, where the species pups, breeds, rests, and molts. The largest rookeries are on San Nicolas and San Miguel islands in the northern Channel Islands. Near the Bay, elephant seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes National Seashore.

Northern elephant seals haul out to give birth and breed from December through March. Pups remain onshore or in adjacent shallow water through May. Both sexes make two foraging migrations each year: One after breeding and the second after molting (Stewart 1989; Stewart and DeLong 1995). Adult females migrate to the central North Pacific to forage, and males migrate to the Gulf of Alaska to forage (Robinson *et al.* 2012). Pup mortality is high when they make the first trip to sea in May, and this period correlates with the time of most strandings. Young-of-the-year pups return in the late summer and fall to haul out at breeding rookeries and small haul-out sites, but occasionally may make brief stops in the Bay. Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Harbor Seal

Harbor seals are found from Baja California to the eastern Aleutian Islands of Alaska (Harvey and Goley 2011, Herder 1986). In California there are approximately 500 haulout sites along the mainland and on offshore islands, including intertidal sandbars, rocky shores, and beaches (Hanan 1996, Lowry *et al.* 2008).

Harbor seals are the most common marine mammal species observed in the San Francisco Bay. Within the Bay they primarily haul out on exposed rocky ledges and on sloughs in the southern Bay. Harbor seals are central-place foragers (Orians and Pearson 1979) and tend to exhibit strong site fidelity within season and across years, generally forage close to haulout sites, and repeatedly visit specific foraging areas (Grigg *et al.* 2012, Suryan and Harvey 1998, Thompson *et al.* 1998). Harbor seals in the Bay forage mainly within 7 mi (10 km) of their primary haulout site (Grigg *et al.* 2012), and often within just 1–3 mi (1–5 km; Torok 1994). Depth, bottom relief, and prey abundance also influence foraging location (Grigg *et al.* 2012).

Harbor seals molt from May through June. Peak numbers of harbor seals haul out in central California during late May to early June, which coincides with the peak molt. During both pupping and molting seasons, the number of seals and the length of time hauled out per day increase, from an average of 7 hours per day to 10–12 hours (Harvey and Goley 2011, Huber *et al.* 2001, Stewart and Yochem 1994).

Harbor seals tend to forage at night and haul out during the day with a peak in the afternoon between 1 p.m. and 4 p.m. (Grigg *et al.* 2002, London *et al.* 2001, Stewart and Yochem 1994, Yochem *et al.* 1987). Tide levels affect the maximum number of seals hauled out, with the largest number of seals hauled out at low tide, but time of day and season have the greatest influence on haul-out behavior (Manugian *et al.* 2017, Patterson and Acevedo-Gutiérrez 2008, Stewart and Yochem 1994). Harbor seals in the Bay typically haul out in groups ranging from a few individuals to over 300 during peak molt (NPS, unpublished data).

The closest haulout to the project area is YBI, approximately 6.6 mi (10.7 km) to the northwest. The YBI haulout site has a daily range of zero to 109 harbor seals during fall months, with the

highest numbers hauled out during afternoon low tides (Caltrans, 2004).

A second high-use haulout is located on the southwest side of Alameda Island near the Encinal Boat Ramp, 7.8 mi (12.6 km) by water. This location consists of two haulout sites approximately 0.5 mi (0.8 km) apart: One at the western end of Breakwater Island, and the other on a platform installed for the harbor seals within the harbor protected by Breakwater Island. More animals haul out here daily in the winter than in the summer and fall: An average of fewer than 10 animals per day haul out in the fall, while up to 75 animals per day use this haulout in January and December (M. Klein and R. Bangert, pers. comm. 2019). This trend reflects the fact that more seals are present in the Bay during the winter foraging period than during the spring breeding season. Large concentrations of spawning Pacific herring (*Clupea pallasii*) and migrating salmonids likely attract seals into the Bay during the winter months (Greig and Allen 2015) and may similarly increase harbor seal numbers in the Estuary. Harbor seals forage for Pacific herring in eelgrass beds in the winter (Schaeffer *et al.* 2007). There are no eelgrass beds in the Estuary to attract foraging harbor seals. Please see the *Marine Mammal Occurrence and Take Calculation and Estimation* section for information on local occurrence in the project area.

Pupping occurs from March through May in central California (Codde and Allen 2018). Pups are weaned in four weeks, most by mid-June (Codde and Allen 2018). Harbor seals molt from June through July (Codde and Allen 2018) and breed between late March and June (Greig and Allen 2015). The closest recognized harbor seal pupping site to Alameda Marina is at Castro Rocks, approximately 24.5 km (15.2 mi) from the project area.

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 5.

TABLE 5—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. Six marine mammal species (two cetacean and four pinniped (two otariid and two phocid) species) have the reasonable potential to co-occur with the proposed activities. Please refer to Table 4. Of the cetacean species that may be present, one is classified as mid-frequency cetacean (*i.e.,* bottlenose dolphin), and one is classified as high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving. The effects of underwater noise from Pacific Shops' proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current

weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The likely or possible impacts of Pacific Shops' proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from Pacific Shops' specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). In general, exposure to pile driving and removal noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the

growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. 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).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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.

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

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

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated.

In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, 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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

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

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

Marine Mammal Habitat Effects

Pacific Shops' construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving, elevated levels of underwater noise would ensonify the estuary where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed (and removed in the case of the temporary templates). The sediments on the sea floor will be disturbed during pile driving; however, suspension will be brief and localized and is unlikely to measurably affect marine mammals or their prey in the area. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6-meter) radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the project. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in the San Francisco Bay. At best, the impact area provides marginal foraging habitat for marine mammals and fish, while the new pilings installed would provide substrate for invertebrate prey to settle on.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave

significantly large areas of more preferable fish and marine mammal foraging habitat in the nearby vicinity in San Francisco Bay.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The area impacted by the project is relatively small compared to the available habitat in the remainder of the Oakland Estuary and the San Francisco Bay. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for Pacific Shops' construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take

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

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

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

Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

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

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities,

NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) (microPascal, root mean square) 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.

Pacific Shops' proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Pacific Shops' proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) 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 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB;	*Cell 2:* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB;	*Cell 4:* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving and vibratory pile driving and removal). The largest calculated Level B harassment zone is 21.5 km (13.4 mi), however, the ZOI is functionally only 1.43 km² (0.6 mi²) due to the geography of the Estuary.

The project includes vibratory and impact pile installation and vibratory pile removal. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for vibratory installation and removal of piles of the same diameter are assumed the same. Source levels for each pile size and activity are presented in Table 7.

The source level for vibratory removal of timber piles is from in-water measurements generated by the Greenbusch Group (2018) from the Seattle Pier 62 project (83 FR 39709; August 10, 2018). Hydroacoustic monitoring results from Pier 62 determined unweighted rms ranging from 140 dB to 169 dB. NMFS analyzed source measurements at different distances for all 63 individual timber piles that were removed at Pier 62 and normalized the values to 10 m. The results showed that the median is 152 dB SPLrms.

Pacific Shops will implement bubble curtains (*e.g.* pneumatic barrier typically comprised of hosing or PVC piping that disrupts underwater noise propagation; see *Mitigation* section below) during impact pile driving of the wide flange beams, 30-inch steel pipe piles, and 36-inch steel pipe piles. They have reduced the source level for these activities by 7dB (a conservative estimate based on several studies including Austin *et al.,* 2016).

TABLE 7—PROJECT SOUND SOURCE LEVELS

Pile type	Source level @10m			Source
	dB RMS	dB peak	dB SEL	
VIBRATORY				
16-in Timber (removal)	152			The Greenbusch Group, Inc 2018

TABLE 7—PROJECT SOUND SOURCE LEVELS—Continued

Pile type	Source level @10m			Source
	dB RMS	dB peak	dB SEL	
12-in Square Concrete (removal)	155			CalTrans 2015 (Based on 12-in steel pipe pile)
Steel sheet pile	160			CalTrans 2015 (Based on 24-in AZ steel sheet)
30-in Steel Pipe	170			CalTrans 2015 (Based on 36-in steel pipe pile)
36-in Steel Pipe	170			CalTrans 2015
Wide Flange Beam	155			Based on 38-in x 18-in king piles at the Naval Station Mayport in Jacksonville, Florida
IMPACT				
14-in Square Concrete	166	185	155	CalTrans 2015 (Based on 18-inch concrete piles)
16-in Square Concrete	166	185	155	CalTrans 2015 (Based on 18-inch concrete piles)
24-in Concrete piles	176	188	166	CalTrans 2015
Wide Flange Beam (attenuated in parentheses).	194 (187)	207 (200)	178 (171)	CalTrans 2015 (Source levels based on 24-in steel pipe pile)
30-in Steel Pipe (attenuated in parentheses)	190 (183)	210 (203)	177 (170)	CalTrans 2015
36-in Steel Pipe (attenuated in parentheses)	193 (186)	210 (203)	183 (176)	CalTrans 2015

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Alameda Marina are not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 8—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Source	Source level at 10m (dB re 1 μPa rms)	Level B harsasment threshold (dB re 1 μPa rms)	Distance to level B harassment threshold (m)
VIBRATORY			
16-in Timber (removal)	152	120	1,359
12-in Square Concrete (removal)	155		2,154
Steel sheet pile	160		4,642
30-in Steel Pipe	170		21,544
36-in Steel Pipe	170		21,544
Wide Flange Beam	155		2,154
IMPACT			
14-in Square Concrete	166	160	25
16-in Square Concrete	166		25
24-in Concrete piles	176		117
Wide Flange Beam (attenuated) [a]	194 (187)		[b] 631
30-in Steel Pipe (attenuated) [a]	190 (183)		[b] 341
36-in Steel Pipe (attenuated) [a]	193 (186)		[b] 541

[a] Includes 7dB reduction for use of bubble curtain.
[b] Calculated using attenuated source level.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we

developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such has pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 9—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Source level	Number of piles within 24-h period	Duration to drive a single pile (minutes)	Number of strikes per pile	Propagation (xLogR)	Distance from source level measurement (meters)
16-in Timber (removal).	A.1) Vibratory pile driving.	2.5	[a] 152	10	5	.....	15	10
12-in Square Concrete (removal).	.....	.....	[a] 155	10	5	.....		
Steel sheet pile	.....	.....	[a] 160	20	10	.....		
30-in Steel Pipe	.....	.....	[a] 170	1	10	.....		
36-in Steel Pipe	.....	.....	[a] 170	3	10	.....		
Wide Flange Beam	.....	.....	[a] 155	4	10	.....		
IMPACT								
14-in Square Concrete.	E.1) Impact pile driving.	2	[b] 155	4	.....	500	15	10
16-in Square Concrete.	.....	.....	[b] 155	4	.....			
24-in Concrete piles.	.....	.....	[b] 166	4	.....			
Wide Flange Beam (attenuated).	.....	.....	[b c] 171	4	.....			
30-in Steel Pipe (attenuated).	.....	.....	[b c] 170	1	.....			
36-in Steel Pipe (attenuated).	.....	.....	[b c] 176	3	.....			

[a] dB RMS SPL at 10m
[b] dB SEL at 10m
[c] Includes 7dB reduction from use of bubble curtain.

TABLE 10—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Source	Level A—Radius to Isopleth (m)			
	MF Cetaceans	HF Cetaceans	Phocids	Otariids
VIBRATORY				
16-in Timber (removal)	<1	1	<1	<1
12-in Square Concrete (removal)	<1	4	2	<1
Steel sheet pile	<1	3	1	<1
30-in Steel Pipe	<1	12	5	<1
36-in Steel Pipe	2	25	10	<1
Wide Flange Beam	<1	3	1	<1
IMPACT				
14-in Square Concrete	<1	26	12	<1
16-in Square Concrete	<1	26	12	<1
24-in Concrete piles	4	139	62	5
Wide Flange Beam (attenuated)	9	299	135	10
30-in Steel Pipe (attenuated)	3	102	46	3
36-in Steel Pipe (attenuated)	16	532	239	17

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate.

Bottlenose Dolphin

Bottlenose dolphins began entering San Francisco Bay in 2010 (Szczepaniak 2013). They primarily occur in the western Central and South Bay, from the Golden Gate Bridge to Oyster Point and Redwood City. However, one individual has been regularly seen in the Bay since 2016 near the former Alameda Air Station (Perlman 2017; W. Keener, pers. comm. 2017), and five animals were regularly seen in the summer and fall of 2018 in the same location (W. Keener, pers. comm. 2019). This area is on the far side of Alameda Island from the Project area, approximately 6.8 mi (10.9 km) by water.

There have been no formal surveys of marine mammals in the Estuary before 2019 (W. Keener, pers. comm, 2019), and no known reports of bottlenose dolphins in the Estuary between 2006 and May 2019 (NMFS 2019a, 2019b). The two closest known sightings to the project area were of a single dolphin on one occasion and an adult and juvenile on another occasion in February 2019. Both sightings were on the edge of the Inner Harbor Entrance Channel to the northwest of the Estuary, approximately 5.8 mi (9.3 km) from the project area (W. Keener, pers. comm., 2019).

Pacific Shops conducted 30 hours of monitoring over four days in June 2019 at the project site, and did not observe any bottlenose dolphins. Additionally, six local frequent users of the Estuary interviewed for this project reported never having seen a bottlenose dolphin in the Estuary. However, the applicant has requested the authorization of Level B harassment take of bottlenose dolphins due to their year-round presence in the Bay, regular proximity to the work area, and potential to enter the Level B harassment zone while pile driving or removal are underway.

Pacific Shops conservatively estimates that a group of two bottlenose dolphins may occur in the project area every 10 project days. NMFS concurs that this approach is reasonable given the available information. Pacific Shops has requested, and NMFS proposes to authorize, 14 Level B harassment takes of bottlenose dolphins during Year 1 (2 individuals/10 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of bottlenose dolphins during Year 2 (2 individuals/10 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for mid-frequency cetaceans extends 16 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). Pacific Shops is planning to implement a 25m shutdown zone during that activity (Table 12). Given the small size of the Level A harassment zones, the shutdown zones are expected to eliminate the potential for Level A harassment take of bottlenose dolphins. Therefore, NMFS does not propose to authorize Level A harassment take of bottlenose dolphins.

Harbor Porpoise

Historically, harbor porpoise primarily occur near the Golden Gate Bridge, Marin County, and the city of San Francisco on the northwest side of the Bay (Keener *et al.* 2012, Stern *et al.* 2017). However, in the summer of 2017 and 2018, mom-calf pairs and small groups (one to four individuals) were seen to the north and west of Treasure Island, and just south of YBI (Caltrans 2018a, 2019), indicating that their range may be expanding within the Bay.

No formal surveys of marine mammals were conducted in the Estuary before 2019 (W. Keener, pers. comm. 2019). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site, and did not observe any harbor porpoises. Six local frequent users of the Estuary interviewed for this project reported never seeing a harbor porpoise in the Estuary. Between 2006 and June 2019, one harbor porpoise stranded in the Estuary. The animal was in an advanced state of decomposition (NMFS 2019a), indicating that it probably died outside of the Estuary and floated in. However, given their year-round residency in the Bay, their proximity to the work area, and their seemingly expanding range within the Bay, the applicant has requested the authorization of Level B harassment take of harbor porpoise.

Pacific Shops conservatively estimates that a group of two harbor porpoises may occur in the project area every 10 project days. NMFS concurs that this approach is reasonable given the available information. Pacific Shops has requested, and NMFS proposes to authorize, 14 Level B harassment takes of harbor porpoise during Year 1 (2 individuals/10 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of harbor porpoise during Year 2 (2 individuals/10 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for high-frequency cetaceans extends 532 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). This largest zone is only relevant for impact pile driving of the 36-inch piles, which would only occur on a maximum of three days between both project years. Additionally, the calculated Level A harassment zone for this activity is based on assumed accumulation of sound from driving three piles in a day. However, we do not expect a harbor porpoise to remain within the Level A harassment zone for a long enough period to incur PTS. Pacific Shops is planning to implement a 400 m shutdown zone during that activity (Table 12), which includes the 11.7 m peak PTS isopleth. Pacific Shops will provide a 3.8m high platform for protected species observers (PSOs). NMFS expects that the platform, in combination with the anticipated ideal weather conditions, will allow PSOs to effectively observe harbor porpoises at 400 m. Therefore, the shutdown zones are expected to eliminate the potential for Level A harassment take of harbor porpoise, and NMFS does not propose to authorize Level A harassment take of harbor porpoise.

California Sea Lion

There have been no formal surveys of marine mammals in the Oakland Estuary before 2019 (W. Keener, pers. comm. 2019). The few sightings that have been recorded have been opportunistic, including a sea lion observed in May 2017 in the small canal that connects Lake Merritt with the Estuary (Martichoux, 2017). Between 2006 and May 2019, 18 confirmed sea lion sightings in the Estuary were reported to TMMC and California Academy of Sciences (CAS) (NMFS 2019a, 2019b), and between 2006 and June 2019, three sea lions stranded in the Estuary (NMFS 2019a, 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site, and observed one sea lion near the project site, across the Estuary under the Coast Guard dock approximately 1130 ft (345 m) from the Alameda Marina shoreline. Interviews with local frequent users of the Estuary confirm that sightings of sea lions are rare. Two people interviewed reported seeing one to two sea lions per year in the Estuary. California sea lions forage for Pacific herring in eelgrass beds in the winter (Schaeffer *et al.* 2007), however, there are no eelgrass beds in the Estuary to attract foraging sea lions.

Pacific Shops conservatively estimates that one California sea lion may occur in the project area every five project days. NMFS concurs that this approach is reasonable given the available information. Therefore Pacific Shops has requested, and NMFS proposes to authorize, 14 Level B harassment takes of California sea lion during Year 1 (1 individual/5 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of California sea lion during Year 2 (1

individual/5 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for otariids extends 17 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). Pacific Shops is planning to implement a 25 m shutdown zone during that activity (Table 12). Given the small size of the Level A harassment zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of California sea lion. Therefore, NMFS does not propose to authorize Level A harassment take of California sea lion.

Northern Fur Seal

There are no available density estimates of northern fur seals in the project area, and northern fur seals have not been reported in the Estuary (NMFS 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any fur seals. Between 2006 and May 2019 there were no reports of stranded fur seals in the Estuary (NMFS 2019a, 2019b). Interviews with frequent users of the Estuary also reported they had never seen a fur seal in the Estuary. However, to account for the possible rare presence of the species in the action area, NMFS proposes to authorize six Level B harassment takes of northern fur seal during Year 1, and nine Level B harassment takes of northern fur seal during Year 2.

The largest Level A harassment zone for otariids extends 17 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). Pacific Shops is planning to implement a 25 m shutdown zone during that activity (Table 12). Given the small size of the Level A harassment zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of northern fur seal. Therefore, NMFS does not propose to issue Level A harassment take of northern fur seal.

Northern Elephant Seal

There are no available density estimates of northern elephant seals in the project area. Generally, only juvenile elephant seals enter the Bay seasonally and do not remain long if they are healthy. From mid-February to the end of June, TMMC reports the most strandings, primarily of malnourished juveniles (TMMC, 2019). However, no elephant seals, alive or stranded, have been reported in the Estuary (NMFS 2019a, 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any elephant seals. Interviews with frequent users of the Estuary also reported they had never seen an elephant seal in the Estuary. However, to account for the possible rare presence of the species in the action area, NMFS proposes to authorize six Level B harassment takes of northern elephant seal during Year 1, and nine Level B harassment takes of northern elephant seal during Year 2.

The largest Level A harassment zone for phocids extends 239 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). Pacific Shops is planning to implement a 240 m shutdown zone during that activity (Table 12). Given the small size of the Level A harassment zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of northern elephant seal. Therefore, NMFS does not propose to authorize Level A harassment take of northern elephant seal.

Harbor Seal

There have been no formal surveys of marine mammals in the Estuary before 2019 (W. Keener, pers. comm. 2019), and the few recorded harbor seal sightings have been opportunistic. The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any harbor seals. A local recreational boater who lives on his boat full-time in the existing Alameda Marina reported seeing a harbor seal approximately twice a week throughout 2019 (G. Dees, pers. comm. 2019). Another recreational boater who is occasionally on her boat in Alameda Marina reported a harbor seal in the marina on five days in August through October, 2019 (T. Drake, pers. comm. 2019). This respondent also reported that a single harbor seal occasionally hauled out on the marina docks for several hours. Two staff members of a local marina reported an average of two harbor seals per month in the Estuary. There were only four confirmed harbor seal sightings reported in the Estuary to TMMC and CAS between 2006 and May 2019 (NMFS 2019a, 2019b), and a dead harbor seal at Pier 2 in the existing Alameda Marina on October 27, 2019 (T. Drake, pers. comms. 2019).

The number of harbor seals hauled out on a floating platform at the Alameda Breakwater, approximately 7.8 mi (12.6 km) from the Project area, has been recorded almost every day since March 2014 (M. Klein and R. Bangert, pers. comm. 2019). Between zero and 75 seals haul out each day; more animals are present in the winter during the herring run. However, based on observations at the Alameda Marina, we do not expect the counts at the Alameda Breakwater to be representative of harbor seal presence in the project area.

Between 2006 and June 2019, only two harbor seals stranded in the Estuary (NMFS 2019a, 2019b). In August 2017 a harbor seal was seen in Lake Merritt, after transiting through the Estuary (Martichoux 2017). Grigg *et al.* (2012) tagged 19 harbor seals at Castro Rocks, approximately 15.2 mi (24.5 km) north-northeast of the project area. Although some ranged as far as the South Bay, approximately 39 mi (63 km) from Castro Rocks, none were recorded in the Estuary (Grigg *et al.* 2012).

Pacific Shops conservatively estimates that one harbor seal may enter the project area per project day. NMFS concurs that this approach is reasonable given the available information. Therefore, Pacific Shops has requested, and NMFS proposes to authorize, 68 Level B harassment takes of harbor seal in Year 1 (1 harbor seal per day × 68 project days = 68 Level B harassment takes), and 98 Level B harassment takes of harbor seal in Year 2 (1 harbor seal per day × 98 project days = 98 Level B harassment takes).

The largest Level A harassment zone for phocids extends 239 m from the source during impact pile driving of 36-in steel pipe piles (Table 10). This largest zone is only relevant for impact pile driving of the 36-inch piles, which would occur on a maximum of three days between both project years. Additionally, the calculated Level A harassment zone for this activity is based on assumed accumulation of sound from driving three piles in a day. However, we do not expect a harbor seal to remain within the Level A harassment zone for a long enough period to incur PTS. Pacific Shops is planning to implement a 240 m shutdown zone during impact pile driving of the 36-inch piles (Table 12), and there is no peak PTS isopleth for phocids. Additionally, as noted previously, PSOs would be observing from a 3.8 m high platform which would further increase their ability to detect harbor seals within this zone. Therefore, the shutdown zones are expected to eliminate the potential for Level A harassment take of harbor seal, and NMFS does not propose to authorize Level A harassment take of harbor seal.

TABLE 11—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance	Year 1 level B harassment take (percent of stock)	Year 2 level B harassment take (percent of stock)
Bottlenose Dolphin	California Coastal	453	14 (3.1)	20 (4.4)
Harbor Porpoise	San Francisco/Russian River	9,886	14 (0.1)	20 (0.2)
California Sea Lion	United States	257,606	14 (0.01)	20 (0.01)
Northern Fur Seal	California	14,050	6 (0.04)	9 (0.06)
	Eastern North Pacific	620,660	(<0.01)	(<0.01)
Northern Elephant Seal	California Breeding	179,000	6 (<0.01)	9 (<0.01)
Harbor Seal	California	30,968	68 (0.2)	98 (0.3)

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.

In addition to the measures described later in this section, Pacific Shops will employ the following mitigation measures:

- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to Pacific Shops' in-water construction activities.

- *Establishment of Shutdown Zones*—Pacific Shops will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Table 5). The largest shutdown zones are generally for high frequency cetaceans, as shown in Table 12.
- The placement of PSOs during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 12—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Source	Shutdown zone (m)			
	MF cetaceans	HF cetaceans	Phocids	Otariids
VIBRATORY				
16-in Timber (removal) 12-in Square Concrete (removal).	10	10	10	10

TABLE 12—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL—Continued

Source	Shutdown zone (m)			
	MF cetaceans	HF cetaceans	Phocids	Otariids
Steel sheet pile.				
30-in Steel Pipe		25		
36-in Steel Pipe.				
Wide Flange Beam		10		
IMPACT				
14-in Square Concrete	25	30	25	25
16-in Square Concrete.				
24-in Concrete piles		140	70	
Wide Flange Beam		300	140	
30-in Steel Pipe		140	70	
36-in Steel Pipe		[a] 400	240	

[a] This shutdown zone is smaller than the 532m Level A harassment zone. NMFS expects that PSOs will be able to monitor this zone more effectively, and that the smaller zone will reduce unnecessary shutdowns while remaining sufficient to prevent Level A harassment.

• *Monitoring for Level B Harassment*—Pacific Shops will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory pile driving) and the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Alameda Marina will allow PSOs to observe marine mammals within the Level B harassment zones. However, due to the large Level B harassment zones (Table 8), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

• *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

• *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a thirty-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

• *Pile driving energy attenuator*—Pacific Shops will use a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) during impact pile driving of the wide flange beams, 30-in steel pipe piles, and 36-inch steel pipe piles. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains will meet the following requirements:

○ The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

○ The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

○ The bubble curtain shall be operated such that there is proper (equal) balancing of air flow to all bubblers.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which

take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated March 2020. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• Pacific Shops must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Two PSOs will be employed during all pile driving and removal activities. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving site or best vantage point practicable to monitor the shutdown zone; and

(2) Best vantage point practicable to observe the monitoring zone for each activity.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than thirty minutes.

Acoustic Monitoring

Pacific Shops intends to conduct a sound source verification (SSV) study to confirm the sound source levels, transmission loss coefficient, and size of the Level A and Level B harassment zones. They intend to request a modification to the zones accordingly. They will follow accepted methodological standards to achieve their objectives. If NMFS approves the results of the SSV study, we propose to modify the zone sizes based on the approved data. Acoustic monitoring report requirements are listed in the Reporting section, below.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring.

• Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory).

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state).

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.

• Age and sex class, if possible, of all marine mammals observed.

• PSO locations during marine mammal monitoring.

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active.

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate).

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be

submitted within 30 days after receipt of comments.

Pacific Shops must include the following information in their acoustic monitoring report.

- Hydrophone equipment and methods: Recording device, sampling rate, distance (m) from the pile where recordings were made; depth of recording device(s).
- Type of pile being driven, substrate type, method of driving during recordings, and if a sound attenuation device is used.
- For impact pile driving: Pulse duration and mean, median, and maximum sound levels (dB re: 1μPa): cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s).
- For vibratory driving/removal: Mean, median, and maximum sound levels (dB re: 1μPa): root mean square sound pressure level (SPLrms), cumulative sound exposure level (SELcum).
- Number of strikes (impact) or duration (vibratory) per pile measured, one-third octave band spectrum and power spectral density plot.
- Estimated source levels, transmission loss coefficient, and revised Level A and Level B harassment zones.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region stranding coordinator (562–980–3230) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

i. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

ii. Species identification (if known) or description of the animal(s) involved;

iii. Condition of the animal(s) (including carcass condition if the animal is dead);

iv. Observed behaviors of the animal(s), if alive;

v. If available, photographs or video footage of the animal(s); and

vi. General circumstances under which the animal was discovered.

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, this introductory discussion of our analyses applies to all of the species listed in Table 11, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Also, because the nature of the estimated takes anticipated to occur are identical in Years 1 and 2, and the number of estimated takes in each year are extremely similar, the analysis below applies to each of the IHAs.

The nature of the pile driving project precludes the likelihood of serious injury or mortality, and the mitigation is expected to ensure that no Level A harassment occurs, which would be unlikely to occur even absent the required mitigation. For all species and stocks, take would occur within a limited, confined area (Oakland Estuary) of any given stock's range. Take would be limited to Level B harassment only due to potential behavioral disturbance and TTS. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further the amount of take proposed to be authorized for any given stock is extremely small when compared to stock abundance.

Exposure to noise resulting in Level B harassment for all species is expected to be temporary and minor due to the general lack of use of the Oakland Estuary by marine mammals, as previously explained. In general, marine mammals are only occasionally sighted within the Oakland Estuary. Any behavioral harassment occurring during the project is highly unlikely to impact the health or fitness of any individuals, much less effect annual rates of recruitment or survival. Any harassment would be brief, and if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

As previously discussed, the closest harbor seal pupping area is 24.5 km (15.2 mi) from the project area. However, there are no habitat areas of particular importance for marine mammals within the Oakland Estuary, and it is not preferred habitat for marine mammals. Therefore, we expect that animals annoyed by project sound will simply avoid the area and use more-preferred habitats, particularly as the project would only occur on approximately 68 days in Year 1, and 98 days in Year 2, for up to approximately 9.5 hours per day.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to

cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized.
- No Level A harassment is anticipated or authorized.
- The number and intensity of anticipated takes by Level B harassment is relatively low for all stocks.
- No biologically important areas have been identified within the project area.
- For all species, the Oakland Estuary is a very small part of their range.
- For all species, proposed Level B harassment takes in each IHA would affect less than five percent of each stock.

Year 1 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, we find that the total marine mammal take from Pacific Stores' construction activities will have a negligible impact on the affected marine mammal species or stocks.

Year 2 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, we find that the total marine mammal take from the Pacific Stores' construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers 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.

Table 11 includes the number of takes for each species proposed to be taken as a result of activities in Year 1 and Year 2 of this project. Our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment during each project year. In fact, for each stock, the take proposed for authorization each year comprises less than five percent of the stock abundance. The number of animals proposed to be taken for each stock discussed above would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

Year 1 IHA—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 in Year 1 of the project.

Year 2 IHA—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 in Year 2 of the project.

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.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two, one-year IHAs to Pacific Shops for conducting vibratory and impact pile driving in Alameda, CA beginning June 2020 and June 2021, respectively, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of these proposed IHAs 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 project. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

• Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 23, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09033 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA143]

Endangered Species; File No. 20314

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service, Virginia Fisheries Field Office, 11110 Kimages Road, Charles City, VA 23030 (Responsible Party: Albert Spells), has requested a modification to scientific research Permit No. 20314.

DATES: Written, telefaxed, or email comments must be received on or before May 29, 2020.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20314–04 from the list of available applications. These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 20314, issued on March 29, 2017 (82 FR 16996), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20314 authorizes the permit holder to conduct scientific research on Atlantic sturgeon to identify the overall health of the Chesapeake Bay discreet population segment, monitor reproductive success, spawning adult and juvenile abundance in tributaries, and evaluate movement patterns and habitat preferences in and between tributaries of the Chesapeake Bay. Sampling gear includes anchored/floating gillnets and trawl nets. After capture, fish are externally tagged, tissue sampled, measured, and weighed prior to release. A subset of fish are fin ray sampled and internally tagged with acoustic devices. Early life stages of Atlantic sturgeon are lethally collected to document occurrence of spawning in river systems. Up to two Atlantic sturgeon juvenile and one adult/sub-adult life stages may unintentionally die during research annually. Due to an increase in the abundance of juvenile year classes of Atlantic sturgeon in the James River and to accommodate improvements in population abundance and index estimates, the permit holder is requesting an increase in the numbers of this juvenile life stage that may be captured, marked, measured, weighed, photoed, and released from 100 to 500 animals, annually. The permit expires March 31, 2027.

Dated: April 23, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09034 Filed 4–28–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Assessment for Real Property Master Plans on U.S. Army Installation Management Command Garrisons

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability; address correction.

SUMMARY: The mailing address to submit written comments published in the **Federal Register** on Friday, April 24, 2020 (85 FR 23010) is incorrect. Written comments will now be sent by mail to U.S. Army Environmental Command, ATTN: Public Comments, 2455 Reynolds Road, Bldg 2266, Joint Base San Antonio-Fort Sam Houston, TX 78234–7588 or by email to *usarmy.jbsa.aec.nepa@mail.mil.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Environmental Command Public Affairs Office at (210) 466–1590, toll-free at (855) 846–3940, or at *usarmy.jbsa.aec.nepa@mail.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–09078 Filed 4–28–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0044]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel & Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Angela James, Office of Information Management, Department of Defense, at 571–372–7574 or write to *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: Title; Associated Form; and OMB Number: Overseas Citizen Population Survey; OMB Control Number 0704–0539.

Needs and Uses: The primary objective of the Overseas Citizen Population Survey (OCPS), conducted on behalf of FVAP, is to refine FVAP's methodology for estimating the number of overseas U.S. civilians who are eligible to vote and who have registered and participated in the past. These estimates are then used to address the question of whether the registration and voting propensity of the overseas civilian population differs from that of comparable domestic or military populations. Subsequent to each Presidential election year, FVAP must report to Congress voter registration and participation rates for Uniformed Services voters and overseas citizens. Previous attempts to collect information on the overseas citizen population to identify and measure its voter registration and participation rates in Federal elections suffered from significant bias; this effort is focused on refining a well-established method to report voter registration and participation rates from a more well-defined subgroup of overseas civilians. Conducting this research will help FVAP meet its federal and congressional mandates in terms of reporting annually on its activities and overall voter registration and participation rates after each Presidential election. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges. In 2018, data from the 2016 survey was used to identify the barriers that overseas citizens face in requesting, casting and returning their ballots—and, along with the 2018 data, which is just becoming available, will help shape FVAP's outreach to these voters in 2020 and beyond. The 2020 version of the OCPS will test awareness and efficacy of these efforts. The survey also identified that overseas voters are more likely to avail themselves of electronic options when requesting their ballots (compared to active duty military, who rely more often on postal mail). These results guided changes to the 2020 survey, which further probes this difference. Finally, the 2018 survey allows for a midterm-to-midterm comparison of the overseas voting experience from 2014 to 2018—and the 2020 version will permit a similar comparison to the 2016 presidential election.

To obtain the necessary information, the OCPS will use data collected from a sample of registered overseas civilian voters in conjunction with previous country level estimates developed by FVAP research and establish a research method to assist FVAP in reporting voter registration and participation rates for the 2020 election.

Affected Public: Individuals or Households.

Annual Burden Hours: 4,500 hours.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Frequency: Biennially.

Dated: April 23, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–09054 Filed 4–28–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Notice of The Stakeholder Meeting To Receive Input on the U.S. Department of Energy (DOE) Energy Storage Grand Challenge (ESGC) Initiative

AGENCY: Office of Electricity, Department of Energy.

ACTION: Amendment to notice of stakeholder meetings.

SUMMARY: This notice advises interested persons that the DOE Research and Technology Investment Committee (RTIC) Energy Storage Subcommittee will hold stakeholder meetings for the ESGC via a virtual platform.

DATES: The modified dates for these meetings are as follows:

- May 1st, 2020 from 11:30 a.m. to 1:30 p.m. Eastern Daylight Time.
- Any subsequent ESGC events will be announced at a later time via the events page found in the section below.

ADDRESSES: These meetings will be held virtually via the WebEx platform. If you are interested in attending any of these meetings, please register at *www.energy.gov/energy-storage-grand-challenge/events.*

FOR FURTHER INFORMATION CONTACT: Vinod Siberry, U.S. Department of Energy, Office of Electricity, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1207. For email please use *rticstorage@hq.doe.gov* and in the subject line include ''Further Information''. In the body of the email please include your name, organization, and contact information, in addition to your question or inquiry.

SUPPLEMENTARY INFORMATION: The notice of this meeting was first published in the **Federal Register** of February 19, 2020 in FR 2020–03231 on pages 9464–9465. This Amendment is to inform the public that the meeting will be held electronically only.

Good Cause for Late Notice: This Amendment to Notice of public meeting is being published less than 15 days before the first meeting date of May 1, 2020. There is good cause for this late notice. Specifically, travel restrictions affecting members of the RTIC Energy Storage Subcommittee related to the ongoing increase in COVID–19 cases have led the RTIC to conclude that, out of an abundance of caution, an electronic meeting is appropriate.

The meeting is being moved to a wholly electronic format in light of travel restrictions affecting members of the RTIC Energy Storage Subcommittee and related to the ongoing increase in coronavirus (COVID–19) cases.

Signing Authority

This document of the Department of Energy was signed on April 23, 2020, by Bruce J. Walker, Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 24, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–09056 Filed 4–28–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–12–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on April 9, 2020, the Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor TFO Tariff Rate Changes Effective March 26, 2020 to be effective 3/26/2020.

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.

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 the Federal Energy Regulatory Commission 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 30, 2020.

Dated: April 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09094 Filed 4–28–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14616–001]

Oregon State University; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a license to construct and operate a wave energy test facility for the PacWave South Hydrokinetic Project (project) and has prepared an Environmental Assessment (EA). Project facilities would be located on the Outer Continental Shelf (OCS) in the Pacific Ocean, in state territorial waters off the coast of Newport, Oregon, and on state and private lands. The project would occupy 2.65 square miles (1,695 acres) on the OCS, administered through a lease by the Bureau of Ocean Energy Management within the U.S. Department of the Interior.

In the EA, Commission staff analyzes the potential environmental effects of the project and concludes that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission provides all interested persons an opportunity to view and/or print the EA 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14616–001.

For further information, contact Jim Hastreiter at (503) 552–2760 or *james.hastreiter@ferc.gov.*

Dated: April 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09093 Filed 4–28–20; 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: EG20–130–000.
Applicants: Richmond Spider Solar, LLC.
Description: Richmond Spider Solar, LLC submits a notice of self-certification of exempt wholesale generator status.
Filed Date: 4/21/20.
Accession Number: 20200422–0011.
Comments Due: 5 p.m. ET 5/12/20.

Docket Numbers: EG20–131–000.
Applicants: Pleinmont Solar 1, LLC.
Description: Pleinmont Solar 1, LLC submits a notice of self-certification of exempt wholesale generator status.
Filed Date: 4/21/20.
Accession Number: 20200422–0010.
Comments Due: 5 p.m. ET 5/12/20.

Docket Numbers: EG20–132–000.
Applicants: Highlander IA, LLC.
Description: Highlander IA, LLC submits a notice of self-certification of exempt wholesale generator status.
Filed Date: 4/22/20.
Accession Number: 20200422–0012.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: EG20–133–000.
Applicants: Pleinmont Solar 2, LLC.
Description: Pleinmont Solar 2, LLC submits a notice of self-certification of exempt wholesale generator status.
Filed Date: 4/22/20.
Accession Number: 20200422–0013.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: EG20–134–000.
Applicants: IP Aragorn, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Aragorn, LLC.
Filed Date: 4/22/20.
Accession Number: 20200422–5194.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: EG20–135–000.
Applicants: IP Juno, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Juno, LLC.
Filed Date: 4/22/20.
Accession Number: 20200422–5197.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: EG20–136–000.
Applicants: IP Titan, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Titan, LLC.
Filed Date: 4/22/20.
Accession Number: 20200422–5200.
Comments Due: 5 p.m. ET 5/13/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1313–000.
Applicants: GridLiance High Plains LLC.
Description: Annual Informational Filing of Rate Year 2020 Projected Net Transmission Revenue Requirement and Rate Year 2018 True-Up Adjustment of GridLiance High Plains LLC.
Filed Date: 3/16/20.
Accession Number: 20200316–5183.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1417–001.
Applicants: Roundhouse Renewable Energy, LLC.
Description: Tariff Amendment: Amendment to Roundhouse Renewable Energy, LLC Application for MBR Authority to be effective 6/1/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5039.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1628–000.
Applicants: Cedar Creek II, LLC.
Description: Initial rate filing: Compliance Filing to be effective 3/19/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5169.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1629–000.
Applicants: AES ES Alamitos, LLC.
Description: Baseline eTariff Filing: AES ES Alamitos MBR Application to be effective 6/22/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5175.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1630–000.
Applicants: Midcontinent Independent System Operator, Inc..
Description: § 205(d) Rate Filing: 2020–04–22_SA 3479 Ameren Illinois-Boomtown Solar Energy GIA (J800) to be effective 4/8/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5161.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1631–000.
Applicants: AEP Oklahoma Transmission Company, Inc.
Description: § 205(d) Rate Filing: AEPOTC-Wildhorse Wind Preliminary Development Agreement Cancellation to be effective 6/22/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5163.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1632–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Idaho Falls Procure & Construct for Sugarmill-Paine to be effective 6/22/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5176.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1633–000.
Applicants: Silver Run Electric, LLC, PJM Interconnection, L.L.C.
Description: Compliance filing: Silver Run Electric, LLC submits revisions to OATT, Att. H–27 re: Order 864 to be effective 5/25/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5177.
Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: ER20–1634–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5616; Queue No. AD1–143 to be effective 3/26/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5034.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1635–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule FERC No. 79 to be effective 3/11/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5037.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1636–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Blackbear Alabama Solar 1 Amended and Restated LGIA Filing to be effective 4/9/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5045.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1637–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Mojave 3/4/5 LLC SA No. 240 to be effective 6/23/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5060.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1638–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Golden Fields Solar VI SA No. 200 to be effective 4/24/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5066.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1639–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation SGIAs Monolith 4–7 SA Nos. 201–204 to be effective 4/10/2020.
Filed Date: 4/23/20.
Accession Number: 20200423–5068.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1640–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2020–04–23 NSP–MMPA-Meter Upgrade-CIAC–677 to be effective 6/23/2020.

Filed Date: 4/23/20.

Accession Number: 20200423–5089.

Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: ER20–1641–000.

Applicants: Southern Illinois Generation Company, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 6/1/2020.

Filed Date: 4/23/20.

Accession Number: 20200423–5091.

Comments Due: 5 p.m. ET 5/14/20.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD20–8–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for approval of erratum to TPL–001–5.

Filed Date: 4/23/20.

Accession Number: 20200423–5103.

Comments Due: 5 p.m. ET 5/26/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09091 Filed 4–28–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1629–000]

AES ES Alamitos, 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 AES ES Alamitos, 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 May 13, 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 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.

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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09095 Filed 4–28–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–52–000.

Applicants: ETC Katy Pipeline, Ltd.

Description: submits tariff filing per 284.123(b)(1)+(g): Certification of Unchanged State Rate Election of ETC Katy Pipeline, LLC to be effective 4/1/2020.

Filed Date: 4/17/2020.

Accession Number: 202004175191.

Comments Due: 5 p.m. ET 5/8/2020.

284.123(g) Protests Due: 5 p.m. ET 6/16/2020.

Docket Number: PR20–53–000.

Applicants: Southcross CCNG Transmission Ltd.

Description: Tariff filing per 284.123(b),(e)/: Rate Election and Amended Statement of Operating Conditions to be effective 4/20/2020.

Filed Date: 4/20/2020.

Accession Number: 202004205043.

Comments/Protests Due: 5 p.m. ET 5/11/2020.

Docket Number: PR20–47–001.

Applicants: Public Service Company of Colorado.

Description: Tariff filing per 284.123(b),(e)+(g): Amended SOR and SOC 4.30.2020 to be effective 3/1/2020.

Filed Date: 4/22/2020.

Accession Number: 202004225205.

Comments Due: 5 p.m. ET 5/13/2020.

284.123(g) Protests Due: 5 p.m. ET 5/26/2020.

Docket Numbers: RP20–797–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Remove X–234 References to be effective 5/23/2020.

Filed Date: 4/22/20.
Accession Number: 20200422–5002.
Comments Due: 5 p.m. ET 5/4/20.

Docket Numbers: RP20–798–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Removal of Expiring Total Agreement to be effective 6/1/2020.
Filed Date: 4/22/20.
Accession Number: 20200422–5013.
Comments Due: 5 p.m. ET 5/4/20.

Docket Numbers: RP20–799–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing TETLP OFO April 2020 Penalty Disbursement Report.
Filed Date: 4/22/20.
Accession Number: 20200422–5019.
Comments Due: 5 p.m. ET 5/4/20.

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 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09092 Filed 4–28–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10008–98–OA]

Meeting of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) will conduct a virtual meeting on Friday, May 15, 2020, 11:00 a.m.–2:00 p.m. (EDT). The focus of the Committee meeting will be to: Deliberate and vote on the Risk Communication Report drafted by the Revitalizing Communities Workgroup of the LGAC and reviewed by other LGAC workgroups and the Small Communities Advisory Subcommittee (SCAS); discuss workgroup charges and issues; and determine the Committee's agenda and priorities for the remainder of the year. These are open meetings, and all interested persons are invited to participate. The LGAC and SCAS will hear comments from the public between 1:10–1:25 p.m. (EDT).

Individuals or organizations wishing to address the Subcommittee, or the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *daniels.joseph@epa.gov* for the LGAC and SCAS. Please contact the Designated Federal Officers (DFO) at the numbers listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

Meeting Logistics: The LGAC and SCAS meetings will be held virtually by conference call. Members of the public who wish to participate should register by contacting the DFO at the number below to receive the call-in number.

The agenda and other meeting materials, including the meeting summaries, will be available online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO. In the event of cancellation for unforeseen circumstances, please contact the designated federal officer or check the website above for reschedule information.

FOR FURTHER INFORMATION CONTACT: The Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee contact is Joseph Daniels, Acting Designated Federal Officer, at (202) 564–3115 or email at *daniels.joseph@epa.gov.*

Information on Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Joseph Daniels at (202) 564–3115 or email at *daniels.joseph@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 24, 2020.

Julian E. Bowles,

Director, State and Local Government Relations, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2020–09070 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10008–79–OLEM]

Thirty-Seventh Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 120(c) requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. As explained further below, the Docket is used to identify Federal facilities that should be evaluated to determine if they pose a threat to public health or welfare and the environment and to provide a mechanism to make this information available to the public. This notice identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on October 28, 2019. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include six additions, zero deletions, and one correction to the Docket since the previous update. At the time of publication of this notice, the new total number of Federal facilities listed on the Docket is 2,378.

DATES: This list is current as of April 3, 2020.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates* by clicking on the link for *Cleanups at Federal Facilities* or by

contacting Benjamin Simes (*Simes.Benjamin@epa.gov*), Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office. Additional information on the Docket and a complete list of Docket sites can be obtained at: *https://www.epa.gov/fedfac/fedfacts.*

SUPPLEMENTARY INFORMATION:

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3.0 Revisions of the Previous Docket
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7.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under Section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available at *https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates.*

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final* or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

[1] See Section 3.2 for the criteria for being deleted from the Docket.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1.* Martha Bosworth (HBS), 5 Post Office Square, Suite 100, Mail Code: OSRR07–2, Boston MA 02109–3912, (617) 918–1407.
- *US EPA Region 2.* Cathy Moyik (ERRD), 290 Broadway, New York, NY 10007–1866, (212) 637–4339.
- *US EPA Region 3.* Joseph Vitello (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.
- *US EPA Region 4.* Leigh Lattimore (4SF–SRSEB), 61 Forsyth St., SW, Atlanta, GA 30303, (404) 562–8768.
- *US EPA Region 5.* David Brauner (SR–6J), 77 W Jackson Blvd., Chicago, IL 60604, (312) 886–1526.
- *US EPA Region 6.* Philip Ofosu (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
- *US EPA Region 7.* Todd H. Davis (SUPRERSP), 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7749.
- *US EPA Region 8.* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.
- *US EPA Region 9.* Leslie Ramirez (SFD–6–1), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3978.
- *US EPA Region 10.* Ken Marcy, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR 97205, (503) 326–3269.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when

evaluating the site for potential response action or listing on the NPL. This notice includes six additions.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: A facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. (*See* Docket Codes (*Reasons for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket.) Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d). This notice includes zero deletions.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy comparison. This notice includes one correction.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS— that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872.* The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2]

The statutory provisions under which a Federal facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each Federal facility: For example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; (7) a

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

report submitted in accordance with section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,378.

Dated: April 22, 2020.

Gregory Gervais,

Acting Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

7.1 Docket Codes/Reasons for Deletion of Facilities

- *Code 1.* Small-Quantity Generator and Very Small Quantity Generator. Show citation box
- *Code 2.* Never Federally Owned and/or Operated.
- *Code 3.* Formerly Federally Owned and/or Operated but not at time of listing.
- *Code 4.* No Hazardous Waste Generated.
- *Code 5.* (This code is no longer used.)
- *Code 6.* Redundant Listing/Site on Facility.
- *Code 7.* Combining Sites Into One Facility/Entries Combined.
- *Code 8.* Does Not Fit Facility Definition.

7.2 Docket Codes/Reasons for Addition of Facilities

- *Code 15.* Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.
- *Code 16.* One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.
- *Code 16A.* NPL site that is part of a Facility already listed on the Docket.
- *Code 17.* New Information Obtained Showing That Facility Should Be Included.
- *Code 18.* Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
- *Code 19.* Sites Were Combined Into One Facility.
- *Code 19A.* New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

- *Code 20.* Reporting Provisions Change.
- *Code 20A.* Typo Correction/Name Change/Address Change.
- *Code 21.* Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)
- *Code 22.* Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)
- *Code 24.* Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #37—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
SMITHSONIAN INSTITUTION—NATIONAL AIR & SPACE MUSEUM.	INDEPENDENCE AVE., SW.	WASHINGTON	DC	20013	SMITHSONIAN	RCRA 3010	17	UPDATE #37.
FS—APALACHICOLA NF—RAD SITE.	ADJACENT TO FS ROAD 374A.	SOPCHOPPY	FL	32358	AGRICULTURE	CERCLA 103	17	UPDATE #37.
FS—CHEQUAMEGON NF—DRUMMOND LAKE LANDFILL.	46DEG20′9.5″N, 91DEG17′48.1″W.	PARK FALLS	WI	54552	AGRICULTURE	RCRA 3010	16	16-Nov-88.
FEDERAL BUREAU OF PRISONS—FORREST CITY.	DALE BUMPERS ROAD.	FORREST CITY	AR	72336	JUSTICE	RCRA 3010	17	UPDATE #37.
PASEO DEL CANON—SHOOTING RANGE.	54A PASEO DEL CANON.	SANTE FE	NM	87501	INTERIOR	RCRA 3010	17	UPDATE #37.
NORTHROP GRUMMAN FCU.	4400 SEN J BENNETT JOHNSTON AVE.	LAKE CHARLES	LA	70615	AIR FORCE	RCRA 3010	17	UPDATE #37.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #37—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
CHEQUAMEGON NATIONAL FOREST.	157 N 5TH AVENUE	PARK FALLS	WI	54552	AGRICULTURE	RCRA 3010	20A	16-Nov-88.
FS—CHEQUAMEGON NF—CLAM LAKE LANDFILL.	46°11′16″N, 90°55′55″W.	PARK FALLS	WI	54552	AGRICULTURE	RCRA 3010		16-Nov-88.

[FR Doc. 2020–09069 Filed 4–28–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–10005–68–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Compliance Assurance Monitoring Program (EPA ICR Number 1663.10, OMB Control Number 2060–0376) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through June 30, 2020. Public comments were previously requested via the **Federal Register** on August 26, 2019, during a 60-day comment period. This document allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before May 29, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2003–0152, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Mr. Muntasir Ali, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; and email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR (Docket ID No. EPA–HQ–OAR–2003–0152). The docket can be viewed online at *https://www.regulations.gov/* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The telephone number for the EPA Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: The Clean Air Act (CAA) contains several provisions directing the EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. Under CAA section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification and reporting requirements to assure compliance with the permit terms and conditions.'' See also CAA section 504(c) (each permit shall require reporting of monitoring the EPA and such other conditions as are necessary to assure compliance). CAA section 504(b) allows the EPA to prescribe rules, methods, and procedures for determining compliance, recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Section 114(a)(1) of the CAA provides additional authority concerning monitoring, reporting, and recordkeeping requirements. This section provides the Administrator with the authority to require any owner/operator of a source to install and to operate monitoring systems and to record the resulting monitoring data. The EPA promulgated the Compliance Assurance Monitoring (CAM) Rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900), pursuant to these provisions. Per 64.9(2)(a), the collection of information for monitoring will include: (1) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken, (2) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and (3) a description of the actions taken to implement a QIP during the reporting period as specified in § 64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring. In accordance with CAA section 114(c) and CAA section 503(e), the monitoring information source owners must submit must also be available to the public except under circumstances set forth in section 114(c) of the CAA.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this section are all facilities required to have an operating permit under title V of the CAA. See section 502(a) of the CAA, which defines the sources to obtain a title V permit. See also 40 CFR 70.2 and 71.2.

Respondent's obligation to respond: Mandatory under title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a title V permit. See also 40 CFR 70.2 and 71.2.

Estimated number of respondents: There are 21,448 pollutant-specific emission units (PSEUs), and 117 permitting authorities. Therefore, the estimated number of respondents is 21,565 (total).

Frequency of response: At least every 6 months per title V, 40 CFR 70.6(a)(3)(iii)(A) and (B).

Total estimated burden: 24,590 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $999,211 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in the Estimates: There is a decrease of 26,490 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an updated estimate of the number of sources and permits subject to the 40 CFR part 70 programs (a reduction of 1,768 permits), an increase in the number of permitting authorities (an addition of one), a decrease in the number of CAM plan renewal review

hours (a decrease of 5.5 hours per occurrence), and no new federal mandates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–09027 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10008–82–OA]

Notification of a Public Meeting of the Science Advisory Board Reduced-Form Tools Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Reduced-Form Tools Review Panel (RFT Review Panel) to review EPA's October 2019 report: ''Evaluating Reduced Form Tools for Estimating Air Quality Benefits.''

DATES: The public teleconferences of the Science Advisory Board RFT Review Panel will be held on Thursday, May 28, 2020, from 12:00 noon to 5:00 p.m. (Eastern Time) and Friday, May 29, 2020, from 12:00 noon to 5:00 p.m. (Eastern Time).

ADDRESSES: The teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconferences may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone/voice mail (202) 564–2059, or email at *shallal.suhair@epa.gov.* General information concerning the SAB can be found on the EPA website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Reduced-Form Tools Review Panel (RFT Review Panel) will hold two public teleconferences to review EPA's Evaluation of Reduced Form Tools for Estimating Air Quality Benefits. The SAB RFT Review Panel will provide comments on the appropriateness of the framework developed and outlined in the report for evaluating the use of Reduced-Form Tools to generate estimates of monetized health benefits compared with those that rely on full-form air quality and health benefits models to inform the cost-benefit analyses of major regulatory actions. The RFT Review Panel will also provide input with regard to future design improvements to enhance the capabilities of these tools.

Technical Contacts: Any technical questions concerning EPA's document titled *Evaluating Reduced-Form Tools for Estimating Air Quality Benefits* should be directed to Dr. Erika Sasser (*sasser.erika@epa.gov*).

Availability of Meeting Materials: Prior to the teleconferences, the agenda and other meeting materials for each teleconference will be placed on the SAB website at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB RFT Review Panel will have the most impact if it provides specific scientific or technical information or analysis for the SAB RFT Review Panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes. Persons interested in providing oral statements on May 21, 2020, should contact Dr. Sue Shallal, DFO, via email at the contact information noted above by May 21, 2020, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB RFT Review Panel members, statements should be received in the SAB Staff Office by May 21, 2020, for consideration at the public teleconference(s). Written statements should be supplied to the DFO via email at the contact information above. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: April 23, 2020.

V. Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020–09071 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0635; FRL–10008–70–ORD]

Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment Subcommittee Meeting, May 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment (CSS–HERA) Subcommittee to review the draft 2019–22 Strategic Research Action Plan (StRAP) of the HERA research program.

DATES: The videoconference meeting will be held over two days, Tuesday, May 12, 2020, from 12:30 p.m. to 5:00 p.m. (EST) and Wednesday, May 13, 2020, from 12:30 p.m. to 5:00 p.m. (EST). Meeting times are subject to change. This meeting is open to the

public. Those who wish to attend must register by May 8, 2020. Comments must be received by May 8, 2020 to be considered by the subcommittee. Requests for the draft agenda or making a presentation at the meeting will be accepted until May 8, 2020.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at *https://www.eventbrite.com/e/us-epa-bosc-chemical-safety-for-sustainability-and-health-and-environmental-risk-assessment-tickets-93157311025.* Attendees should register no later than May 8, 2020.

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0635 by one of the following methods:

• *www.regulations.gov:* Follow the online instructions for submitting comments.

▪ *Note:* comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.

• *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0635.

▪ *Note:* comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket, and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.*

Copyrighted materials in the docket are only available via hard copy. The telephone number for the ORD Docket Center is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voice mail at: (202) 564–6518; or via email at: *tracy.tom@epa.gov.*

Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. Meeting agenda and materials will be posted to *https://www.epa.gov/bosc.*

Proposed agenda items for the meeting include but are not limited to the following: review of the HERA 2019–22 draft StRAP.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Pub. L. 92–463, 1, Oct. 6, 1972, 86 Stat. 770.

Dated: April 17, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2020–09032 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0321; FRL–10009–00–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Sewage Sludge Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for Sewage Sludge Incineration Units (EPA ICR Number 2369.05, OMB Control Number 2060–0658), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 29, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0321, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Sewage Sludge Incineration Units (40 CFR part 60, subpart LLLL) were proposed on October 14, 2010, and promulgated on March 21, 2011. These regulations apply to new and existing facilities with one or more sewage sludge incineration (SSI) units. New facilities are those that commenced construction after October 14, 2010 or commenced modification after September 21, 2011. Physical or operational changes made to the SSI unit to comply with the SSI Emission Guidelines at 40 CFR part 60, subpart MMMM do not qualify as a modification under this NSPS. This information is

being collected to assure compliance with 40 CFR part 60, subpart LLLL.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners or operators of sewage sludge incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart LLLL).

Estimated number of respondents: 8 (total).

Frequency of response: Occasionally, semiannually, and annually.

Total estimated burden: 1,560 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,070,000 (per year), which includes $998,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most recently-approved ICR as currently identified in the OMB Inventory of Approved Burdens due to an increase in the number of respondents subject to the rule. While the per respondent costs of annual performance testing and CEMS/CPMS monitoring have remained the same, but the total O&M costs have increased from the previous ICR renewal due to the increase in the number of existing respondents complying with the requirements of the rule.

Several revisions were made to the calculation of respondent burden. The labor burden for facilities to familiarize with regulation requirements was revised from 40 hours per existing source per year to 40 hours for a new source and 4 hours for an existing source. This change more accurately reflects the burden that new and existing sources require to familiarize and re-familiarize with the rule. The Number of Respondents that will complete the annual refresher course was revised from 1 to 7 to reflect that this is an annual requirement for operators at existing sources, per 40 CFR 60.4825.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–09024 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0319; FRL–10008–95–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for VOC Emissions From Petroleum Refinery Wastewater Systems (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for VOC Emissions from Petroleum Refinery Wastewater Systems (EPA ICR Number 1136.13, OMB Control Number 2060–0172), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 29, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID Number EPA–HQ–OECA–2013–0319, online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for VOC Emissions from Petroleum Refinery Wastewater Systems (40 CFR part 60, subpart QQQ) were proposed on May 4, 1987, and promulgated on November 23, 1988. These regulations apply to existing facilities and new wastewater systems at petroleum refineries, and cover individual drain systems, oil-water separators, and aggregate facilities. An individual drain system consists of all process drains connected to the first downstream junction box. An oil-water separator is the wastewater treatment equipment used to separate oil from water. An aggregate facility is an individual drain system together with ancillary downstream sewer lines and oil-water separators, down to and including the secondary oil-water separator, as applicable. Aggregate facilities are intended to capture any potential VOC emissions within the petroleum refinery wastewater system during expansions of and additions to the system. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart QQQ.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or during any period in which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Petroleum refinery wastewater systems.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart QQQ).

Estimated number of respondents: 149 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 10,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,200,000 (per year), which includes $19,400 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The burden in labor hours is unchanged from the previous ICR renewal and the number of responses is unchanged. The costs of performance testing and CEMS monitoring are unchanged from the previous ICR renewal. The regulations have not changed over the past three years and are not anticipated to change over the next three years. The growth rate for the industry is very low, negative or non-existent, so there is no change in the estimate of the number of sources subject to this regulation since the previous ICR renewal.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–09028 Filed 4–28–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16701]

Deletion of Items From April 23, 2020 Open Meeting

April 23, 2020.

The following items have been adopted by the Commission and deleted from the list of items scheduled for consideration at the Thursday, April 23, 2020, Open Meeting. The items were previously listed in the Commission's Notice of Thursday, April 16, 2020.

Item No.	Bureau	Subject
4	INTERNATIONAL	TITLE: ViaSat, Inc., Petition for Declaratory Ruling Granting Access for a Non-U.S.-Licensed Non-Geostationary Orbit Satellite Network (IBFS File No. SAT–PDR–20161115–00120 and SAT–APL–20180927–00076). SUMMARY: The Commission will consider an Order and Declaratory Ruling that would grant ViaSat's request for U.S. market access to offer broadband services using a proposed constellation of non-geostationary orbit satellites.
5	MEDIA	TITLE: Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules (MB Docket No. 19–193); Modernization of Media Regulation Initiative (MB Docket No. 17–105). SUMMARY: The Commission will consider a Report and Order that would modernize the LPFM technical rules to provide more regulatory flexibility for licensees.
6	MEDIA	TITLE: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Docket No. 11–43). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would propose to expand video description requirements to 40 additional local television markets over the next four years to increase the accessibility of programming to blind and visually impaired Americans.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09021 Filed 4–28–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0819; FRS 16697]

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 29, 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: 3060–0819.

Title: Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support.

Form Numbers: FCC Form 481, FCC Form 497, FCC Form 555, FCC Form 5629, FCC Form 5630, FCC Form 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit enterprises.

Number of Respondents and Responses: 18,335,775 respondents; 20,102,235 responses.

Estimated Time per Response: .0167 hours–125 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 8,531,854 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contained in this collection. The PIA was published in the **Federal Register** at 82 FR 38686 on August 15, 2017. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN) associated with this collection is FCC/WCB–1, ''Lifeline Program.''

The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program (''Lifeline'').

As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published FCC/WCB–1 ''Lifeline Program'' in the **Federal Register** on August 15, 2017 (82 FR 38686).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this 60-day comment period to obtain approval from the Office of Management and Budget (OMB) of revisions to this information collection.

On October 30, 2019, the Commission adopted the Bridging the Digital Divide for Low-Income Consumers, WC Docket Nos. 17–287, 11–42, 09–197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking FCC 19–111 (2019) (2019 Lifeline Order). The Lifeline Fifth Report and Order restores the traditional state and federal roles in designating eligible telecommunications carriers (ETC) and eliminates the Lifeline Broadband Provider (LBP) category. The Order also codifies a requirement that enrollment representatives must register with USAC before interacting with USAC's systems. Finally, the 2019 Lifeline Order implements several process and procedural changes to further bolster program integrity efforts. These changes require minor modifications to the previously approved requirements. The changes made by the Lifeline Fifth Report and Order have a moderate impact on overall burden, increasing the burden hours for some requirements and decreasing the burden hours for other requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09020 Filed 4–28–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0906; FRS 16696]

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 (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 comments should be submitted on or before June 29, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC 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.

OMB Control Number: 3060–0906.

Title: Annual DTV Ancillary/Supplemental Services Report for DTV Stations, FCC Form 2100, Schedule G; 47 CFR 73.624(g).

Form Number: FCC Form 2100, Schedule G (formerly FCC Form 317).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 7,652 respondents, 15,304 responses.

Frequency of Response: Recordkeeping requirement, annual reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

Estimated Time per Response: 2–4 hours.

Total Annual Burden: 45,912 hours.

Total Annual Cost: $1,147,800.

Nature and Extent of Confidentiality: There is no need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 2018, the Commission revised section 73.624(g) of its rules to require only those DTV stations that provided ''feeable'' ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission. See Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services, MB Docket Nos. 17–264, 17–105, FCC 18–41, Report and Order.

Each licensee/permittee of a digital television (DTV) station that provides feeable ancillary or supplementary services during the relevant reporting period must file on an annual basis FCC Form 2100, Schedule G. Specifically, required filers include the following (but we generally refer to all such entities herein as a ''DTV licensee/permittee''):

A licensee of a digital commercial or noncommercial educational (NCE) full power television (TV) station, low power television (LPTV) station, TV translator or Class A TV station.

A permittee operating pursuant to digital special temporary authority (STA) of a commercial or NCE full power TV station, LPTV station, TV translator or Class A TV station.

Each DTV licensee/permittee must report the feeable ancillary or supplementary services that were provided during the reporting cycle.

Each DTV licensee/permittee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Each NCE licensee/permittee must also retain for eight years documentation sufficient to show that its entire bitstream was used ''primarily'' for NCE broadcast services on a weekly basis.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–09019 Filed 4–28–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16689]

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 29, 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 Number: 3060–XXXX.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17–59.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents and Responses: 3,666 respondents; 15,375,326 responses.

Estimated Time per Response: .004 hours (15 seconds) to 32 hours.

Frequency of Response: Monthly, one time, and on occasion reporting requirements; recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 227 and 251(e)(1) of the Telecommunications Act of 1996.

Total Annual Burden: 290,233 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On December 12, 2018, the Commission adopted rules in FCC 18–177, Second Report and Order, published at 84 FR 11226, March 26, 2019, which contain new information collection requirements. Specifically, the Commission concluded that the obligation to provide permanent disconnect information will apply to all reporting carriers as defined in the Commission's numbering rules, which include wireless, wireline, and interconnected Voice over internet Protocol providers that obtain numbers from the North American Numbering Plan Administrator. As part of the Commission reporting requirements, reporting carriers must provide, among other things, the most recent date each North American Numbering Plan telephone number allocated or ported to the reporting carrier was permanently disconnected. The telephone number and date of permanent disconnection will allow voluntary users of the database to determine whether a number has been permanently disconnected prior to calling that number, thereby protecting against unwanted calls to consumers and potential Telephone Consumer Protection Act liability for callers. Reporting carriers and voluntary users of the reassigned numbers database may also need to provide contact information, including names, address, and telephone number, to enable the database administrator to contact the reporting carrier in case there are any issues with their submission.

The Commission has referred to the North American Numbering Council the development of a technical requirements document for the reassigned numbers database for review by the Commission. The technical requirements document will contain a single, unified set of functional and interface requirements for: Technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service providers' reporting and accounting.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09018 Filed 4–28–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–10]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Federal Home Loan Bank Capital Stock–30-day Notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as ''Federal Home Loan Bank Capital Stock,'' which has been assigned control number 2590–0002 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on April 30, 2020.

DATES: Interested persons may submit comments on or before May 29, 2020.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and

Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Federal Home Loan Bank Capital Stock, (No. 2020–N–10)''' by any of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Federal Home Loan Bank Capital Stock, (No. 2020–N–10).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Rebecca Williams, Financial Analyst, Division of Federal Home Loan Bank Regulation, *Rebecca.Williams@fhfa.gov* (202) 649–3719; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. An institution that is eligible for membership in a particular Bank must purchase and hold a prescribed minimum amount of the Bank's capital stock in order to become and remain a member of that Bank. With limited exceptions, only an institution that is a member of a Bank may obtain access to low cost secured loans, known as advances, or other products provided by that Bank.

Section 6 of the Bank Act establishes capital requirements for the Banks and requires FHFA to issue regulations prescribing uniform capital standards applicable to all of the Banks.[1] Section 6 also establishes parameters relating to the Banks' capital structures and requires that each Bank adopt a ''capital structure plan'' (capital plan) to establish, within those statutory parameters, its own capital structure and to establish requirements for, and govern transactions in, the Bank's capital stock.[2] FHFA's regulations on Bank Capital Requirements, Capital Stock, and Capital Plans are located at 12 CFR part 1277.

B. Need For and Use of the Information Collection

Both the Bank Act and FHFA's regulations state that a Bank's capital plan must require its members to maintain a minimum investment in the Bank's capital stock, but both permit each Bank to determine for itself what that minimum investment is and how each member's required minimum investment is to be calculated.[3] Although each Bank's capital plan establishes a slightly different method for calculating the required minimum stock investment for its members, each Bank's method is tied to some degree to both the level of assets held by the member institution (typically referred to as a ''membership stock purchase requirement'') and the amount of advances or other business engaged in between the member and the Bank (typically referred to as an ''activity-based stock purchase requirement'').

A Bank must collect information from its members to determine the minimum capital stock investment each member is required to maintain at any point in time. Although the information needed to calculate a member's required minimum investment and the precise method through which it is collected differ somewhat from Bank to Bank, the Banks typically collect two types of information. First, in order to calculate and monitor compliance with its membership stock purchase requirement, a Bank typically requires each member to provide and/or confirm an annual report on the amount and types of assets held by that institution. Second, each time a Bank engages in a business transaction with a member, the Bank typically confirms with the member the amount of additional Bank capital stock, if any, the member must acquire in order to satisfy the Bank's activity-based stock purchase requirement and the method through which the member will acquire that stock.

The OMB number for the information collection is 2590–0002, which is due to expire on April 30, 2020. The likely respondents include current and former Bank members and institutions applying for Bank membership.

C. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the two collections under this control number and estimates that the average total annual hour burden imposed on all respondents over the next three years will be 23,135 hours. The estimate for each collection was calculated as follows:

1. Membership Stock Purchase Requirement Submissions

FHFA estimates that the average annual number of current and former members and applicants for membership required to report information needed to calculate a membership stock purchase requirement will be 6,950, and that each institution will submit one report per year, resulting in an estimated total of 6,950 submissions annually. The estimate for the average time required to prepare, review, and submit each report is 0.7 hours. Accordingly, the estimate for the annual hour burden associated with membership stock purchase requirement submissions is (6,950 reports × 0.7 hours per report) = 4,865 hours.

2. Activity-Based Stock Purchase Requirement Submissions

FHFA estimates that the average number of daily transactions between Banks and members that will require the exchange of information to confirm the member's activity-based stock purchase requirement will be 350, and that there will be an average of 261 working days

[1] *See* 12 U.S.C. 1426(a).

[2] *See* 12 U.S.C. 1426(b), (c).

[3] *See* 12 U.S.C. 1426(c)(1); 12 CFR 1277.22, 1277.28(a).

per year, resulting in an estimated 91,350 submissions annually. The estimate for the average preparation time per submission is 0.2 hours. Accordingly, the estimate for the annual hour burden associated with activity-based stock purchase requirement submissions is (91,350 submissions × 0.2 hours per submission) = 18,270 hours.

D. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on February 19, 2020.[4] The 60-day comment period closed on April 20, 2020. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Robert Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2020–09107 Filed 4–28–20; 8:45 am]

BILLING CODE 8070–01–P

[4] *See* 85 FR 9471 (Feb. 19, 2020).

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011830–013.

Agreement Name: Indamex Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A.; Hapag-Lloyd AG; Ocean Network Express Pte. Ltd.; and Orient Overseas Container Line Limited.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article 5.2(a) to revise the size and maximum number of vessels to be provided and to delete obsolete language.

Proposed Effective Date: 6/1/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/553.

Agreement No.: 201332–001.

Agreement Name: Maersk/MSC/SML Cooperative Working Agreement.

Parties: Maersk A/S; Mediterranean Shipping Company S.A.; SM Line Corporation.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment adds a new Article 12 setting forth a temporary, alternative arrangement between the parties that will apply on an interim basis in light of the suspension of the USWC3 service.

Proposed Effective Date: 6/1/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27468.

Agreement No.: 201243–001.

Agreement Name: COSCO SHIPPING/WHL Slot Charter Agreement.

Parties: COSCO SHIPPING Lines Co., Ltd.; Wan Hai Lines (Singapore) Pte. Ltd.; and Wan Hai Lines Ltd.

Filing Party: Eric Jeffrey; Nixon Peabody.

Synopsis: The Amendment expands the geographic scope to include Taiwan and Vietnam, and updates the address of WHL (Singapore).

Proposed Effective Date: 4/20/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/7135.

Agreement No.: 201340.

Agreement Name: Hyundai Glovis/Kawasaki Kisen Kaisha Ltd. Europe to United States Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes Hyundai Glovis to charter space to ''K'' Line on an ad hoc basis on Hyundai Glovis vessels in the trades between the U.S. East and West Coasts on the one hand and Spain, Italy, France, Belgium, Germany, the United Kingdom, and Sweden on the other hand.

Proposed Effective Date: 4/21/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/29491.

Agreement No.: 201256–001.

Agreement Name: Maersk/MSC Gulf-ECSA Vessel Sharing Agreement.

Parties: Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment deletes the expiration date of the Agreement and changes the name of the Maersk entity that is party to the Agreement.

Proposed Effective Date: 6/5/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/12179.

Agreement No.: 201271–001.

Agreement Name: MED/USEC Vessel Sharing Agreement.

Parties: Hapag-Lloyd; Yang Ming Marine Transport Corp. and Yang Ming (UK) Ltd. (acting as a single party); Ocean Network Express Pte. Ltd.; COSCO SHIPPING Lines Co., Ltd.; CMA CGM S.A. and APL Co. Pte. Ltd. and American President Lines, Ltd. (acting as a single party); and Orient Overseas Container Line Limited and OOCL (Europe) Limited (acting as a single party).

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The amendment deletes COSCO SHIPPING Lines (Europe) GmbH as a party to the Agreement and corrects the address for COSCO SHIPPING Lines Co., Ltd.

Proposed Effective Date: 4/23/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16275.

Dated: April 24, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–09079 Filed 4–28–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1699]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA15

Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed guidance; extension of comment period.

SUMMARY: On March 18, 2020, the Board and the FDIC (together, the agencies)

published in the **Federal Register** a document entitled ''Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies'' (document). The document invited comments on proposed guidance for the 2021 and subsequent resolution plan submissions by certain foreign banking organizations. The proposed guidance is intended to assist these firms in developing their resolution plans, which are required to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The document provided for a comment period ending on May 5, 2020. The agencies have determined that an extension of the comment period until June 4, 2020, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare and submit comments.

DATES: The comment period for the document entitled ''Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies,'' published on March 18, 2020 (85 FR 15449), is extended from May 5, 2020, to June 4, 2020.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT:

Board: Mona Elliot, Deputy Associate Director, (202) 452–4688, Division of Supervision and Regulation, Laurie Schaffer, Deputy General Counsel, (202) 452–2272, Jay Schwarz, Special Counsel, (202) 452–2970, Steve Bowne, Senior Counsel, (202) 452–3900, or Sarah Podrygula, Attorney (202) 912–4658, Legal Division. Users of Telecommunications Device for the Deaf (TDD) may call (202) 263–4869.

FDIC: Alexandra Steinberg Barrage, Associate Director, Policy and Data Analytics, *abarrage@fdic.gov;* Ronald W. Crawley, Jr., Senior Resolution Policy Specialist, *rcrawley@fdic.gov;* Celia Van Gorder, Senior Counsel, *cvangorder@fdic.gov,* (202) 898–6748 or Esther Rabin, Counsel, *erabin@fdic.gov,* (202) 898–6860, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On March 18, 2020, the agencies published in the **Federal Register** [1] a document inviting comments on proposed guidance meant to assist certain foreign banking organizations in developing their 2021 and subsequent resolution plans. These resolution plans are required to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2]

The document stated that the comment period would close on May 5, 2020. Since the issuance of the proposed guidance, the COVID–19 global pandemic has substantially disrupted activity in the United States. The effects of the COVID–19 emergency have created many challenges for households and businesses, and an extension of the comment period will provide additional opportunity for the public to prepare comments to address the matters raised by the document. Therefore, the agencies are extending the comment period for the document from May 5, 2020, to June 4, 2020.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 23, 2020.

Robert E Feldman,

Executive Secretary.

[FR Doc. 2020–09096 Filed 4–28–20; 8:45 am]

BILLING CODE 6210–01–P; 6714–01–P

[1] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies. 85 FR 15449 (March 18, 2020).

[2] 12 U.S.C. 5365(d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC/NCIPC); Cancellation of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC/NCIPC); April 30, 2020, 12:30 p.m.–03:50 p.m. EDT; which was published in the **Federal Register** on March 25, 2020, Volume 85, Number 58, page/s/16945–16946.

This meeting is being cancelled in its entirety due to the response activities associated with the COVID–19 pandemic. The planned agenda items for the April meeting will be included for discussion in a meeting being rescheduled for this summer. We will provide updated information in a future **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., MSEH, Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop S106–9, Atlanta, Georgia 30341; telephone (770) 488–3953; email address: *NCIPCBSC@cdc.gov.*

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. 2020–09051 Filed 4–28–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5799]

Modernizing the Food and Drug Administration's Data Strategy; Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a new date, June 30, 2020, for the postponed public meeting entitled ''Modernizing FDA's Data Strategy'' and extending the comment period for docket number FDA–2019–N–5799 that appeared in the **Federal Register** on January 8, 2020. In the **Federal Register** notice, FDA requested comments on the purpose of the meeting, which is related to possible Agency level approaches to modernizing FDA's data strategy, including approaches to data quality, data stewardship, data exchange, and data analytics. The Agency is taking this action in response to the associated postponed public meeting to allow interested persons additional time to submit comments.

DATES: The public meeting will be held on June 30, 2020, from 9 a.m. to 5 p.m. Eastern time. The public meeting may be extended or may end early. FDA is extending the comment period on the **Federal Register** notice published January 8, 2020, with docket FDA–2019–N–5799. Submit either electronic or written comments by July 30, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Room 1503A), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/white-oak-campus-information/public-meetings-fda-white-oak-campus.*

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 July 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 30, 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–2019–N–5799 for ''Modernizing FDA's Data Strategy; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Jessica Berrellez, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 2308, Silver Spring, MD 20993, 301–796–0511, *Jessica.Berrellez@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In September 2019, FDA announced its Technology Modernization Action Plan (TMAP; *https://www.fda.gov/about-fda/reports/fdas-technology-modernization-action-plan*). The TMAP describes important near-term actions that FDA is taking to modernize use of technology—computer hardware, software, data, and analytics—to advance FDA's public health mission. The TMAP will provide a foundation for developing a more fluid, agile, and efficient FDA that is responsive to novel technologies and rapidly increasing workloads.

To achieve these goals, FDA intends to develop a modernized Agency-wide, strategic approach not only to technology, but to data itself. Data is at the heart of FDA's work as a science-based Agency, and we anticipate ongoing, rapid increases in the amount and complexity of the data that informs FDA's regulatory decision-making process and how we advance our public health mission. FDA will hold a public meeting on June 30, 2020, from 9 a.m. to 5 p.m., to provide an opportunity to hear from FDA staff and outside experts on topics directly related to modernizing FDA's data strategy, including data quality, data stewardship, data exchange, and data analytics.

II. Topics for Discussion at the Public Meeting

FDA is gathering scientific and technical information to help inform its development of an Agency-wide, strategic approach to modernizing its data strategy, including data quality, data stewardship, data exchange, and data analytics. The Agency has determined that a public meeting and an open public docket will encourage public input and engagement in this important topic.

The Agency welcomes any relevant scientific and technical information related to FDA's consideration of the following topics:

1. Standards and policy, including:

a. How can FDA best use policy and common data standards to help ensure the effective and efficient use of data assets?

b. What are the consequences/issues as we move from ''static point-in-time

data sets'' to updating digital data streams for analyses?

c. As we move into increased sharing and integrated data sets, how might FDA manage data in a way that avoids unnecessary duplication?

2. Data security, privacy, and management including:

a. How can FDA modernize its data strategy to continue ensuring privacy and security of data?

b. What should FDA do to promote the management and organization of data assets across the Agency, as the amount and complexity of data (*e.g.,* in regulatory submissions to FDA) is rapidly increasing?

3. Data strategies and data sharing, including:

a. How can FDA's data strategy facilitate broader goals of integration and interoperability of health care data and scientific data/virtual patient data generated using scientific models?

b. How can FDA design its data strategy to reflect a global marketplace and promote clarity to data providers like regulated industry and other stakeholders?

c. How can FDA design its data strategy and policy development to facilitate appropriate data access, data sharing within the Agency and via data sharing agreements, as well as the appropriate reuse and repurposing of data to advance Agency regulatory science priorities?

d. For stakeholders, including regulated industry that submit data to FDA, how can FDA enhance the efficiency of the preparation and submission of data to FDA?

III. Attending and Participating in the Public Meeting

Registration: If you wish to attend this public meeting in person, please register via *https://modernizing datastrategy.eventbrite.com* by 5 p.m. Eastern Time on June 26, 2020. Those without email access can register to attend in person by contacting Jessica Berrellez at 301–796–0511 by June 26, 2020 (see **FOR FURTHER INFORMATION CONTACT**). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. If you registered for the March 27, 2020, public meeting, your registration will NOT carry over and you must register for this as a new meeting. Space will be limited.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by 5 p.m. Eastern Time on June 26, 2020. Early registration is recommended because seating is limited; therefore, FDA may limit the number of in-person attendees from each organization.

Given the current uncertainty related to FDA's ability to hold in-person meetings of more than 10 people on a given future date, it is possible that this may be converted to a virtual meeting or may be postponed. Please check the meeting website for the latest information: *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

If you need special accommodations due to a disability, please contact *Jessica.Berrellez@fda.hhs.gov* (see **FOR FURTHER INFORMATION CONTACT**) no later than 11:59 p.m. Eastern Time on June 23, 2020.

Participants: FDA is interested in gathering scientific and technical information from individuals with a broad range of perspectives on the topics to be discussed at the public meeting. Participants will include those who submitted nominations through the **Federal Register** notice published January 8, 2020, with docket number FDA–2019–N–5799. They will discuss their scientific and/or technical knowledge on the questions and presentations in each session. Participants will be responsible for their own travel arrangements. New nominations are not being solicited and will not be accepted.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Please register for the streaming webcast of the workshop via *https://modernizing datastrategy.eventbrite.com* by 5 p.m. Eastern Time on June 26, 2020. Pre-registration for the webcast is recommended, but not required. This is a new registration. If you registered for the March 27, 2020, public meeting, your registration will NOT carry over. The webcast will be available and active during the public meeting at *https://collaboration.fda.gov/data063020/.* In the event that this meeting is converted to a virtual meeting, options for remote participation may change. Please check the meeting website for the latest information: *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

An agenda for the public meeting and any other background materials will be made available 5 days before the public meeting at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

Persons attending FDA's meetings are advised that the Agency is not responsible for providing access to electrical outlets.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

Dated: April 23, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–09045 Filed 4–28–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Request for information (RFI).

SUMMARY: The Department of Health and Human Services (HHS), Office of Research Integrity (ORI) is seeking information and comments from entities and individuals regarding best practices for sequestering evidence during research misconduct proceedings under 42 CFR part 93. In particular, ORI is interested in learning about challenges and solutions in sequestering digital evidence, such as data stored in cloud environments and on personal electronic equipment or storage devices. ORI will use this information to prepare guidelines to support institutions carrying out research misconduct proceedings.

Responses to the RFI must be received electronically at the email address provided below no later than 5:00 p.m. ET 45 days after the publication of this RFI.

Interested parties are to submit comments electronically to *OASH-ORI-Public-Comments@hhs.gov.* Include ''Sequestration RFI'' in the subject line of the email. Mailed paper submissions

and submissions received after the deadline will not be reviewed.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION:

Background: 42 CFR part 93 establishes several requirements regarding the reporting and investigation of research misconduct to which institutions must adhere to receive Public Health Service (PHS) funding. Per § 93.305(a), an institution must:

> Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, *promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner,* except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. . . . [Emphasis added].

Failing to properly sequester data can have a significant detrimental impact on the outcome of a research misconduct proceeding. Common issues that can negatively affect the examination of evidence include:

- Notifying a respondent about a misconduct proceeding before sequestration
- failing to sequester all relevant evidence, such as digital data stored on personal computers and storage devices
- failing to sequester forensic images of hard drives
- failing to fully document the sequestration process and maintain a detailed chain of custody for each item sequestered

To better support institutions in carrying out their responsibility for maintenance and custody of research records and evidence, ORI intends to publish guidelines that will inform interested parties of best practices for sequestering evidence during a research misconduct proceeding.

Request for information and comments: In preparation for producing guidelines on sequestration, ORI is interested in learning what major challenges exist in the sequestration process and approaches to overcome them. ORI is particularly interested in best practices in the sequestering of digital evidence. Specific topics of interest include but are not limited to the following:

- Digital data can be an important source of evidence for research misconduct proceedings. What unique challenges exist when collecting digital data and what approaches successfully address them? ORI is especially interested in learning the following:
  - ➢ How do institutions identify sources of digital data that need to be sequestered?
  - ➢ Digital data may be located on devices not necessarily owned by the institution, such as personal computers and storage devices, cloud-based and online services, and personal email. What approaches are successful in securing data in these situations? What data policies address this issue?
- ORI has observed that sequestration tends to be more successful when institutions assemble a team of individuals with different expertise to assist in in the gathering and securing of evidence. Thus, ORI is interested in learning the following:
  - ➢ What is the technical makeup of successful teams, especially regarding digital evidence?
  - ➢ How are members selected and trained?
- Institutions may have their own specific policies, procedures, guidelines, instructions, or other tools to enable them to meet their broad obligation under § 93.305(a) to properly sequester evidence for research misconduct proceedings. Thus, ORI is interested in learning the following:
  - ➢ What institutional policies, procedures, and guidelines have been effective in ensuring successful sequestration?
  - ➢ To assist institutions in formulating their own policies, the ORI website provides example Policies and Procedures for Research Misconduct at *https://ori.hhs.gov/sample-policy-procedures-responding-research-misconduct-allegations.* Although institutions are not required to adopt the exact text as presented, ORI considers institutions that do so to be compliant with their obligation under § 93.302(a)(1) to establish policies and procedures in compliance with 42 CFR part 93. What additions or changes are appropriate for these sample Policies and Procedures to reflect the growing digital landscape, especially regarding sequestering digital evidence?

Collection of Information Requirements: Please note: This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposals (RFPs), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or to make a grant award. Further, ORI is not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in responding to this RFI; all costs associated with responding to this RFI will be solely at the expense of the interested parties. ORI notes that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request.

ORI will actively consider all input as our office develops future regulatory proposals or future sub-regulatory policy guidance. ORI may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract or to issue a grant. Information obtained as a result of this RFI may be used by the U.S. Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned.

Dated: April 22, 2022.

Elisabeth A. Handley,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2020–09086 Filed 4–28–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990-new]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the

following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 29, 2020.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Substance Use Disorder Patient Placement Criteria Used By States.

Type of Collection: New.

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services (HHS) is requesting Office of Management and Budget (OMB) approval for a one-time survey of state agencies regarding their use of substance use disorder (SUD) patient placement criteria and assessment tools. The proposed survey is one component of a larger project to assess the feasibility of gathering and utilizing needs assessment data to identify and address unmet patient needs by levels of care. Results from this survey will provide ASPE with information about the types of patient placement data states collect and maintain, and the degree to which the data can be used to understand the SUD treatment gap. These results will provide ASPE with information that can be used to develop a multistate dataset of needs assessment that can be updated over time. Such a dataset is necessary for understanding and addressing treatment needs in the nation on an ongoing basis.

The 17-question survey requests information related to state requirements for using patient placement criteria and assessment tools for individuals with SUD. Additional questions ask how data from the placement criteria and/or assessment tools are maintained; if level of care data has been used to help determine service gaps and need for greater capacity; and whether the respondent could provide weblinks to available information on the criteria used in their state.

Two individuals from each state and the District of Columbia will be invited to respond to the survey. Respondents will be representatives from each state's Single State Authority (SSA) and the Medicaid Agency. An eighty-five percent response rate is anticipated, resulting in an estimated 87 total participants.

This project falls under Section 301 of the Public Health Service Act (42U.S.C. 241) [280–1a] which authorizes the Office of the Secretary to conduct and coordinate studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases.

The total annual burden hours estimated for this information collection request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Forms	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Survey on SUD Placement Criteria	87	1	10/60	14.5

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–09108 Filed 4–28–20; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Emergency Information Collection Clearance Request for Public Comment

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Office on (202) 795–7714. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 7-days.

Proposed Project: COVID–19 by PCR Requisition Form.

OMB No. 0990–NEW.

Emergency Information Collection Clearance Request

Office: HHS, Office of the Assistant Secretary for Health, Office of the Surgeon General.

Abstract: The COVID–19 by PCR Requisition Form will be used to collect information from individuals who are participating in the federally supported, state managed, locally executed CBTS program to obtain COVID–19 laboratory testing. The COVID–19 by PCR Requisition Form will be used by approximately 200,000 individuals. The Lab Requisition form includes the ordering physician information, the laboratory account information, the date of collection, the time of collection; the

individual's last name, first name, date of birth, gender, language, race, ethnicity, address, phone number, insurance carrier name, and whether the individual has provided informed consent and received a copy of the privacy notice. The information from the Lab Requisition form is shared with the ordering provider, the contracted laboratory companies, the cognizant state health department, and the contracted call center. Aggregate data is shared with HHS and FEMA.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Individuals receiving COVID–19 testing	200,000	1	.1	20,000

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–09039 Filed 4–28–20; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Clinical Cognitive Screening.

Date: May 18, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, BETHESDA, MD 20892, (301) 402–1622, *bissonettegb@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 23, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09047 Filed 4–28–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition DDK–C Subcommittee.

Date: June 17–19, 2020.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 23, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09049 Filed 4–28–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review F–SEP.

Date: June 10–12, 2020.

Time: 09:00 a.m. to 05:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Rockville, MD 20852.

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging, and Bioengineering, National Institutes of Health, 6707 Democracy Blvd.,

Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov*.
(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: April 23, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09048 Filed 4–28–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0183]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0025

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0025, Carriage of Bulk Solids Requiring Special Handling; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 29, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0183] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0183], and must be received by June 29, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148.

OMB Control Number: 1625–0025.

Summary: As specified in 46 CFR part 148, the petition for a Special Permit allows the Coast Guard to determine the manner of safe carriage for unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permit vessel crews and emergency personnel to properly and safely respond to accidents involving hazardous substances. See 46 CFR 148 Subpart B and §§ 148.60 and 148.70.

Need: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids.

Forms: Not applicable.

Respondents: Owners and operators of vessels that carry certain bulk solids.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 850 hours to 910 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–09103 Filed 4–28–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0182]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0007

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 29, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0182] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0182], and must be received by June 29, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement

OMB Control Number: 1625–0007

Summary: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessel. A determination is made as to the kind and degree of precaution which must be taken to protect the vessel and its contents.

Need: 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

Forms: None.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden of 600 hours a year remains unchanged.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended)

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–09064 Filed 4–28–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6211–N–01]

Housing Trust Fund Federal Register Allocation Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Fiscal Year 2020 Funding Awards.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) established the Housing Trust Fund (HTF) to be administered by HUD. Pursuant to the Federal Housing Enterprises Financial Security and Soundness Act of 1992 (the Act), as amended by HERA, Division A, eligible

HTF grantees are the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands. In accordance with Section 1338 (c)(4)(A) of the Act, this notice announces the formula allocation amount for each eligible HTF grantee.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000; telephone (202) 708–2684. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Information Relay Service). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Section 1131 of HERA Division A amended the Act to add a new section 1337 entitled ''Affordable Housing Allocations'' and a new section 1338 entitled ''Housing Trust Fund.'' HUD's implementing regulations are codified at 24 CFR part 93. Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income families with incomes between 0 and 30 percent of area median income and very low-income families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for extremely low-income and very low-income families. Section 1337 of the Act provides for the HTF (and other programs) to be funded with an affordable housing set-aside by Fannie Mae and Freddie Mac. The total set-aside amount is equal to 4.2 basis points (.042 percent) of Fannie Mae and Freddie Mac's new mortgage purchases, a portion of which is for the HTF. Section 1338 of the Act directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies the factors to be used for the formula and priority for certain factors. The factors and methodology HUD uses to allocate HTF funds among eligible grantees are established in the HTF regulation. The funding announced for Fiscal Year 2020 through this notice is $322,564,267.66. Appendix A to this notice provides the names of the grantees and the amounts of the awards.

Dated: April 24, 2020.

John Gibbs,

Acting Assistant Secretary for Community Planning and Development.

Appendix A: FY 2020 Housing Trust Fund Allocation Amounts

Grantee	FY 2020 allocation
1 Alabama	$3,123,706
2 Alaska	3,000,000
3 Arizona	5,070,454
4 Arkansas	3,000,000
5 California	50,839,161.66
6 Colorado	4,411,358
7 Connecticut	3,750,859
8 Delaware	3,000,000
9 District of Columbia	3,000,000
10 Florida	14,371,181
11 Georgia	7,361,716
12 Hawaii	3,000,000
13 Idaho	3,000,000
14 Illinois	12,424,008
15 Indiana	4,644,564
16 Iowa	3,000,000
17 Kansas	3,000,000
18 Kentucky	3,152,170
19 Louisiana	3,609,159
20 Maine	3,000,000
21 Maryland	4,420,359
22 Massachusetts	7,039,756
23 Michigan	7,364,581
24 Minnesota	4,078,002
25 Mississippi	3,000,000
26 Missouri	4,668,023
27 Montana	3,000,000
28 Nebraska	3,000,000
29 Nevada	3,142,533
30 New Hampshire	3,000,000
31 New Jersey	10,037,054
32 New Mexico	3,000,000
33 New York	29,127,880
34 North Carolina	7,251,897
35 North Dakota	3,000,000
36 Ohio	8,755,082
37 Oklahoma	3,000,000
38 Oregon	4,399,904
39 Pennsylvania	9,729,334
40 Rhode Island	3,000,000
41 South Carolina	3,438,676
42 South Dakota	3,000,000
43 Tennessee	4,334,563
44 Texas	16,617,908
45 Utah	3,000,000
46 Vermont	3,000,000
47 Virginia	6,168,999
48 Washington	6,491,663
49 West Virginia	3,000,000
50 Wisconsin	4,860,636
51 Wyoming	3,000,000
52 Puerto Rico	1,513,904
53 America Samoa	16,404
54 Guam	132,691
55 Northern Marianas	73,048
56 Virgin Islands	143,034
Total	322,564,267.66

[FR Doc. 2020–09058 Filed 4–28–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N070; FXES11130100000–201–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before May 29, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross TE–08964A–2):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take

of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application number	Applicant, city, state	Species	Location	Take activity	Permit action
TE–826600	Dr. Melissa Price, University of Hawaii at Manoa, Honolulu, HI.	Lanai tree snail (*Partulina semicarinata*) Lanai tree snail (*Partulina variabilis*) Newcomb's tree snail (*Newcombia cumingi*) Oahu tree snail (*Achatinella* spp.).	Hawaii	Harass by survey, capture, handle, measure, mark, attach transmitters (Oahu tree snails only), biosample, release, captive propagate, and salvage.	Renew
TE–72088A	National Oceanic and Atmospheric Administration, Pacific Islands Fisheries Science Center, Honolulu, HI.	Green sea turtle (*Chelonia mydas*) Hawksbill sea turtle (*Eretmochelys imbricata*) Leatherback sea turtle (*Dermochelys coriacea*) Loggerhead sea turtle (*Caretta caretta*).	Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, Republic of Palau, and Pacific Remote Islands Areas.	Harass by survey; monitor; capture; handle; excavate nests, collect eggs; captive-rear hatchlings; biosample; identify; tag; deploy data loggers in nests; attach biotelemetry devices and satellite transmitters; release; research, including reproduction, food, and growth rates; and salvage.	Amend
TE–19045C	Hawaii Division of Forestry and Wildlife, Honolulu, HI.	Anthricinan yellow-faced bee (*Hylaeus anthracinus*) Lanai tree snail (*Partulina semicarinata*) Lanai tree snail (*Partulina variabilis*) Newcomb's tree snail (*Newcombia cumingi*) Oahu tree snail (*Achatinella* spp.) Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*).	Hawaii	Harass by capture, collect, handle, biosample, captive propagate, release, mark, monitor, and salvage.	Amend
TE–48278D	Archipelago Research and Conservation, Kalaheo, HI.	Band-rumped storm-petrel (*Oceanodroma castro*) Hawaiian petrel (*Pterodroma sandwichensis*).	Hawaii	Harass by survey, monitor nests, capture, handle, band, biosample and scent research (band-rumped storm-petrel only), release, install artificial burrows and social attraction array, and salvage.	Amend

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Rolland White,

Assistant Regional Director–Ecological Services, Pacific Region.

[FR Doc. 2020–09080 Filed 4–28–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02030000, 20XR0680I1, RX.08637907.6000000]

Notice of Intent to Prepare an Environmental Impact Statement for the Del Puerto Canyon Reservoir Project, Stanislaus County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to prepare an Environmental Impact Statement (EIS) for the Del Puerto Canyon Reservoir Project. Reclamation is requesting public and agency comment to identify significant issues or other alternatives to be addressed in the EIS.

DATES: Submit written comments on the scope of the EIS on or before May 29, 2020.

ADDRESSES: Provide written scoping comments, requests to be added to the mailing list, or requests for other special assistance needs to Ms. Allison Jacobson, Project Manager, Bureau of Reclamation, Division of Planning, 2800 Cottage Way CGB–700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Jacobson, Bureau of Reclamation, Division of Planning, 2800 Cottage Way CGB–700, Sacramento, CA 95825; telephone (916) 978–5075; facsimile (916–978–5094); email *ajacobson@usbr.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1–800–877–8339 TTY/ASCII to contact the above individual during normal business hours or to leave a message or question after hours. You will receive a reply during normal business hours. Information on this project may also be found at: *https://www.delpuertocanyonreservoir.com.*

SUPPLEMENTARY INFORMATION: Reclamation is issuing this notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 43 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46.

Background

Del Puerto Water District (DPWD), in partnership with the San Joaquin River Exchange Contractors Water Authority (SJRECWA), proposes to construct a reservoir located on Del Puerto Creek in the foothills of the Coast Range Mountains west of Patterson, California and Interstate 5. The Del Puerto Canyon Reservoir Project (Project) is a State-led effort under the Water Infrastructure Improvements for the Nation Act (WIIN Act) Public Law 114–322, Sec. 4007. The proposed reservoir would provide approximately 82,000 acre-feet (AF) of locally owned off-stream storage south of the Sacramento-San Joaquin Delta. The purpose of the proposed Project is to develop additional South of Delta water storage to maximize the management and efficient use of existing water supplies in both DPWD and the SJRECWA service areas and to serve environmental purposes, including water supply for wildlife refuges designated under the Central Valley Project Improvement Act. Water would be conveyed from the Delta-Mendota Canal (DMC) to be stored in the proposed reservoir and later discharged back into the DMC. The proposed Project includes construction of a main dam, three saddle dams, a spillway, inlet/outlet works, conveyance facilities (including a diversion facility on the DMC, a pumping plant, underground pipeline and energy dissipation facilities at the DMC outfall, along with related appurtenant components), and electrical facilities (power supply line and electrical substation). The proposed Project also includes relocating existing and proposed utilities that run north-south through the Project area and the relocation of Del Puerto Canyon Road, which runs east-west through the Project area.

The Project sponsors developed an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act for the Project and released that EIR for public review on December 12, 2019. The review period ended January 27, 2020. Effects to many of the resources discussed in the EIR were mitigated to less-than-significant levels, though there were significant and unavoidable effects remaining after mitigation. Reclamation's action would be to fund up to 25 percent of total project costs pursuant to the WIIN Act, proportional to the Federal benefits developed. Reclamation will use much of the analysis and evaluate the alternatives presented in the EIR. Additional information will be developed in the EIS with respect to several resources, including energy use, traffic and transportation, air quality, biological resources, cultural resources, and Central Valley Project operations. Agencies and the public are encouraged to review the EIR provided at *https://www.delpuertocanyonreservoir.com,* and provide input regarding potentially significant issues to be addressed, or to identify potential alternatives that would meet the purpose of the Project.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Richard Welsh,

Principal Deputy Regional Director, Bureau of Reclamation, Interior Region 10—California-Great Basin.

[FR Doc. 2020–09042 Filed 4–28–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–639–642 and 731–TA–1475–1492 (Preliminary)]

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

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of 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, provided for in subheadings 7606.11.30, 7606.11.60, 7606.12.30, 7606.12.60, 7606.91.30, 7606.91.60, 7606.92.30, and 7606.92.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of Bahrain, Brazil, India, and Turkey.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 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 the investigations.

Background

On March 9, 2020, The Aluminum Association Common Alloy Aluminum Sheet Working Group and its Individual Members, Aleris Rolled Products, Inc., Beachwood, Ohio; Arconic, Inc., Bettendorf, Iowa; Constellium Rolled Products Ravenswood, LLC, Ravenswood, West Virginia; JW Aluminum Company, Daniel Island, South Carolina; Novelis Corporation, Atlanta, Georgia; and Texarkana Aluminum, Inc., Texarkana, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of common alloy aluminum sheet from Bahrain, Brazil, India, and Turkey and LTFV 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. Accordingly, effective March 9, 2020, the Commission instituted countervailing duty investigation Nos. 701–TA–639–642 and antidumping duty investigation Nos. 731–TA–1475–1492 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 13, 2020 (85 FR 14702). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference (originally scheduled for March 30, 2020) through written questions, submissions of written testimony, written responses to questions, and postconference briefs; all persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on April 23, 2020. The views of the Commission are contained in USITC Publication 5049 (April 2020), entitled *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: Investigation Nos. 701–TA–639–642 and 731–TA–1475–1492 (Preliminary).*

By order of the Commission.

Issued: April 24, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–09075 Filed 4–28–20; 8:45 am]

BILLING CODE 7020–02–P

[2] 85 FR 19449 (April 7, 2020) and 85 FR 19444 (April 7, 2020).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1103]

Certain Digital Video Receivers and Related Hardware and Software Components; Commission Decision Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a limited exclusion order and cease and desist orders prohibiting importation of infringing digital video receivers and related hardware and software components.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 16, 2018, the Commission instituted this investigation based on a supplemented complaint filed on behalf of Rovi Corporation of San Jose, California; Rovi Guides, Inc. of San Jose, California; and Veveo, Inc. of Andover, Massachusetts (collectively, ''Rovi''); as well as Rovi Technologies Corporation of San Jose, CA. The supplemented complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video receivers and related hardware and software components by reason of infringement of one or more claims of U.S. Patent Nos. U.S. Patent No. 7,779,011 (''the '011 patent''); 7,937,394

(''the '394 patent''); 7,827,585 (''the '585 patent''); 9,294,799 (''the '799 patent''); 9,396,741 (''the '741 patent''); 9,578,363 (''the '363 patent''); 9,621,956 (''the '956 patent''); and 9,668,014 (''the '014 patent''). 83 FR 11792 (Mar. 16, 2018). The Commission's notice of investigation named as respondents Comcast Corporation of Philadelphia, Pennsylvania; Comcast Cable Communications, LLC of Philadelphia, Pennsylvania; Comcast Cable Communications Management, LLC of Philadelphia, Pennsylvania; Comcast Business Communications, LLC of Philadelphia, Pennsylvania; Comcast Holdings Corporation of Philadelphia, Pennsylvania; and Comcast Shared Services, LLC of Chicago, Illinois (collectively, ''Comcast''). *Id.* The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

The Commission previously terminated the investigation as to complainant Rovi Technologies Corporation; as to the '956, '394, '014, '799, and '363 patents in their entirety; and as to certain claims of the '011, '585, and '741 patents. Order No. 12, *unreviewed,* Notice (July 24, 2018); Order No. 33, *unreviewed,* Notice (Sept. 19, 2018); Order 39, *unreviewed,* Notice (Oct. 25, 2018).

On June 3, 2019, the presiding ALJ issued Order No. 47, a summary determination (''SD''), which, *inter alia,* granted Rovi's motions for summary determination as to importation and sale after importation. On June 11, 2019, Comcast filed a petition for review of the SD. On June 18, 2019, Rovi responded to Comcast's petition. On June 25, 2019, the Commission investigative attorney (''IA'') responded to Comcast's petition.

On June 4, 2019, the ALJ issued the final initial determination (''final ID''). On June 17, 2019, Comcast and Rovi each filed a petition for review of the final ID. On June 25, 2019, Comcast and Rovi responded to each other's petition, and the IA responded to both.

In addition, the Commission received comments from Rovi on the public interest pursuant to Commission Rule 210.50(a)(4). The Commission also received comments from the following organizations in response to the Commission's notice soliciting public interest comments, 84 FR 27804 (June 14, 2019): Tea Party Patriots Action; Americans for Limited Government; Frontiers of Freedom Institute; Market Institute; and Conservatives for Property Rights (joined by 60 Plus Association, and Americans for Limited Government). The Commission also received correspondence from Rep. Peter King (R–N.Y.) (Sept. 19, 2019), Rep. Jackie Speier (D–Cal.) (Sept. 6, 2019), and Rep. Steve Stivers (R–Ohio) (Aug. 27, 2019).

On August 15, 2019, the Commission determined to review in part the SD as to reimportation, and not to review the remainder of the SD. Notice at 3 (Aug. 15, 2019) (''Notice of Review''). As to the final ID, in relevant part the Commission terminated the investigation with a finding of no violation as to the '585 and '741 patents, but determined to review infringement of the '011 patent. *Id.* The Commission solicited briefing on certain questions pertaining to infringement of the '011 patent. *Id.* at 4.

On August 29, 2019, the parties filed responses to the Commission notice, and on September 10, 2019, Comcast and Rovi filed replies.

Having examined the record of this investigation, including the final ID and the parties' submissions, the Commission has determined that Comcast's X1 set-top boxes are used by Comcast's users to directly infringe claim 9 of the '011 patent at Comcast's inducement. Thus, Comcast violated section 337 with regard to claim 9 of the '011 patent. The Commission declines to reach the issue of whether there has been a section 337 violation as to claim 1 of the '011 patent because of the delay and burden associated with deciding the issue and because such a finding would not afford any additional relief to Rovi. Thus, the Commission need not decide the issue. *See Yingbin-Nature (Guangdong) Wood Indus. Co.* v. *Int'l Trade Comm'n,* 535 F.3d 1322, 1331–32 (Fed. Cir. 2008).

The Commission has further determined that the appropriate remedy is: (1) A limited exclusion order prohibiting the entry of infringing digital video receivers and related hardware and software components; and (2) cease and desist orders directed to respondents. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist orders. The Commission has determined that a bond in the amount of zero percent of entered value is required during the period of Presidential review. 19 U.S.C. 1337(j)(3).

The investigation is terminated. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 23, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–09043 Filed 4–28–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1171]

Certain Child Resistant Closures With Slider Devices Having a User Actuated Insertable Torpedo for Selectively Opening the Closures and Slider Devices Therefor; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on April 21, 2020, the presiding administrative law judge (''ALJ'') issued an Initial Determination Granting Summary Determination on Violation of Section 337 and Recommended Determination on Remedy and Bonding in the above-captioned investigation. On April 22, 2020, the ALJ issued a Notice of Errata thereto. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action. A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically: (1) A general exclusion order (''GEO'') directed to certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor imported, sold for importation, and/or sold after importation that infringe one or more of claims 1, 3, 5, and 8–10 of U.S. Patent No. 9,505,531; claims 1, 4, 6–8, 11, 12, 15, and 19 of U.S. Patent No. 9,554,628; and claims 1, 3, 5, and 8 of U.S. Patent No. 10,273,058; and (2) if the Commission declines to issue a GEO, then a limited exclusion order (''LEO'') directed to certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor imported, sold for importation, and/or sold after importation by defaulting respondents Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China and Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China that infringe one or more of the above claims.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on April 21, 2020. Comments should address whether issuance of the remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended GEO and LEOs are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended GEO and LEOs;

(iii) Identify like or directly competitive articles that complainant, its licensees, and/or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, its licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended GEO and LEOs within a commercially reasonable time; and

(v) Explain how the recommended GEO and LEOs would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on May 21, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1171'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary ((202) 205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 23, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–09031 Filed 4–28–20; 8:45 am]

BILLING CODE 7020–20–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kansky J. Delisma, M.D.; Decision and Order

On May 23, 2019, the Drug Enforcement Administration (hereinafter, DEA or Government) Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ), issued a Recommended Rulings, Findings of Fact, Conclusions of Law and Decision (hereinafter, RD) on the action to deny Kansky J. Delisma, M.D.'s application for a DEA Certification of Registration. The Government filed exceptions to the RD to which Dr. Delisma responded. Having reviewed and considered the entire administrative record before me, including the Government's Exceptions, I adopt the ALJ's RD with minor modifications, where noted herein.*A

Government's Exceptions

The Government filed an exception (hereinafter, Govt Exceptions) to the ALJ's interpretation and application of 21 U.S.C. 824(a)(5) and that provision's interplay with 42 U.S.C. 1320a–7(a). Govt Exceptions, at 2. Under Section 824(a) of the Controlled Substances Act (hereinafter, CSA), a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824. The ground in 21 U.S.C. 824(a)(5) requires that the registrant

*A I have made minor modifications to the RD. I have substituted initials for the names of witnesses to protect their privacy, and I have made minor, nonsubstantive grammatical changes. Where I have made any substantive changes, omitted language for brevity or relevance, or where I have added to or modified the ALJ's opinion, I have bracketed the modified language and explained the edit in a footnote marked with an asterisk and a letter in alphabetical order.

''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* 42 U.S.C. 1320a–7(a) provides a list of four predicate offenses for which exclusion from Medicare, Medicaid and federal health care programs is mandatory and sets out mandatory timeframes for such exclusion. *Id.*[*B]

The Government argues that in cases brought pursuant to 21 U.S.C. 824(a)(5), the statutory language *requires* DEA to ''revoke a respondent's registration (or deny a respondent's application) once the Government has proven that respondent is currently mandatorily excluded from participation in Federal health care programs and that DEA should not permit a respondent to have a DEA registration for as long as the respondent has been excluded.'' Govt Exceptions, at 2. As the Government noted in its brief, the Government advocated for this position in several contemporaneous exclusion cases. *Id.* at n.2. Since the Government filed its brief, I have issued a Decision and Order in one of the other exclusion cases, *Jeffrey Stein, M.D.,* that directly addressed and rejected the Government's argument. 84 FR 46968 (2019).

The clear language of 21 U.S.C. 824(a)—''[a] registration . . . may be suspended or revoked by the Attorney General''—gives the Administrator the *discretion* to revoke the registration of a registrant who has been excluded from participation in Federal health programs. *Stein,* 84 FR at 46970–71 (providing detailed analysis of the language and legislative history of 21 U.S.C. 824(a)(5)). It does not require automatic revocation or denial on that ground. *Id.*

Accordingly, although section 824(a) provides DEA with the authority to revoke a respondent's registration upon a finding of one or more of the five listed grounds, if a respondent presents evidence, either in a written statement or in the context of a hearing, I will review the evidence provided by the respondent to determine whether revocation or suspension is appropriate given the particular facts. *See* 5 U.S.C. 556(d) (''A party is entitled to present his case or defense by oral or documentary evidence.''); 21 CFR 1301.43(c) (permitting a Respondent to file ''a waiver of an opportunity for a hearing . . . together with a written statement regarding such person's position on the matters of fact and law involved in such hearing.''); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 829 (11th Cir. 2018) (''[W]e may set aside a decision as 'arbitrary and capricious when, among other flaws, the agency has . . . entirely failed to consider an important aspect of the problem.' ''); *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 177 (D.C. Cir. 2005) (''To uphold DEA's decision, . . . we must satisfy ourselves 'that the agency ''examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.' ''). Where, as in the instant case, the Government has made a *prima facie* case to suspend or revoke a registration based on a mandatory exclusion pursuant to section 1320a–7(a) of Title 42, I review any evidence and argument the respondent submitted to determine whether or not respondent has presented ''sufficient mitigating evidence to assure the Administrator that [he] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988)).[*C]

As I explained in *Stein,* the Government's proposed reading of the CSA would also ''be a significant departure from past Agency decisions.'' 84 FR at 46970; *see, e.g., Kwan Bo Jin, M.D.,* 77 FR 35021, 35023 (2012); *Dinorah Drug Store, Inc.,* 61 FR 15972, 15974 (1996).

For the above reasons, I reject the Government's exception and issue the Order below adopting the recommendations of the ALJ.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823, I hereby order that the pending application for a Certificate of Registration, Control Number W18071098C, submitted by Kansky J. Delisma, M.D., is approved. This Order is effective May 29, 2020.

Uttam Dhillon,

Acting Administrator.

Paul E. Soeffing, Esq., for the Government.

Laura Perkovic, Esq. and Jeremy L. Belanger, Esq., C.H.C., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

On January 17, 2019, the Drug Enforcement Administration served Kansky J. Delisma, M.D. (''Dr. Delisma'' or ''Respondent'') with an Order to Show Cause (''OSC''), proposing to deny his application for a DEA Certificate of Registration (''COR''), Control Number W18071098C. Administrative Law Judge Exhibit (''ALJ–'') 1, at 1. The OSC alleged that denial is warranted under 21 U.S.C. 824(a)(5), because Dr. Delisma is excluded from federal health care programs pursuant to 42 U.S.C. 1320a–7(a). In response to the OSC, Dr. Delisma timely requested a hearing before an Administrative Law Judge. ALJ–2. The hearing that Dr. Delisma requested was held in Pittsburgh, Pennsylvania, on April 18, 2019.

The issue before the Acting Administrator is whether the record as a whole establishes by a preponderance of the evidence that DEA should deny the application for a Certificate of Registration of Kansky J. Delisma, M.D., Control Number W18071098C, and deny any pending application for renewal or modification of such registration, and any applications for any other DEA registrations, pursuant to 21 U.S.C. 824(a)(5), because he has been excluded from federal health care programs under 42 U.S.C. 1320a–7(a). ALJ–10, at 1.

This Recommended Decision is based on my consideration of the entire Administrative Record, including all of the testimony, admitted exhibits, and the oral and written arguments of counsel.

The Allegation

1. On May 31, 2016, judgment was entered against Dr. Delisma based on his guilty plea to one count of ''Receipt of Kickbacks in Connection with a Federal Health Care Program,'' in violation of 42 U.S.C. 1320a–7b(b)(1)(A). Based on this conviction for health care fraud, the U.S. Department of Health and Human Services, Office of Inspector General (''HHS/OIG''), by letter dated August 31, 2016, mandatorily excluded Dr. Delisma from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years pursuant to 42 U.S.C. 1320a–7(a), effective September 20, 2016. ALJ–1, at 2. Despite the fact that the underlying conduct for which Dr. Delisma was convicted did not involve controlled substances, his mandatory exclusion from Medicare, Medicaid, and all federal health care

[*B] Although the language of 21 U.S.C. 824(a)(5) discusses suspension and revocation of a registration, it may also serve as the basis for the denial of a DEA registration application. *Dinorah Drug Store, Inc.,* 61 FR 15972–03, 15973 (1996).

[*C] The Government correctly argues, and Respondent did not rebut, that the underlying conviction forming the basis for a registrant's mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation pursuant to section 824(a)(5). *Stein* at 46971–72; *see also Narciso Reyes, M.D.,* 83 FR 61678, 61681 (2018); *KK Pharmacy,* 64 FR at 49510 (collecting cases); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996).

programs warrants denial of his application for DEA registration pursuant to 21 U.S.C. 824(a)(5). ALJ–1, at 2, paras. 2–3.

Witnesses

I. The Government's Witnesses

Because Respondent stipulated to the admissibility of all of the Government's Exhibits, the Government called no witnesses. Stipulation (''Stip.'') 12. Rather, the Government moved the admission of Government Exhibits 1–4, and upon their admission into the Administrative Record, the Government rested its case. Transcript (''Tr.'') 14–15.

II. Respondent's Witnesses

Respondent presented his case through two witnesses. The Respondent was the first witness. Tr. 17–57. In his testimony, Dr. Delisma provided background information about his education and training. Tr. 17–20. He explained that he decided to go into medicine out of a ''true calling from inside to serve.'' Tr. 20. As such, after completing his medical education, he began his medical practice working at a Veteran's Hospital and a public health hospital in Miami, Florida. *Id.* He first obtained a DEA Certificate of Registration in 2004 and kept it until it expired in 2016. Tr. 28, 43–44.

Dr. Delisma went into a private, internal medicine practice in 2008–09. Tr. 20. While in that private practice, he accepted a kickback of $700. for referring a patient to a home-health provider. Tr. 28–29. Because of that action, following his guilty plea, Dr. Delisma was convicted in Federal Court of a single count of accepting a kickback. *Id.* For that crime, Dr. Delisma was sentenced to eight months confinement, to pay a $5,000. fine, fees of $100., and restitution of $49,000., and following his confinement, he was placed on one year of supervised release. Tr. 29. Dr. Delisma has satisfied all the terms of his sentence. *Id.* Because of his conviction, Dr. Delisma was excluded from participation in federal health care programs. Tr. 33–36.

Although Dr. Delisma allowed his Florida medical license to expire, he later obtained licenses to practice medicine in Pennsylvania, Montana, New York, and Maryland. Tr. 36–39. At the time he applied for a license in each state, he informed the licensing board of his conviction and none placed any restrictions on his medical license. Tr. 38–39. He currently works as the Medical Director at the State Correctional Institution in Somerset, Pennsylvania, and he has requested a Certificate of Registration for that location. Tr. 20–21, 49. He is the only full-time physician who works at that facility. Tr. 50–51. There have been times when his inmate patients have had to wait to obtain prescriptions for controlled substances. Tr. 52–54.

Dr. Delisma has taken three continuing medical education courses, all related to medical ethics. Tr. 39–41, 44–45. He also accepted responsibility for his actions, and expressed his remorse. Tr. 29, 42.

Dr. Delisma presented his testimony in a clear, candid, and convincing manner. He impressed me as sincere in his acceptance of responsibility and his remorse. I find his testimony to be entirely credible.

The Respondent's second witness was Dr. A.D. Tr. 58–70. Dr. A.D. is the Regional Medical Director for the Central Region of the Pennsylvania Department of Corrections. Tr. 59. He has known Dr. Delisma since shortly before Dr. Delisma was hired into his current job. *Id.* Dr. A.D. wanted to meet and interview Dr. Delisma upon reviewing his ''remarkable'' credentials. Tr. 60.

Dr. A.D. testified concerning the fine quality of work Dr. Delisma has performed as the medical director at Somerset. Tr. 60, 64, 68. He considers Dr. Delisma to be ''one of our top physicians.'' Tr. 60. Dr. A.D. also testified that Dr. Delisma's lack of a Certificate of Registration adversely impacts the quality of medical care he is able to provide to the inmates. Tr. 62–64, 67–68. In fact, it was Dr. A.D. who suggested that Dr. Delisma apply for a Certificate of Registration. Tr. 70; RE–10, at 1.

Dr. A.D. presented his testimony in a clear, candid, and convincing manner. His testimony also corroborated substantial portions of Dr. Delisma's testimony. Accordingly, I find his testimony to be entirely credible.

The Facts

I. Stipulations

The Parties agree to 12 stipulations, which are accepted as facts in these proceedings:

1. Respondent applied to DEA for registration as a practitioner in Schedules II through V pursuant to DEA control number W18071098C, with a proposed registered address of 1590 Walters Mill Rd., Somerset, PA 15510 and a proposed mailing address of 600 N 12th Street, Lemoyne, PA 17043. Respondent submitted his online application on or about July 9, 2018.

2. On May 31, 2016, judgment was entered against Respondent in the United States District Court for the Southern District of Florida based on his guilty plea to one count of ''Receipt of Kickbacks in Connection with a Federal Health Care Program,'' in violation of 42 U.S.C. 1320a–7b(b)(l)(A).

3. HHS/OIG, by letter dated August 31, 2016, mandatorily excluded Respondent from participation in Medicare, Medicaid and all federal health care programs for the minimum statutory period of five years pursuant to 42 U.S.C. 1320a–7a. The exclusion was effective September 20, 2016.

4. Reinstatement of eligibility to participate in Medicare, Medicaid and all federal health care programs after exclusion by HHS/OIG is not automatic.

5. Respondent is currently excluded from participation in Medicare, Medicaid and all federal health care programs.

6. Since Respondent's criminal conviction, he has satisfied all assessments, fines, and restitution as of August 22, 2017. Tr. 10–11.

7. On April 24, 2018, the Florida Board of Medicine settled its case with Respondent by issuing a Letter of Concern and by requiring Respondent to pay a fine.

8. Respondent was issued a medical license by the Pennsylvania Bureau of Professional and Occupational Affairs as of March 22, 2018.

9. Respondent was issued a medical license by the New York State Education Department on July 2, 2018.

10. Respondent was issued a medical license by the Maryland Board of Physicians on June 19, 2018, with terms and conditions. All of those terms and conditions were satisfied as of November 21, 2018.

11. On January 26, 2018, Respondent was issued a medical license by the Montana Board of Medical Examiners.

12. The Government and Respondent stipulate to the admissibility of Government Exhibits 1–4.

II. Findings of Fact

Dr. Delisma's Background and Training

1. Dr. Delisma was born in Haiti, where he completed high school. Tr. 17.

2. At age 19, Dr. Delisma went to the University of Bordeaux in France, where he studied for six years. Tr. 17. While in France, Dr. Delisma earned four university degrees. Tr. 17–18.

3. Dr. Delisma immigrated to the United States in 1992, moving to South Florida. Tr. 18.

4. Dr. Delisma attended Howard University Medical School in Washington, DC, from 1997 to 2001. Tr. 19.

5. From 2001 to 2004, Dr. Delisma completed an internship and residency

in internal medicine at the Yale University School of Medicine. Tr. 19. Dr. Delisma remained at Yale for another year, as an attending physician. *Id.*

6. Dr. Delisma had a DEA registration from 2004 until it expired in May 2016. Tr. 28, 43–44.

7. Dr. Delisma received a scholarship to Harvard University in 2005, where he completed a master's degree in public health and a fellowship in health policy in 2006. Tr. 19.

Dr. Delisma's Medical Practice in Florida

8. Dr. Delisma returned to South Florida in 2006, where he worked as an emergency room physician at the Veterans Administration hospital in Miami for two years, and for a year at Jackson Hospital, a public health hospital in Miami. Tr. 19–20.

9. In 2008–09, Dr. Delisma began private practice in internal medicine in Florida. Tr. 20. He treated about 60% of his patients in hospital settings, and about 40% were in an outpatient clinic. Tr. 20

10. Dr. Delisma let his Florida medical license expire and did not renew it. Tr. 36.

Medicare Exclusion

11. Dr. Delisma's exclusion from federal health care programs is the result of his 2016 conviction in Florida for receiving a $700. kickback for referring a patient to a home health agency. Tr. 28; Government Exhibit (''GE–'') 2, 3. His conviction involved only one patient. Tr. 28–29.

12. Dr. Delisma pled guilty to the offense and took responsibility for his actions. Tr. 29. Dr. Delisma offered his apology, and is deeply sorry for his actions. *Id.*

13. On May 26, 2016, Dr. Delisma was convicted, and sentenced to eight months in Federal detention in Miami, Florida, followed by one year of supervised release. Tr. 29; GE–2, at 2–3. He was also ordered to pay $49,000. in restitution, a $5,000. fine, and $100. in fees. Tr. 29; GE–2, at 5–6.

14. The restitution that Dr. Delisma was required to pay was for the amount of money the home-health care provider had billed Medicare for the patient Dr. Delisma had referred to the home health care provider. Tr. 50.

15. Dr. Delisma satisfied all the conditions of his sentence by January 2018.[1] Tr. 29; RE–1.

16. Concerning Dr. Delisma's conviction, there were no issues regarding the quality of the patient care he rendered to his patients. Tr. 31. In addition, there were no allegations concerning prescribing any medications. *Id.*

17. Because of Dr. Delisma's exclusion from federal health care programs, the Florida Board of Medicine (''Board'') reprimanded him and imposed a $500. fine, but placed no restrictions on his practice.[2] Tr. 35–36; RE–2, at 4–5. In addition, Dr. Delisma was required to reimburse the Board $882.94. to cover the cost of its proceedings against him. RE–2, at 1, 6.

Dr. Delisma's Current Medical Position

18. Dr. Delisma is currently licensed to practice medicine in Pennsylvania, Montana, New York, and Maryland. Tr. 37–39; RE–3, 4, 7, 8. When applying for a medical license in each of the states, Dr. Delisma informed the licensing board of each state of his criminal conviction in Florida. Tr. 38–39. The medical licensing boards of those states have not placed any restrictions on Dr. Delisma's ability to prescribe medications or to practice medicine. Tr. 39.

19. Dr. Delisma currently works as the Medical Director at the State Correctional Institution in Somerset, Pennsylvania. Tr. 20–21. Dr. Delisma is seeking a Certificate of Registration for his work at the Somerset Correctional Institution, located at 1590 Walters Mill Rd., Somerset, Pennsylvania. Tr. 49.

20. Dr. A.D. is the regional medical director for the central region of the Pennsylvania Department of Corrections (''Department of Corrections''). Tr. 59.

21. At the time Dr. Delisma was hired, Dr. A.D. was aware of Dr. Delisma's past legal issues. Tr. 60.

22. Due to Dr. Delisma's remarkable credentials, Dr. A.D. was very interested in seeing and interviewing him. Tr. 60. Although Dr. Delisma had no correctional medicine experience, he took to it amazingly well and quickly picked-up the nuances required in correctional medicine. *Id.*

23. In Dr. A.D.'s opinion, Dr. Delisma is one of the top physicians within his organization. Tr. 60.

24. Dr. A.D. suggested to Dr. Delisma that he apply for a Certificate of Registration for the reasons Dr. A.D. expounded upon in his testimony. Tr. 70.

25. In Dr. A.D.'s opinion, granting a Certificate of Registration to Dr. Delisma ''would vastly improve the quality of care that is given'' at Somerset. Tr. 66. Delaying care to a patient can result in pain and suffering by the patient. Tr. 67–68. The Department of Corrections strives to avoid that. *Id.*

26. The standard of care for inmates is no different than the standard of care for any patient who is not in prison. Tr. 68.

27. The Somerset Correctional Institution is where inmates come from all over the State of Pennsylvania for surgical procedures, oncology care, and end-of-life care. Tr. 22.

28. For many inmates their first interaction with the medical community is when they are in prison. Tr. 68. Many inmates present with years of undiagnosed, untreated medical conditions. *Id.*

29. There are about 2,600 inmates at Somerset, and Dr. Delisma routinely provides medical care to about 300 of them. Tr. 23–24.

30. On a daily basis, Dr. Delisma sees about 15 patients in the correctional facility infirmary, where patients are waiting to go to the hospital or have just returned from the hospital. Tr. 21. In addition, Dr. Delisma sees up to 30 patients a day in the facility's outpatient clinic. *Id.*

31. With the patient population at Somerset, it is necessary to prescribe controlled substances up to five times a week. Tr. 26. Some inmates may require controlled substances to alleviate pain following surgery or due to acute injuries. Tr. 26–27. Other patients may require a benzodiazepine or a chemotherapy drug. Tr. 27. Because many of the inmates have some sort of addiction problem, however, the Department of Corrections is ''extraordinarily careful to limit [their] use of any type of controlled substance . . . .'' Tr. 66.

32. It is consistent with the standard of care in internal medicine to be able to prescribe necessary medications to a patient. Tr. 44.

33. When Dr. Delisma evaluates one of his inmate patients and determines that the patient needs a controlled substance, Dr. Delisma refers the patient to another physician who has a DEA registration. Tr. 47. That physician also works at the Somerset facility, but he is not assigned there full-time. Tr. 47–49. That physician also works at other correctional facilities. Tr. 48–49

34. When Dr. Delisma refers a patient to another doctor for a prescription for a controlled substance that doctor independently evaluates the patient before issuing a prescription for a

[1] The ''Satisfaction of Judgment'' was entered on August 22, 2017. RE–1.

[2] Although Dr. Delisma testified that the Florida Board of Medicine did not impose any restrictions on his medical license, he also testified that his ''license was reinstated after being suspended for one year.'' Tr. 36. Nothing in the Final Order of the Board, or in the Settlement Agreement with the Board, however, indicates that the Board suspended Dr. Delisma's medical license. RE–2, at 1–14.

controlled substance to the patient. Tr. 47.

35. No full-time medical professional works at the Somerset facility who has a DEA Certificate of Registration. Tr. 50–51. In addition to a physician who works at other correctional facilities, the regional director and a physician's assistant will sometimes help at Somerset. *Id.*

36. There are times when no one at the Somerset Correctional Institution has a DEA registration. Tr. 51.

37. If Dr. Delisma determines that an inmate requires a controlled substance, the patient can normally get a prescription for that controlled substance in less than 24 hours. Tr. 52. Over a weekend, however, it has taken up to 72 hours for an inmate to obtain a prescription for a controlled substance. Tr. 53–54.

38. Dr. Delisma is the only full-time physician at Somerset. Tr. 63. Sometimes the inmates, however, need immediate medical attention. Tr. 63. Therefore, it is not in the medical interest of the inmates when their only full-time physician is unable to deliver the expected standard of care because he does not have a Certificate of Registration. Tr. 64, 67.

39. Even though Dr. Delisma does not have a Certificate of Registration, the Department of Corrections wants to keep him because he has ''already demonstrated himself to be reliable, talented, well trained, and always willing to help us out when we need him.'' Tr. 64.

40. According to Dr. A.D., Dr. Delisma is valuable to the Department of Corrections ''because of his experience and training in internal medicine, from some of the best institutions in this world.'' Tr. 68.

41. Respondent's Exhibit 10 is a letter of recommendation that Dr. A.D. drafted on behalf of Dr. Delisma. Tr. 65.

42. The State Medical Director for the Department of Corrections has endorsed Dr. Delisma's application for a Certificate of Registration. Tr. 44–45; RE–11.

No Prior Incidents Concerning Controlled Substances

43. In Dr. Delisma's entire career as a licensed physician he has never received any reprimands for improper or irresponsible prescribing of any medications, to include controlled substances. Tr. 42.

44. Dr. Delisma has never been under investigation by any governmental agency for any inappropriate or irresponsible prescribing practices. Tr. 42.

Continuing Education

45. In March 2017, Dr. Delisma completed a continuing education course in ''Legal and Ethical Issues in Healthcare,'' and in September 2017 he completed a course in ''Medical Ethics for Physicians.'' Tr. 40–41; RE–5, at 44–45.

46. On November 17, 2018, Dr. Delisma attended the ''Medical Ethics and Professionalism'' course in Atlanta, Georgia, presented by the University of California, Irvine School of Medicine. Tr. 39–40; RE–6.

Analysis

To deny an application for DEA registration, the Government must prove, by a preponderance of the evidence, that the regulatory requirements for denial are satisfied. *Steadman* v. *SEC,* 450 U.S. 91, 100–02 (1981); 21 CFR 1301.44(e). The sole basis for sanction in this case is the mandatory exclusion provision of 21 U.S.C. 824(a)(5). DEA has held that section 824(a)(5) authorizes the denial of applications as well as revocation of existing registrations. *Dinorah Drug Store, Inc.,* 61 FR 15972, 15973 (1996); *Kuen H. Chen, M.D.,* 58 FR 65401, 65402 (1993).

Under 21 U.S.C. 824(a)(5), DEA may deny an application for registration if the applicant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' The Government can meet its burden under section 824(a)(5) simply by advancing evidence that the applicant has been excluded from a federal health care program under 42 U.S.C. 1320a–7(a). *Johnnie Melvin Turner, M.D.,* 67 FR 71203, 71203–04 (2002); *Dinorah Drug Store, Inc.,* 61 FR at 15973. The Administrator has issued sanctions where the Government introduced evidence of the applicant's plea agreement and judgment for health care fraud, and the resulting letter from the U.S. Department of Health and Human Services imposing mandatory exclusion. *Richard Hauser, M.D.,* 83 FR 26308, 26310 (2018); *Johnnie Melvin Turner, M.D.,* 67 FR at 71203–04.

Section 1320a–7(a) of Title 42, United States Code, establishes four bases for mandatory exclusion that authorize the Secretary of the Department of Health and Human Services to exclude individuals or entities from Federal health care programs. Those bases include conviction of program-related crimes, patient abuse, health care fraud, or a felony related to controlled substances. 42 U.S.C. 1320a–7(a)(1)–(4). These 4 bases are different from the 16 bases that authorize permissive exclusion under 42 U.S.C. 1320–7(b). The distinction is important because section 824(a)(5) specifically references 42 U.S.C. 1320a–7(a), the section establishing four bases for mandatory exclusion. Thus, to carry its burden under section 824(a)(5), the Government must prove that the applicant's exclusion was mandatory (42 U.S.C. 1320a–7(a)) and not permissive (42 U.S.C. 1320–7(b)). Exclusion under one of the 16 permissive grounds listed in section 1320a–7(b) does not provide a basis for sanction. *Hoi Y. Kam, M.D.,* 78 FR 62694, 62697 (2013); *Terese, Inc., d/b/a Peach Orchard Drugs,* 76 FR 46843, 46846–47 (2011); *James Henry Holmes, M.D.,* 59 FR 6300, 6301 (1994).

In addition, DEA has reiterated in numerous final orders that the underlying conviction that led to mandatory exclusion does not need to involve controlled substances to support sanction.[3] This long held and consistent precedent makes it undisputed that the Government does not need to advance any evidence related to controlled substances to meet its burden under section 824(a)(5). The absence of evidence related to controlled substances, however, can be considered as mitigation evidence [to show why the applicant can be entrusted with a registration].*[D] *See Mohammed Asgar, M.D.,* 83 FR 29569, 29573 (2018) (noting respondent's conviction ''did not involve the misuse of his registration to handle controlled substances''); *Kwan Bo Jin, M.D.,* 77 FR 35021, 35027 (2012) (highlighting the lack of evidence concerning respondent's ''prescribing practices''); *Dinorah Drug Store, Inc.,* 61 FR at 15944 (''[B]alanced against this basis for denial is . . . the lack of any adverse action or allegations pertaining to [respondent's] conduct related to controlled substances.''). In the absence of evidence involving controlled substances, however, sanction is warranted where the Administrative Record presents ''serious questions as to the'' registrant's integrity. *Anibal P.*

[3] [*Jeffrey Stein,* 84 FR at 46971–72 (2019)]
* (citation added); *Mohammed Asgar, M.D.,* 83 FR 29569, 29571 (2018); *Narciso A. Reyes, M.D.,* 83 FR 61678, 61681 (2018); *Richard Hauser, M.D.,* 83 FR 26308, 26310 (2018); *Orlando Ortega-Ortiz, M.D.,* 70 FR 15122, 15123 (2005); *Juan Pillot-Costas, M.D.,* 69 FR 62084, 62085 (2004); *Daniel Ortiz-Vargas, M.D.,* 69 FR 62095, 62095–96 (2004); *KK Pharmacy,* 64 FR 49507, 49510 (1999); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998); *Anibal P. Herrera, M.D.,* 61 FR 65075, 65078 (1996); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996); *Richard M. Koenig, M.D.,* 60 FR 65069, 65071 (1995); *George D. Osafo, M.D.,* 58 FR 37508, 37509 (1993); *Nelson Ramirez-Gonzalez, M.D.,* 58 FR 52787, 52788 (1993); *Gilbert L. Franklin, D.D.S.,* 57 FR 3441, 3441 (1992).

*[D] Language added.

Herrera, M.D., 61 FR 65075, 65078 (1996).

I. The Government's Position

The Government submitted its ''Proposed Findings of Fact and Conclusions of Law'' (''Government's Brief'') on May 17, 2019.[4] I have read and considered the Government's Brief in preparing this Recommended Decision.

In its Brief, the Government's proposed findings of fact are essentially the same as the findings of fact set forth in this Recommended Decision. ALJ–12, at 1–5. The Government also acknowledges that it is appropriate to analyze this case under the public interest factors of 21 U.S.C. 823(f).[*E] *Id.* at 6. The Government also acknowledges that Factors 1–4 of 21 U.S.C. 823(f) are not applicable in this case, but argues that the Respondent's conviction for accepting a kickback and his exclusion from federal health care programs is a Factor 5 consideration. *Id.* at 9.

Relying on *Richard Hauser, M.D.,* 83 FR 26308, 26310 (2018), and cases cited therein, the Government argues that ''notwithstanding the fact that the underlying conduct for which Respondent was convicted had no nexus to controlled substances'' his exclusion ''warrants revocation (sic) of his registration.''[5] ALJ–12, at 7.

Continuing, the Government argues that ''[i]t would be incongruous and contrary to the public interest for DEA to grant Respondent a registration when he has not completed the period of his health care exclusion . . . .''[6] *Id.* at 10.

Finally, the Government notes that Dr. Delisma did not need a Certificate of Registration to be hired into his current position, or to keep it. ALJ–12, at 10. Without citation to any authority, the Government argues that Dr. Delisma's application should be denied because ''there is no compelling public interest purpose for Respondent to be granted a DEA registration where the public interest is currently being served . . . .'' *Id.*

II. The Respondent's Position

Respondent submitted his ''Closing Argument & Proposed Findings of Fact and Conclusions of Law'' (''Respondent's Brief'') on May 17, 2019.[7] I have read and considered the Respondent's Brief in preparing this Recommended Decision.

In his Brief, the Respondent's proposed findings of fact are essentially the same as the findings of fact set forth in this Recommended Decision. ALJ–13, at 1–8. While the Respondent notes that the Government established a *prima facie* case, the Respondent also argues that the Government failed to prove ''by a preponderance of the evidence that the Respondent's application should be denied solely based off of the Respondent's exclusion from participation in federal health care programs.'' *Id.* at 9. The Respondent notes that the licensing authorities in four states ''do not perceive Dr. Delisma as a threat to public safety and believe that [] his unfettered licensure is consistent with public interest.'' *Id.* Like the Government, the Respondent acknowledges that it is appropriate to analyze this case under the five factors contained in 21 U.S.C. 823(f). *Id.* In reviewing those factors, the Respondent argues that all five factors weigh in his favor. *Id.* at 10–12.

The Respondent notes that he has accepted responsibility for his actions. ALJ–13, at 12. The Respondent also notes that patients at the correctional facility where he works have had to wait, at times up to 72 hours, to obtain needed medication. *Id.* The Respondent argues that by granting him a registration the inmate patients at Somerset will not have to ''suffer needlessly while the facility locates a provider that (sic) can write a prescription for a controlled substance.'' *Id.* at 13.

III. 21 U.S.C. 824(a)(5): Mandatory Exclusion From Federal Health Care Programs Pursuant to 42 U.S.C. 1320a–7(a)

Mandatory exclusion from a federal health care program under 42 U.S.C. 1320a–7(a) serves as an independent basis for denying an application for DEA registration. 21 U.S.C. 824(a)(5). The OSC's sole allegation is that Dr. Delisma's mandatory exclusion from all federal health care programs warrants denying his application under 21 U.S.C. 824(a)(5). Specifically, the Government alleges that on May 31, 2016, judgment was entered against Dr. Delisma based on his guilty plea to one count of ''Receipt of Kickbacks in Connection with a Federal Health Care Program,'' in violation of 42 U.S.C. 1320a–7b(b)(1)(A). ALJ–1, at 2. Based on this conviction, the HHS/OIG, by letter dated August 31, 2016, mandatorily excluded Dr. Delisma from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years pursuant to 42 U.S.C. 1320a–7(a), effective September 20, 2016. *Id.* The Government further alleged that although the underlying conduct for which Dr. Delisma was convicted did not involve controlled substances, his mandatory exclusion from Medicare, Medicaid, and all federal health care programs warrants denial of his application for DEA registration pursuant to 21 U.S.C. 824(a)(5). *Id.*

Neither party disputes that Dr. Delisma was mandatorily excluded from federal health care programs under 42 U.S.C. 1320a–7(a) for the minimum period of five years based on Dr. Delisma's guilty plea to one count of receiving a kickback in connection with a federal health care program. Stips. 2–

[4] The Government's Brief has been marked as ALJ–12.

[*E] In its Motion for Summary Judgment, which the ALJ properly denied, the Government argued that the five public interest factors were inapplicable to this case because the Government was seeking to deny the application based on section 824(a)(5) (exclusion from federal health care programs) and had not alleged grounds under section 824(a)(4) (registrant has committed acts that would render his registration inconsistent with the public interest) in its Order to Show Cause. Govt MSJ at 5, n. 2. In reviewing an application for a registration, however, section 823(f) instructs the Agency to consider the public interest when determining whether to grant a petitioner's application to dispense controlled substances. 21 U.S.C. 823(f). Accordingly, the Respondent appropriately raised, and the ALJ appropriately considered, the public interest in determining whether to grant the Respondent's application in this case.

[5] It is accurate to state that *Hauser,* and the cases cited therein, state that where a registrant is excluded from Federal health care programs, DEA may revoke a Certificate of Registration even if the exclusion is unrelated to controlled substances. Having read *Hauser* and the cases the Government cited, however, all are inapposite to the case before me. For example, in four of the cases cited by the Government no hearing was held and the underlying criminal conviction involved fraud (solicitation) and there is no mention of acceptance of responsibility: *Orlando Ortega-Ortiz, M.D.,* 70 FR 15122 (2005); *Juan Pillot-Costas, M.D.,* 69 FR 62084 (2004); *Daniel Ortiz-Vargas, M.D.,* 69 FR 62095 (2004); and *KK Pharmacy,* 64 FR 49507 (1999), which also involved controlled substances and a materially false application. In *Stanley Dubin, D.D.S.,* 61 FR 60727 (1996), the respondent had been convicted of Medicare fraud, criminal conspiracy, forgery, and tampering with or fabricating evidence. In addition, the Administrative Law Judge did not credit a portion of Dubin's testimony and there is no discussion of acceptance of responsibility. Finally, in *Nelson Ramirez-Gonzalez, M.D.,* 58 FR 52787 (1993), the Administrative Law Judge found that the registrant had been convicted of nine felony counts, to include mail fraud, false claims, and making false statements. There is no mention of acceptance of responsibility in the decision.

[6] In my view, this argument is contrary to the discretion the Administrator has in determining whether to grant an application for a registration, or to revoke one. *Dan E. Hale, D.O.,* 69 FR 69402, 69406 (2004). It also fails to account for the Administrator's decisions in *Kwan Bo Jin, M.D.,* 77 FR 35021, 35023 (2012) and *Mohammed Asgar, M.D.,* 83 FR 29569, 29572 (2018). In addition, for the reasons explained in my ''Order Denying Government's Motion for Summary Disposition,'' the Government's reliance on *Narciso A. Reyes, M.D.,* 83 FR 61678 (2018) is also misplaced. ALJ–12, at 8; ALJ–9, at 4–5.

[7] The Respondent's Brief has been marked as ALJ–13.

3, 5. The parties also stipulated to the admissibility of the Government's four exhibits. Stip. 12.

The Government's evidence shows that the United States District Court for the Southern District of Florida (''District Court'') entered judgment against Dr. Delisma on May 31, 2016, on one count of ''Receipt of Kickbacks in Connection with a Federal Health Care Program,'' in violation of 42 U.S.C. 1320a–7b(b)(l)(A). GE–2, at 1; Stip. 2. The evidence further shows that Dr. Delisma pled guilty to the offense. *Id.* The judgment form indicates that the District Court sentenced Dr. Delisma to 8 months imprisonment and 1 year of supervised release. GE–2, at 2–3. The District Court also ordered Dr. Delisma to pay fines of $100. and $5,000., and to pay $49,000. in restitution. *Id.* at 5–6.

The Government's evidence also shows that on August 31, 2016, HHS/OIG issued a letter to Dr. Delisma informing him that HHS was excluding him from participation in Medicare, Medicaid, and all federal health care programs under section 1128(a)(1) of the Social Security Act (codified at 42 U.S.C. 1320a–7(a)). GE–3, at 1; Stip. 3. The letter states that HHS excluded Dr. Delisma based on his conviction for ''a criminal offense related to the delivery of an item or service under the Medicare or a State health care program.'' GE–3, at 1; *see* 42 U.S.C. 1320a–7(a)(1) (establishing mandatory exclusion based on conviction ''of a criminal offense related to the delivery of an item or service under subchapter XVIII or under any State health care program''). The letter further states that HHS excluded Dr. Delisma for the statutory minimum of five years and the exclusion was effective September 20, 2016. GE–3, at 1; Stip. 3. The letter also explains that reinstatement in federal health care programs is not automatic. *Id.* at 2; Stip. 4.

The Government's evidence also includes a printout from the HHS/OIG website showing that Dr. Delisma was excluded under Section 1128(a)(1) (42 U.S.C. 1320a–7(a)(1)) for a program-related conviction effective September 20, 2016. GE–4. Lastly, the Government's evidence includes a notarized document titled, Certification of Registration Non-Registration (''Certification''), signed by the Associate Chief of the Registration and Program Support Section. GE–1. The Certification states that Dr. Delisma submitted an application for DEA registration on or about July 9, 2018, and that the Registration and Support Section assigned his application Control Number W18071098C. *Id.;* Stip. 1. The Certification further indicates that when Dr. Delisma submitted his application, he disclosed his conviction and exclusion from federal health care programs. *Id.*

Evidence of Dr. Delisma's plea agreement, judgment, and the HHS exclusion letter are sufficient to sustain an allegation under 21 U.S.C. 824(a)(5). *Kwan Bo Jin, M.D.,* 77 FR at 35023; *Linda Sue Cheek, M.D.,* 76 FR 66972, 66982 (2011). Based on the Government's documentary exhibits, and the parties' joint stipulations, I find that the Administrative Record shows by a preponderance of the evidence that Dr. Delisma was convicted of receiving a kickback in connection with a federal health care program. I also find that based on this conviction, he was mandatorily excluded from participation in Medicare, Medicaid, and all federal health care programs for five years under 42 U.S.C. 1320a–7(a). Thus, the Government's allegation that Dr. Delisma's application for DEA registration should be denied under 21 U.S.C. 824(a)(5) because he was mandatorily excluded from Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a) is SUSTAINED. ALJ–1, at 2, paras. 2–3. This allegation weighs in favor of denying Dr. Delisma's application for DEA registration.

Discussion and Conclusions of Law

I sustained the Government's allegation that HHS mandatorily excluded Dr. Delisma from federal health care programs based on a program-related conviction. This allegation is supported by a preponderance of the evidence and the parties' joint stipulations.

Once the Government makes a *prima facie* case under 21 U.S.C. 824(a)(5), the burden shifts to respondent to '' 'present[] sufficient mitigating evidence to show why he can be entrusted with a registration.'' *Mohammed Asgar, M.D.,* 83 FR at 29572; *Kwan Bo Jin, M.D.,* 77 FR at 35023; *Linda Sue Cheek, M.D.,* 76 FR at 66982. Stated differently, where the Government advances substantial evidence to prove that exclusion from a federal health care program justifies sanction under section 824(a)(5), the case is not over, but instead shifts to respondent to argue that a lesser sanction, or no sanction, is appropriate in light of mitigating evidence. *Id.; see KK Pharmacy,* 64 FR 49507, 49510 (1999) (revoking where Government carried its burden and respondent introduced ''[n]o evidence of explanation or mitigating circumstances''); *Joseph M. Piacentile, M.D.,* 62 FR 35527, 35528–29 (1997) (revoking registration because Government met its burden and respondent failed to offer ''any evidence of [his] rehabilitation or remorse''). Once the burden shifts to Respondent, Respondent may present evidence showing that despite his conviction, he does not pose a threat to the public interest. *Linda Sue Cheek, M.D.,* 76 FR at 66982. Respondent may rebut the Government's *prima facie* case by accepting responsibility, showing remorse, introducing evidence of rehabilitation, and satisfying all terms and conditions of his sentence. *Kwan Bo Jin, M.D.,* 77 FR at 35026.

Even in cases involving the exclusion from federal health care programs, DEA analyzes the five public interest factors in 21 U.S.C. 823(f) in determining whether [granting a respondent's application for] *[F] registration would be inconsistent with the public interest. *See Dinorah Drug Store, Inc.,* 61 FR 15972, 15973–74 (1996) (considering all five public interest factors); [].*[G] Those factors are:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

DEA considers these public interest factors separately. *Ajay S. Ahuja, M.D.,* 84 Fed Reg. 5479, 5488 (2019); *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993). Thus, there is no need to enter findings on each of the factors. *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Furthermore, there is no requirement to consider a factor in any given level of detail. *Trawick* v. *DEA,* 861 F.2d 72, 76–77 (4th Cir. 1988). When deciding whether registration is in the public interest, DEA must consider the totality of the circumstances. *See generally Joseph Gaudio, M.D.,* 74 FR 10083, 10094–95

*[F] Language modified.

*[G] Citations omitted for relevance.

(2009) (basing sanction on all evidence of record).

With respect to Factors 1 and 3, it is undisputed that Dr. Delisma holds valid state medical licenses in Pennsylvania, New York, Maryland, and Montana. FF 18. [].*[H] However, possession of a state license does not entitle a holder of that license to a DEA registration. *Mark De La Lama, P.A.,* 76 FR 20011, 20018 (2011). It is well established that a ''state license is a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR at 15230. The ultimate responsibility to determine whether a DEA registration is consistent with the public interest resides exclusively with the DEA, not to entities within state government. *Edmund Chein, M.D.,* 72 FR 6580, 6590 (2007), *aff'd Chien* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008).

[In determining the public interest under Factor 1, the ''recommendation of the appropriate State licensing board or professional disciplinary authority . . . shall be considered.'' 21 U.S.C. 823(f)(1). ''Two forms of recommendations appear in Agency decisions: (1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority (hereinafter, appropriate state entity), which explicitly addresses the granting or retention of a DEA COR; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC.'' *John O. Dimowo,* 85 FR 15800, 15809 (2020). *See, also, Vincent J. Scolaro, D.O.,* 67 FR 42060, 42065 (2002) (''While the State Board did not affirmatively state that the Respondent could apply for a DEA registration, [the ALJ] found that the State Board by implication acquiesced to the Respondent's application because the State Board has given state authority to the Respondent to prescribe controlled substances.''). Here, Pennsylvania, where Respondent seeks registration, acted to grant Respondent a medical license after he apprised the licensing authority of his conviction, and the state did not place any restrictions on Respondent's ability to prescribe medications or practice medicine. FF 18. As the ''appropriate State licensing board'' for the purpose of Public Interest Factor One determined that Respondent should be licensed with full knowledge of his conviction, Factor 1 weighs against denial of his application in this matter. *See, e.g., Tyson D. Quy, M.D.,* 78 FR 47412, 47417 (2013); *Vincent J. Scolaro, D.O.,* 67 FR 42060, 42064–65 (2002); *Kwan Bo Jin, M.D.,* 77 FR at 35023–24 (noting that a state medical board's determination that a registrant could maintain his license after his Federal conviction for health care fraud ''does weigh against a finding that [r]espondent's continued registration would be inconsistent with . . . Factor One.'')*[I]].

As to Factor 3, there is no evidence that Dr. Delisma has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in criminal misconduct may never have been convicted of an offense or even prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 822 (10th Cir. 2011). Therefore, DEA has held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is not dispositive. *Id.* Accordingly, Factor 3 weighs neither for nor against revocation in this case.

DEA often analyzes Factors 2 and 4 together. *See, e.g., Fred Samimi, M.D.,* 79 FR 18698, 18709 (2014); *John V. Scalera, M.D.,* 78 FR 12092, 12098 (2013). Under Factor 2, DEA analyzes a registrant's ''experience in dispensing controlled substances.'' 21 U.S.C. 823(f)(2). Factor 2 analysis focuses on a registrant's acts that are inconsistent with the public interest, rather than on a registrant's neutral or positive acts and experience. *Randall L. Wolff, M.D.,* 77 FR 5106, 5121 n.25 (2012) (explaining that ''every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [the registrant's] professional career'' (quoting *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009))). Similarly, under Factor 4, DEA analyzes an applicant's compliance with Federal and state controlled substance laws. 21 U.S.C. 823(f)(4). The Factor 4 analysis focuses on violations of state and Federal laws and regulations concerning controlled substances. *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 223–24 (6th Cir. 2009) (citing *Gonzales* v. *Oregon,* 546 U.S. 243, 272, 274 (2006)); *Gaudio,* 74 FR at 10090–91. In this case, however, there are no allegations suggesting that Dr. Delisma has any negative experience in dispensing controlled substances, or that he has failed to comply with any state or federal laws concerning controlled substances. In my view, the absence of such allegations weigh in Dr. Delisma's favor. *Kwan Bo Jin, M.D.,* 77 FR at 35024; *see also Dinorah Drug Store, Inc.,* 61 FR at 15973–74 (noting consideration of the fact that the underlying misconduct that led to the exclusion did not involve controlled substances).

Factor 5 allows for consideration of other conduct a registrant may have engaged in that may threaten the public health and safety. In this case, the Government has not alleged any conduct other than Dr. Delisma's conviction of receiving a kickback and his resulting exclusion from federal health care programs as a basis to deny his application. Thus, in my view, the absence of allegations of any other conduct that may threaten the public health and safety weighs in Dr. Delisma's favor. *Kwan Bo Jin, M.D.,* 77 FR at 35025.

Finally, Dr. Delisma has not presented any evidence to rebut the underlying misconduct, or his exclusion from participation in Federal health care programs. Rather, he stipulated to the accuracy of those allegations. In addition, he accepted responsibility for his actions. FF 12. He initially did so by pleading guilty to the charge in Federal Court (Stip. 2; FF 12), by stipulating to all the elements of the Government's *prima facie* case in these proceedings, and by candidly accepting responsibility on the record. *Id.* Based upon my review of the entire Administrative Record and my evaluation of Dr. Delisma's candor and demeanor under oath, I find that Dr. Delisma's acceptance of responsibility was sincere and unequivocal.

Sanction

Imposing sanctions under 21 U.S.C. 824(a)(5) is a matter of discretion. [*Stein,* 84 FR at 46971;] *[J] *Kwan Bo Jin, M.D.,* 77 FR at 35023. Even when the Government meets its burden, the CSA provides that issuing a sanction is ''discretionary.'' *Dan E. Hale, D.O.,* 69 FR 69402, 69406 (2004). In exercising that discretion, DEA ''should consider

*[H] Sentence omitted.

*[I] I have replaced the ALJ's Factor One analysis in this case to reflect the Factor One legal analysis in *John O. Dimowo,* 85 FR 15800 (2020), which was published after the ALJ issued this RD. As noted in *Dimowo,* a state entity's actions are distinct from its inactions. 85 FR at 15810, n. M. Where the record contains no evidence of a recommendation by a state licensing board, that absence does not weigh for or against revocation under Factor 1. *See Ajay S. Ahuja, M.D.,* 84 FR 5479, 5490 (2019) (finding that ''where the record contains no evidence of a recommendation by a state licensing board that absence does not weigh for or against revocation.''); *see also MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 817–819 (10th Cir. 2011) (noting that the Agency decision found that the lack of action from an appropriate state entity was not a recommendation under Factor One and holding that the Deputy Administrator did not misweigh the public interest factors).

*[J] Citation added.

all the facts and circumstances of the case.'' *Id.; see also Linda Sue Cheek, M.D.,* 76 FR at 66982 (''[D]enial of an application for registration [under section 824(a)(5)] is a matter of discretion.''); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998) (turning to the issue of whether DEA should exercise its discretion to revoke respondent's COR after the Government carried its burden); *Anibal P. Herrera, M.D.,* 61 FR at 65077 (same).

The Government bears the initial burden of proof, and must justify a sanction by a preponderance of the evidence. *Steadman,* 450 U.S. at 100–03. If the Government makes a *prima facie* case for a sanction, the burden of proof shifts to the registrant to show that a sanction would be inappropriate. *Med. Shoppe—Jonesborough,* 73 FR 364, 387 (2008). A registrant may prevail by successfully attacking the veracity of the Government's allegations or evidence. Alternatively, a registrant may rebut the Government's *prima facie* case for a sanction by accepting responsibility for wrongful behavior and by taking remedial measures to ''prevent the re-occurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 FR 8194, 8236 (2010) (citations omitted). In addition, when assessing the appropriateness and extent of sanctioning, DEA considers the egregiousness of the offenses and its interest in specific and general deterrence. *David A. Ruben, M.D.,* 78 FR 38363, 38385 (2013).

Prima Facie Showing and Balancing

The Government can meet its burden in a case involving a registrant who has been excluded from federal health care programs simply by showing evidence of the exclusion and the underlying conviction. Further, DEA has long held that the underlying conviction forming the basis of a registrant's mandatory exclusion from participation in Federal health care programs need not involve controlled substances for DEA to issue a sanction pursuant to 21 U.S.C. 824(a)(5). [*Stein,* 84 FR at 46971–71;] *K *Hauser,* 83 FR at 26310.

The Government based its case on Dr. Delisma's conviction of his receipt of kickbacks in connection with a federal health care program, and his subsequent exclusion from federal health care programs by the Department of Health and Human Services. ALJ–1, at 2, paras. 2–3. Citing *Hauser,* 83 FR at 26308, the Government asserted that even though Dr. Delisma's underlying conduct ''had no nexus to controlled substances,'' his exclusion warranted the denial of his application for a Certificate of Registration. ALJ–1, at 2, para. 3. The Government has not advanced any evidence under Factors 1–5 of 21 U.S.C. 823(f), other than the exclusion.

After the Government presents a *prima facie* case for a sanction, the Respondent has the burden of production to present ''sufficient mitigating evidence'' to show why he can be entrusted with a DEA registration. *Med. Shoppe—Jonesborough,* 73 FR at 387 (quoting *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007)). To rebut the Government's *prima facie* case, the Respondent must both accept responsibility for his actions and demonstrate that he will not engage in future misconduct. *Patrick W. Stodola, M.D.,* 74 FR 20727, 20734–35 (2009).

The Respondent may accept responsibility by providing evidence of his remorse, his efforts at rehabilitation, and his recognition of the severity of his misconduct. *Robert A. Leslie, M.D.,* 68 FR at 15228. To accept responsibility, a respondent must show ''true remorse'' for wrongful conduct. *Michael S. Moore, M.D.,* 76 FR 45867, 45877 (2011). An expression of remorse includes acknowledgment of wrongdoing. *Wesley G. Harline, M.D.,* 65 FR 5665, 5671 (2000). A respondent must express remorse for all acts of documented misconduct. *Jeffrey Patrick Gunderson, M.D.,* 61 FR 26208, 26211 (1996). Acceptance of responsibility and remedial measures are assessed in the context of the ''egregiousness of the violations and the [DEA's] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.'' *David A. Ruben, M.D.,* 78 FR at 38364. In this case, I have found that Dr. Delisma's acceptance of responsibility was both sincere and unequivocal.

The mere acceptance of responsibility, however, does not end the analysis of whether to issue a sanction. ''[T]here are cases in which, notwithstanding a finding that a registrant has credibly accepted responsibility, the misconduct is so egregious and extensive that the protection of the public interest nonetheless warrants the revocation of a registration or the denial of an application.'' *William J. O'Brien, III, D.O.,* 82 FR 46527, 46527 (2017) (quoting *Hatem Ataya, M.D.,* 81 FR 8221, 8244 (2016)) (citation omitted).

In addition, consideration must be given to both specific and general deterrence. *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74810 (2015). Specific deterrence is the DEA's interest in ensuring that a registrant complies with the laws and regulations governing controlled substances in the future. *Id.* General deterrence concerns the DEA's responsibility to deter conduct similar to the proven allegations against the respondent for the protection of the public at large. *Id.*

With respect to egregiousness, I do not find the Respondent's conduct to be particularly egregious. Furthermore, the Government's reliance on *Hauser* in the Order to Show Cause is misplaced. Dr. Hauser was convicted of two counts of health care fraud for overbilling a state Medicaid program. *Hauser,* 83 FR at 26309. Dr. Hauser's fraud involved ''executing a scheme with the intent to defraud'' a state Medicaid program for payment of ''services that he did not actually perform,'' a far more egregious offense than that of Dr. Delisma. *Id.* In addition, Dr. Hauser failed to come forward with any evidence explaining or mitigating his overbilling conduct or otherwise explaining why his registration should not be revoked, and the record reflected no such evidence. *Id.* at 26,310. Furthermore, Dr. Hauser's fraud conviction is significant because a fraud conviction suggests that a registrant cannot be trusted to tell the truth except in cases where the registrant credibly accepts responsibility. *Kwan Bo Jin, M.D.,* 77 FR at 35027. In contrast, Dr. Delisma was convicted of a single count of receiving a kickback involving only one patient. In addition, Dr. Delisma was not convicted of fraudulent activities,[8] he accepted responsibility, he submitted credible evidence as to why his application should be approved, and he submitted some evidence of remediation. Further, his misconduct was not related to controlled substances.

The Administrator has also considered various circumstances as mitigating factors in past exclusion cases. Examples of such circumstances include: The fact that misconduct did not involve controlled substances;[9] no evidence that respondent's registration

*K Citation added.

[8] There are four bases for mandatory exclusion under 42 U.S.C. 1320a–7(a). They are convictions for: Program-related crimes, patient abuse, health care fraud, or a felony related to controlled substances. The Government's evidence shows that the Respondent's exclusion was for a ''program-related conviction.'' GE–4. Further, unlike several of the registrants in cases cited by the Government, Dr. Delisma was not convicted of ''soliciting'' a kickback.

[9] *See Mohammed Asgar, M.D.,* 83 FR at 29573 (declaring it significant ''that Respondent's criminality did not directly involve his registration or controlled substances''); *Dinorah Drug Store, Inc.,* 61 FR at 15974 (weighing in mitigation ''the lack of any adverse action or allegations pertaining to [respondent's] conduct related to controlled substances'').

threatens the public interest;[10] respondent accepted responsibility;[11] respondent submitted letters and testimony concerning his good character;[12] HHS found no aggravating factors and therefore excluded respondent for the minimum period;[13] respondent was candid about his background with his employer;[14] and respondent satisfied all terms and conditions of his sentence.[15] All of these circumstances are relevant mitigating factors in the case before me. Stip. 3, 6; FF 12, 16, 18, 21, 31, 33–34, 41–44.

It is frequently noted that proceedings concerning an Order to Show Cause are non-punitive in nature. *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988). ''The purpose of this proceeding is not to impose punishment . . . .'' *Jackson,* 72 FR at 23853. Rather, these proceedings are intended to be '' 'a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused controlled substances or their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration.' '' *Id.* (quoting *Miller,* 53 FR at 21932) (citing *Robert M. Golden, M.D.,* 61 FR 24808, 24812 (1996)).

I have also considered the issue of deterrence, both general and specific. With regard to specific deterrence, Dr. Delisma has already been held accountable for accepting a kickback, having been sentenced to prison, as well as having to pay substantial financial penalties. He has fully satisfied all of those imposed requirements by both the Federal courts and licensing authorities. FF 15, 17–18. He has also completed three continuing education courses concerning medical ethics. FF 45–46. In addition, [and importantly,] *L he has demonstrated sincere remorse. FF 12. Concerning general deterrence, other practitioners would be sufficiently deterred based upon Dr. Delisma's criminal conviction and punishment, as well as the fees imposed by state licensing authorities. [].*M In this case, where there is no allegation or evidence that Dr. Delisma has ever improperly handled controlled substances [or engaged in other behaviors that negatively implicate his potential future compliance with the CSA and where he has been held accountable and expressed sincere remorse],*N denying his application would not be remedial in nature, it would simply be added punishment.

The Administrator has also frequently noted that ''past performance is the best predictor of future performance.'' *Mohammed Asgar, M.D.,* 83 FR at 29572 (internal citations and quotations omitted). In this case, there is absolutely no evidence that there has ever been any concern about the manner in which Dr. Delisma handled controlled substances. While a respondent's past poor performance in handling controlled substances is often times cited in decisions revoking a Certificate of Registration or denying an application for a Certificate of Registration, the reverse should also be true. In this case, I consider Dr. Delisma's past performance to be the best predictor of continued performance consistent with public health and safety.

Finally, I note that the Government has argued that Dr. Delisma's application should be denied because he did not need a registration to secure his position at Somerset, and does not need it to retain the position. ALJ–12, at 10. The Government cites no authority for this novel proposition. Countering that argument, Dr. Delisma argues that he needs a registration to provide the inmates at Somerset the quality of care they deserve. ALJ–13, at 12–13. The Respondent cites no DEA authority for this novel proposition.[16] I reject both arguments because the analysis of 21 U.S.C. 823(f) focuses on whether granting an application for a registration or revoking a registration is in the public interest. *Jackson,* 72 FR at 23853. Nowhere is there a suggestion that an application should be approved or denied based upon an evaluation, or consideration, of whether the applicant needs the registration.[17] Similarly, while it is commendable that Dr. Delisma is using his medical talents in a public service environment, an environment cannot entitle a practitioner to a registration, where consideration of the five factors of 21 U.S.C. 823(f) might otherwise result in denial of that practitioner's application.

Recommendation

I have considered the entire Administrative Record in this case. Other than Dr. Delisma's exclusion from participation in federal health care programs and his underlying conviction, which prompted that mandatory exclusion, I find absolutely no evidence that Dr. Delisma poses any threat to our public health and safety. To the contrary, the evidence suggests that granting Dr. Delisma a Certificate of Registration would be in the public interest. Accordingly, I recommend that

[10] *See Kwan Bo Jin, M.D.,* 77 FR at 35027 (stressing the lack of any evidence that the practitioner's ''registration would be inconsistent with the public interest, to include issues with his prescribing practices'').

[11] *See Mohammed Asgar, M.D.,* 83 FR at 29573 (finding respondent accepted responsibility and the Government ''put forward no evidence challenging the sincerity of Respondent's acceptance of responsibility''); *Kwan Bo Jin, M.D.,* 77 FR at 35026 (highlighting the practitioner's ''full acceptance of responsibility''); *Melvin N. Seglin, M.D.,* 63 FR at 70433 (holding respondent's attempt to explain why he overbilled did not negate his acceptance of responsibility).

[12] *See Anibal P. Herrera, M.D.,* 61 FR at 65077 (considering ''letters of support from patients and other doctors''); *Suresh Gandotra, M.D.,* 58 FR 64781, 64782 (1993) (considering character testimony).

[13] *See Dinorah Drug Store, Inc.,* 61 FR at 15974 (considering the fact that HHS found no aggravating factors ''to justify imposing more than the mandatory minimum period of exclusion'').

[14] *See Melvin N. Seglin, M.D.,* 63 FR at 70432–33 (stressing that respondent ''was honest and forthcoming regarding his background with his current employer'').

[15] *See Kwan Bo Jin, M.D.,* 77 FR at 35026 (finding it relevant for purposes of mitigation that respondent ''met all terms and conditions of his sentence'').

*L Language added.

*M Sentence omitted.

*N Language added. Although Dr. Delisma's past history with controlled substances weighs in favor of granting his application, certain behaviors that do not directly involve controlled substances may still weigh against an application if the behaviors are relevant to the applicant's potential future compliance with the CSA. *See Stein,* 84 FR 469 (finding a sanction appropriate for deterrence where there were no allegations respondent had improperly handled controlled substances but respondent had impeded a government investigation). Dr. Delisma's single act of accepting a kickback does demonstrate a past failure to comply with federal law, which I factor into my determination of trust, but his actions since his criminal act have been fully compliant and transparent and have given me no further reason to doubt his future compliance with the CSA.

[16] It would seem the decision in *Garrett Howard Smith, M.D.,* 83 FR 18882 (2018) undercuts the Respondent's suggestion. There, the Acting Administrator held that testimony about a registrant's excellent work performance at a medical facility other than where he held his registration and that he was ''providing a valuable service to the community'' is not ''relevant in the public interest determination.'' *Id.* at 18897 n.23.

[17] However, in *Melvin N. Seglin, M.D.,* 63 FR at 70433, the Deputy Administrator found ''it significant that Respondent . . . need[ed] to be able to handle controlled substances in order to continue treating inmates in the local jail.'' The Deputy Administrator decided *Seglin* in 1998. In the more recent case of *Gregory D. Owens, D.D.S.,* 74 FR 36751 (2009), however, the Deputy Administrator reasoned ''[w]hether a practitioner treats patients who come from a medically underserved community or who have limited incomes has no bearing on whether he has accepted responsibility and undertaken adequate corrective measures.'' In 2011, the Administrator upheld this reasoning in *Linda Sue Cheek, M.D.,* 76 FR at 66972. If there ever was a suggestion that DEA should consider whether, and to what extent, an applicant needed a registration, as DEA considered in *Seglin,* DEA has since changed course, as illustrated by *Owens* and *Cheek.* Thus, I find no support for the proposition that I should recommend denying Dr. Delisma's application because he does not need a COR, or that I should recommend granting his application because he might need one.

the Acting Administrator GRANT the application for a Certificate of Registration, Control Number W18071098C, submitted by Dr. Kansky J. Delisma, M.D., without further delay.

Dated: May 23, 2019.

Charles Wm. Dorman,
U.S. Administrative Law Judge.

[FR Doc. 2020–09057 Filed 4–28–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0055]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Currently Approved Collection; The National Instant Criminal Background Check System (NICS) Checks by Criminal Justice Agencies

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 29, 2020.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or email *NICS@fbi.gov.* Attention: OMB PRA 1110–0055

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1 *Type of Information Collection:* Extension of a currently approved collection.

2 *The Title of the Form/Collection:* The National Instant Criminal Background Check System (NICS) Checks by Criminal Justice Agencies (CJA).

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is unnumbered. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, County, City, Tribal law enforcement agencies.

Abstract: In November 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103–159, was signed into law and required federal firearms licensees (FFL) to request background checks on individuals attempting to purchase or receive a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the United States Attorney General to establish a NICS that FFLs may contact by telephone, or other electronic means in addition to the telephone, for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law. There are additional authorized uses of the NICS found at Title 28, Code of Federal Regulations (CFR), Section 25.6(j). The FBI authorized the CJAs to initiate a NICS check to assist their transfer of firearms to private individuals as a change to 28 CFR 25.6(j) in the **Federal Register**, Volume 78, Number 18 pages 5757–5760.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated the time burden associated with this collection is 3 minutes per transaction, depending on the individual circumstance. The total annual respondent entities taking advantage of this disposition process is 21,156 CJAs.

6 *An estimate of the total public burden (in hours) associated with the collection:* It is estimated the burden associated with this collection is 3 minutes per transaction depending on the individual circumstance. If each of the 21,156 respondents conducted 3 dispositions with this authority per year at 3 minutes per check, then it is anticipated the business burden would be 3,173.4 hours per year.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 24, 2020.

Melody Braswell,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–09088 Filed 4–28–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0039]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Federal Firearms Licensee Firearms Inventory Theft/Loss Report—ATF Form 3310.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0039 (Federal Firearms Licensee Firearms Inventory Theft/Loss Report—ATF Form 3310.11) is being renamed the Federal Firearms Licensee Firearms Inventory/Firearms In Transit Theft/

Loss Report. Some sections of the form were reformatted and additional fields were included, to improve user experience when reporting theft or loss of inventory. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 29, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Neil Troppman, ATF National Tracing Center either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *neil.troppman@atf.gov,* or by telephone at 304–260–3643.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection* (check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3310.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Federal Government.

Abstract: The Federal Firearms Licensee Firearms Inventory Theft/Loss Report—ATF Form 3310.11 is used by federal firearms licensees (FFLs) to report theft or loss of inventory or collection to the Attorney General and other appropriate authorities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,000 respondents will utilize the form annually, and it will take each respondent approximately 24 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,600 hours, which is equal to 4,000 (# of respondents) * .4 (24 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 24, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–09087 Filed 4–28–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 29, 2020.

ADDRESSES: Anja Decressin, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, *ebsa.opr@dol.gov,* (202) 693–8410, FAX (202) 219–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Process for Expedited Approval of an Exemption for Prohibited Transaction, Prohibited Transaction Class Exemption 1996–62.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0098.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 5.

Responses: 3,515.

Estimated Total Burden Hours: 88.

Estimated Total Burden Cost (Operating and Maintenance): $20,457.

Description: On April 28, 1975, the Department Published ERISA Procedure 75–1 in the **Federal Register**, which provided the public with information regarding the procedure to follow when requesting an exemption. On August 10, 1990, the Department issued a regulation which replaced ERISA

Procedure 75–1 for applications for prohibited transaction exemptions filed on or after September 10, 1990 (29 CFR 2570.30 *et seq.*).

On July 31, 1996, the Department published in the **Federal Register**, Prohibited Transaction Class Exemption 96–62 that provides for accelerated approval of an exemption permitting a plan to engage in a transaction which might otherwise be prohibited following a demonstration to the Department that the transaction: (1) Is substantially similar in all material respects to at least two other transactions for which the Department recently granted administrative relief from the same restriction; and (2) presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. Under the class exemption, a party may proceed with a transaction in as little as 78 days from the acknowledgment of receipt by the Department of a written submission filed in accordance with the terms of the class exemption.

In 2002, the DOL amended the exemption to clarify that it covers ''plans'' as described in Code Section 4975(e)(1), such as IRAs and Keogh Plans, and that the scope of the exemption is not limited to Title I ERISA covered plans.

Additionally, in 2003 the DOL amended the exemption to permit parties to base their submissions on substantially similar transactions described either in two individual exemptions granted within the past 60 months, or in one individual exemption granted within the last 120 months and one transaction that received final authorization under the exemption within the past 60 months. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0098. The current approval is scheduled to expire on October 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203–3.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0048.

Affected Public: Businesses or other for-profits.

Respondents: 39,457.

Responses: 171,221.

Estimated Total Burden Hours: 132,639.

Estimated Total Burden Cost (Operating and Maintenance): $46,773.

Description: Section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work or to participants who continue to work beyond normal retirement age. This section sets forth the circumstances and conditions under which such benefit payments may be suspended.

This regulation, which was issued on January 27, 1981, amended on December 4, 1981, and corrected on December 11, 1981, generally describes the manner and circumstances under which retirement benefits may be suspended during periods of employment subsequent to retirement. The rule also clarifies that the normal retirement benefit of a participant who continues working beyond the plan's normal retirement age may also be considered to be suspended even though no act of retirement has occurred.

In order for a plan to suspend benefits pursuant to the regulation, it must notify the affected retiree or participant during the first calendar month or payroll period in which the plan withholds payment that benefits are suspended. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to Section 503 of the Act and applicable regulations. The notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, *i.e.,* 29 CFR 2530.203–3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0048. The current approval is scheduled to expire on December 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Prohibited Transaction Class Exemption 1981–8, Investment of Plan Assets in Certain Types of Short-Term Investment.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0061.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 82,664.

Responses: 413,320.

Estimated Total Burden Hours: 103,330.

Estimated Total Burden Cost (Operating and Maintenance): $93,770.

Description: This class exemption (PTE 81–8), which was granted on January 23, 1981, exempts from the prohibited transaction restrictions the investment of plan assets in certain short-term investments in debt obligations issued by certain persons who provide services to the plan or are affiliated with such service providers. PTE 81–8 covers four types of short-term investments: banker's acceptances, commercial paper, repurchase agreements and certificates of deposit and contains specific conditions for each type of investment. PTE 81–8 was amended on April 9, 1985, to add a new category of permissible investments-securities issued by banks or their affiliates in cases where the bank is a party in interest only by reason of the furnishing of a checking account or related services (such as clearing and recordkeeping services) to the list of acceptable short-term investments in the existing class exemption. In addition, PTE 81–8 was amended to expand the category of sellers with whom the plan may enter into repurchase agreements to include dealers in bank acceptances who report their security positions on a daily basis to the Federal Reserve Bank of New York. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0061. The current approval is scheduled to expire on December 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0111.

Affected Public: Businesses or other for-profits.

Respondents: 35.

Responses: 420,000.

Estimated Total Burden Hours: 4,200.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: The class exemption that is the subject of this submission would permit certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers that are parties in interest with respect to such plans. For purposes of this exemption, a foreign exchange transaction is the exchange of currency of one nation for the currency of another nation. Although the Department previously granted an exemption for certain foreign exchange transactions (PTE 94–20, 59 FR 8022 (OMB Control Number 1210–0085)), that exemption

did not include relief for those foreign exchange transactions executed pursuant to the advance written authorization of a plan fiduciary who is independent of the bank or broker-dealer engaging in the transaction (a ''standing instruction''). This submission covers the information collection included in the exemption for foreign exchange transactions executed pursuant to standing instructions, which was granted on November 13, 1998. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0111. The current approval is scheduled to expire on December 31, 2020.

Dated: April 23, 2020.

Anja Decressin,

Acting Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2020–09026 Filed 4–28–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year (PY) 2020 Workforce Innovation and Opportunity Act (WIOA) Allotments; PY 2020 Wagner-Peyser Act Allotments and PY 2020 Workforce Information Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces allotments for PY 2020 for WIOA Title I Youth, Adult and Dislocated Worker Activities programs; allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2020 and the allotments of Workforce Information Grants to States for PY 2020.

DATES: The Department must receive comments on the formula used to allot funds to the Outlying Areas by May 29, 2020.

ADDRESSES: Submit written comments to the Employment and Training Administration (ETA), Office of Financial Administration, 200 Constitution Avenue NW, Room N–4702, Washington, DC 20210, Attention: Ms. Anita Harvey, email: *harvey.anita@dol.gov.*

Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. The Department will receive hand-delivered comments at the above address. All overnight mail will be considered hand-delivered and must be received at the designated place by the date specified above.

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that it receives after the comment period has closed.

Comments: The Department will retain all comments on this notice and will release them upon request via email to any member of the public. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print, Braille, and electronic file. The Department also will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the notice in an alternative format, contact Ms. Harvey using the information provided above. The Department will retain all comments received without making any changes to the comments, including any personal information provided. The Department therefore cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments; this information would be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information.

FOR FURTHER INFORMATION CONTACT: WIOA Youth Activities allotments—Sara Hastings at (202) 693–3599; WIOA Adult and Dislocated Worker Activities and ES allotments—Andrew Ridgeway at (202) 693–3536; Workforce Information Grant allotments—Donald Haughton at (202) 693–2784. Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: WIOA allotments for states and the state allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. WIOA requires allotments for the Outlying Areas to be competitively awarded rather than based on a formula determined by the Secretary of Labor (Secretary) as occurred under the Workforce Investment Act (WIA). However, for PY 2020, the Further Consolidated Appropriations Act, 2020 waives the competition requirement, and the Secretary is using the discretionary formula rationale and methodology for allocating PY 2020 funds for the Outlying Areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the United States Virgin Islands) that was published in the **Federal Register** at 65 FR 8236 (Feb. 17, 2000). WIOA specifically included the Republic of Palau as an Outlying Area, except during any period for which the Secretary of Labor and the Secretary of Education determine that a Compact of Free Association is in effect and contains provisions for training and education assistance prohibiting the assistance provided under WIOA; no such determinations prohibiting assistance have been made. The formula that the Department of Labor (Department) used for PY 2020 is the same formula used in PY 2019 and is described in the section on Youth Activities program allotments. The Department invites comments only on the formula used to allot funds to the Outlying Areas.

The Department is announcing WIOA allotments for PY 2020 for Youth Activities, Adults and Dislocated Worker Activities, Wagner-Peyser Act PY 2020 allotments, and PY 2020 Workforce Information Grant allotments. This notice provides information on the amount of funds available during PY 2020 to states with an approved WIOA Combined or Unified State Plan, and information regarding allotments to the Outlying Areas.

On December 20, 2019, the Further Consolidated Appropriations Act, 2020, Public Law 116–94 was signed into law (''the Act''). The Act, Division A, Title I, Sections 106(b) and 107 of the Act allows the Secretary of Labor (Secretary) to set aside up to 0.5 percent of each discretionary appropriation for activities related to program integrity and 0.75 percent of most operating funds for evaluations. For 2020, as authorized by the Act, the Department has set aside $818,000 of the Training and Employment Services (TES) appropriation for evaluations. ETA reserved these funds from the WIOA Adult, Youth, and Dislocated Worker program budgets. Any funds not utilized for these reserve activities will be provided to the states. We also have attached tables listing the PY 2020 allotments for programs under WIOA Title I Youth Activities (Table A), Adult and Dislocated Workers Employment and Training Activities (Tables B and C, respectively), and the PY 2020 Wagner-

Peyser Act allotments (Table D). We also have attached the PY 2020 Workforce Information Grant table (Table E).

Youth Activities Allotments. The appropriated level for PY 2020 for WIOA Youth Activities totals $913,130,000. After reducing the appropriation by $224,000 for evaluations, $912,906,000, is available for Youth Activities. Table A includes a breakdown of the Youth Activities program allotments for PY 2020 and provides a comparison of these allotments to PY 2019 Youth Activities allotments for all States and Outlying Areas. For the Native American Youth program, the total amount available is 1.5 percent of the total amount for Youth Activities (after the evaluations set-aside), in accordance with WIOA section 127. The total funding available for the Outlying Areas was reserved at 0.25 percent of the amount appropriated for Youth Activities (after the evaluations set aside) after the amount reserved for Native American Youth (in accordance with WIOA section 127(b)(1)(B)(i)). On December 17, 2003, Public Law 108–188, the Compact of Free Association Amendments Act of 2003 (''the Compact''), was signed into law. The Compact specified that the Republic of Palau remained eligible for WIA Title I funding. See 48 U.S.C. 1921d(f)(1)(B)(ix). WIOA sec. 512(g)(1) updated the Compact to refer to WIOA funding. The National Defense Authorization Act for Fiscal Year 2018 (Division A, Title XII, Subtitle F, Section 1259C(c) of Pub. L. 115–91) authorized WIOA Title I funding to Palau through FY 2024.

Under WIA, the Secretary had discretion for determining the methodology for distributing funds to all Outlying Areas. Under WIOA the Secretary must award the funds through a competitive process. However, for PY 2020, the Further Consolidated Appropriations Act, 2020 waives the competition requirement regarding funding to Outlying Areas (*e.g.,* American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the United States Virgin Islands). For PY 2020, the Department used the same methodology used since PY 2000 (*i.e.,* we distribute funds among the Outlying Areas by formula based on relative share of the number of unemployed, a minimum of 90 percent of the prior year allotment percentage, a $75,000 minimum, and a 130 percent stop gain of the prior year share). For the relative share calculation in PY 2020, the Department continued to use the data obtained from the 2010 Census for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands. For the Republic of Palau, the Department used data from Palau's 2015 Census. The Department will accept comments on this methodology.

After the Department calculated the amount for the Outlying Areas and the Native American program, the amount available for PY 2020 allotments to the states is $896,964,379. This total amount is below the required $1 billion threshold specified in WIOA sec. 127(b)(1)(C)(iv)(IV); therefore, the Department did not apply the WIOA additional minimum provisions. Instead, as required by WIOA, the minimums of 90 percent of the prior year allotment percentage and 0.25 percent state minimum floor apply. WIOA also provides that no state may receive an allotment that is more than 130 percent of the allotment percentage for the state for the previous year. The three data factors required by WIOA sec. 127(b)(1)(C)(ii) for the PY 2020 Youth Activities state formula allotments are, summarized slightly, as follows:

(1) The average number of unemployed individuals in Areas of Substantial Unemployment (ASUs) for the 12-month period, July 2018–June 2019 in each state compared to the total number of unemployed individuals in ASUs in all states;

(2) Number of excess unemployed individuals or excess unemployed individuals in ASUs (depending on which is higher) averages for the same 12-month period used for ASU unemployed data compared to the total excess unemployed individuals or ASU excess number in all states; and

(3) Number of disadvantaged youth (age 16 to 21, excluding college students not in the workforce and military) from special tabulations of data from the American Community Survey (ACS), which the Department obtained from the Census Bureau in each state compared to the total number of disadvantaged youth in all states. ETA obtained updated data for use in PY 2018 and the same data must be used in PY 2020. The Census Bureau collected the data used in the special tabulations for disadvantaged youth between January 1, 2011–December 31, 2015.

For purposes of identifying ASUs for the Youth Activities allotment formula, the Department continued to use the data made available by BLS (as described in the Local Area Unemployment Statistics (LAUS) Technical Memorandum No. S–19–15). For purposes of determining the number of disadvantaged youth, the Department used the special tabulations of ACS data available at: *https://www.dol.gov/agencies/eta/budget/formula/disadvantagedyouthadults.*

See TEGL No. 14–17 for further information.

Adult Employment and Training Activities Allotments. The total appropriated funds for Adult Activities in PY 2020 is $854,649,000. After reducing the appropriated amount by $175,000 for evaluations, $854,474,000 remains for Adult Activities, of which $852,337,815 is for states and $2,136,185 is for Outlying Areas. Table B shows the PY 2020 Adult Employment and Training Activities allotments and a state-by-state comparison of the PY 2020 allotments to PY 2019 allotments.

In accordance with WIOA, the Department reserved the total available for the Outlying Areas at 0.25 percent of the full amount appropriated for Adult Activities (after the evaluations set-aside). As discussed in the Youth Activities section above, in PY 2020 the Department will distribute the Adult Activities funding for the Outlying Areas, using the same principles, formula, and data as used for outlying areas for Youth Activities. The Department will accept comments on this methodology. After determining the amount for the Outlying Areas, the Department used the statutory formula to distribute the remaining amount available for allotments to the states. The Department did not apply the WIOA minimum provisions for the PY 2020 allotments because the total amount available for the states was below the $960 million threshold required for Adult Activities in WIOA sec. 132(b)(1)(B)(iv)(IV). Instead, as required by WIOA, the minimums of 90 percent of the prior year allotment percentage and 0.25 percent state minimum floor apply. WIOA also provides that no state may receive an allotment that is more than 130 percent of the allotment percentage for the state for the previous year. The three formula data factors for the Adult Activities program are the same as those used for the Youth Activities formula, except the Department used data for the number of disadvantaged adults (age 22 to 72, excluding college students not in the workforce and military).

Dislocated Worker Employment and Training Activities Allotments. The amount appropriated for Dislocated Worker activities in PY 2020 totals $1,322,912,000. The total appropriation includes formula funds for the states, while the National Reserve is used for National Dislocated Worker Grants, technical assistance and training, demonstration projects, Workforce Opportunity for Rural Communities,

Community College Grants, and the Outlying Areas' Dislocated Worker allotments. After reducing the appropriated amount by $419,000 for evaluations, a total of $1,322,493,000 remains available for Dislocated Worker activities. The amount available for Outlying Areas is $3,306,233, leaving $267,473,767 for the National Reserve and a total of $1,051,713,000 available for states. Table C shows the PY 2020 Dislocated Worker activities allotments and a state-by-state comparison of the PY 2020 allotments to PY 2019 allotments.

Similar to the Adult Activities program, the Department reserved the total available for the Outlying Areas at 0.25 percent of the full amount appropriated for Dislocated Worker Activities (after the evaluations set-aside). Similar to Youth and Adult funds, instead of competition, in PY 2020 the Department will use the same *pro rata* share as the areas received for the PY 2020 WIOA Adult Activities program to distribute the Outlying Areas' Dislocated Worker funds, the same methodology used in PY 2019. The Department will accept comments on this methodology.

The three data factors required in WIOA sec. 132(b)(2)(B)(ii) for the PY 2020 Dislocated Worker state formula allotments are, summarized slightly, as follows:

(1) Relative number of unemployed individuals in each state, compared to the total number of unemployed individuals in all states, for the 12-month period, October 2018–September 2019;

(2) Relative number of excess unemployed individuals in each state, compared to the total excess number of unemployed individuals in all states, for the 12-month period, October 2018–September 2019; and

(3) Relative number of long-term unemployed individuals in each state, compared to the total number of long-term unemployed individuals in all states, for the 12-month period, October 2018–September 2019.

In PY 2020, under WIOA the Dislocated Worker formula uses minimum and maximum provisions. No state may receive an allotment that is less than 90 percent of the state's prior year allotment percentage (stop loss) or more than 130 percent of the state's prior year allotment percentage (stop gain).

Low unemployment rates in the states have impacted the excess unemployment data factor in the WIOA Dislocated Worker formula. The excess unemployment rate of 4.5 percent and low unemployment result in all states triggering either their statutorily required stop loss or stop gain provision, with some PY 2020 funding undistributed. WIOA specifically prohibits distributing an amount to a state that is more than its stop gain limit. Based on this statutory limitation, the Department distributed the remaining balance of funds according to the formula driven relative share of all states triggering the stop loss provision.

Wagner-Peyser Act ES Allotments. The appropriated level for PY 2020 for ES grants totals $668,052,000. After determining the funding for Guam and the United States Virgin Islands, the Department calculated allotments to states using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). The Department based PY 2020 formula allotments on each state's share of calendar year 2019 monthly averages of the civilian labor force (CLF) and unemployment. Section 6(b)(4) of the Wagner-Peyser Act requires the Secretary to set aside up to three percent of the total funds available for ES to ensure that each state will have sufficient resources to maintain statewide ES activities. In accordance with this provision, the Department included the three percent set aside funds in this total allotment. The Department distributed the set-aside funds in two steps to states that have experienced a reduction in their relative share of the total resources available this year from their relative share of the total resources available the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. ETA calculated the median CLF density based on CLF data provided by the BLS for calendar year 2019. The Department distributed all remaining set-aside funds on a *pro-rata* basis in Step 2 to all other states experiencing reductions in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of ES funds (Table D) includes $666,423,522 for states, as well as $1,628,478 for Outlying Areas.

Section 7(a) of the Wagner-Peyser Act (49 U.S.C. 49f(a)) authorizes states to use 90 percent of funds allotted to a state for labor exchange services and other career services such as job search and placement services to job seekers; appropriate recruitment services for employers; program evaluations; developing and providing labor market and occupational information; developing management information systems; and administering the work test for unemployment insurance claimants. Section 7(b) of the Wagner-Peyser Act states that 10 percent of the total sums allotted to each state must be reserved for use by the Governor to provide performance incentives for public ES offices and programs, provide services for groups with special needs, and to provide for the extra costs of exemplary models for delivering services of the type described in section 7(a) and models for enhancing professional development and career advancement opportunities of state agency staff.

Workforce Information Grants Allotments. Total PY 2020 funding for Workforce Information Grants allotments to states is $32,000,000. Table E contains the allotment figures for each state and Outlying Area. The Department distributes the funds by administrative formula, with a reserve of $176,800 for Guam and the United States Virgin Islands. Guam and the United States Virgin Islands allotment amounts are partially based on CLF data. The Department distributes the remaining funds to the states with 40 percent distributed equally to all states and 60 percent distributed based on each state's share of CLF for the 12 months ending September 2019.

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS

State	PY 2019	PY 2020	Difference	% Difference
Total	$900,791,000	$912,906,000	$12,115,000	1.34
Alabama	15,149,798	13,818,197	(1,331,601)	−8.79
Alaska	4,229,167	5,076,190	847,023	20.03
Arizona	25,610,047	33,740,829	8,130,782	31.75
Arkansas	5,911,108	6,222,886	311,778	5.27

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS—Continued

State	PY 2019	PY 2020	Difference	% Difference
California	119,017,698	134,926,913	15,909,215	13.37
Colorado	8,431,842	7,969,239	(462,603)	−5.49
Connecticut	10,709,715	9,768,378	(941,337)	−8.79
Delaware	2,212,652	2,242,411	29,759	1.34
District of Columbia	4,331,649	5,121,772	790,123	18.24
Florida	45,888,161	41,854,792	(4,033,369)	−8.79
Georgia	23,153,178	21,118,115	(2,035,063)	−8.79
Hawaii	2,212,652	2,242,411	29,759	1.34
Idaho	2,220,081	2,242,411	22,330	1.01
Illinois	41,773,340	47,902,600	6,129,260	14.67
Indiana	12,866,699	13,241,878	375,179	2.92
Iowa	4,307,514	3,928,902	(378,612)	−8.79
Kansas	4,660,163	4,250,555	(409,608)	−8.79
Kentucky	13,375,729	14,588,219	1,212,490	9.06
Louisiana	15,924,333	18,661,916	2,737,583	17.19
Maine	2,419,335	2,242,411	(176,924)	−7.31
Maryland	14,546,358	13,267,797	(1,278,561)	−8.79
Massachusetts	12,354,890	11,268,949	(1,085,941)	−8.79
Michigan	34,878,283	35,039,178	160,895	0.46
Minnesota	9,097,556	8,297,921	(799,635)	−8.79
Mississippi	10,396,417	12,695,917	2,299,500	22.12
Missouri	12,676,655	11,562,432	(1,114,223)	−8.79
Montana	2,280,623	2,257,550	(23,073)	−1.01
Nebraska	2,862,935	3,321,693	458,758	16.02
Nevada	9,921,829	9,330,673	(591,156)	−5.96
New Hampshire	2,212,652	2,242,411	29,759	1.34
New Jersey	24,036,015	21,923,354	(2,112,661)	−8.79
New Mexico	9,124,699	9,451,630	326,931	3.58
New York	62,137,502	56,675,887	(5,461,615)	−8.79
North Carolina	27,582,642	26,247,804	(1,334,838)	−4.84
North Dakota	2,212,652	2,242,411	29,759	1.34
Ohio	41,626,582	45,496,637	3,870,055	9.30
Oklahoma	8,631,298	7,872,645	(758,653)	−8.79
Oregon	8,626,626	10,563,715	1,937,089	22.45
Pennsylvania	36,515,461	34,144,371	(2,371,090)	−6.49
Puerto Rico	29,825,410	28,606,753	(1,218,657)	−4.09
Rhode Island	3,395,462	3,097,016	(298,446)	−8.79
South Carolina	11,731,447	10,700,304	(1,031,143)	−8.79
South Dakota	2,212,652	2,242,411	29,759	1.34
Tennessee	15,774,815	14,388,278	(1,386,537)	−8.79
Texas	68,455,626	62,438,675	(6,016,951)	−8.79
Utah	3,538,726	3,227,687	(311,039)	−8.79
Vermont	2,212,652	2,242,411	29,759	1.34
Virginia	11,859,006	10,816,651	(1,042,355)	−8.79
Washington	21,151,649	25,394,224	4,242,575	20.06
West Virginia	6,472,612	7,298,882	826,270	12.77
Wisconsin	10,091,692	9,204,676	(887,016)	−8.79
Wyoming	2,212,652	2,242,411	29,759	1.34
State Total	885,060,937	896,964,379	11,903,442	1.34
American Samoa	237,085	240,385	3,300	1.39
Guam	804,738	815,939	11,201	1.39
Northern Marianas	439,677	445,798	6,121	1.39
Palau	75,000	75,000	0	0.00
Virgin Islands	661,698	670,909	9,211	1.39
Outlying Areas Total	2,218,198	2,248,031	29,833	1.34
Native Americans	13,511,865	13,693,590	181,725	1.34

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS

State	PY 2019	PY 2020	Difference	% Difference
Total	$843,487,000	$854,474,000	$10,987,000	1.30
Alabama	14,711,809	13,413,096	(1,298,713)	−8.83
Alaska	3,957,007	4,769,805	812,798	20.54

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS—Continued

State	PY 2019	PY 2020	Difference	% Difference
Arizona	24,282,345	31,978,231	7,695,886	31.69
Arkansas	5,650,246	6,015,408	365,162	6.46
California	114,617,248	129,604,863	14,987,615	13.08
Colorado	7,841,113	7,246,878	(594,235)	−7.58
Connecticut	9,742,854	8,882,785	(860,069)	−8.83
Delaware	2,103,446	2,130,845	27,399	1.30
District of Columbia	3,886,654	4,645,239	758,585	19.52
Florida	46,351,320	42,259,570	(4,091,750)	−8.83
Georgia	22,242,515	20,279,015	(1,963,500)	−8.83
Hawaii	2,103,446	2,130,845	27,399	1.30
Idaho	2,103,446	2,130,845	27,399	1.30
Illinois	39,309,891	45,085,051	5,775,160	14.69
Indiana	11,700,755	12,047,106	346,351	2.96
Iowa	3,057,346	2,787,453	(269,893)	−8.83
Kansas	3,925,813	3,579,254	(346,559)	−8.83
Kentucky	13,357,433	14,497,419	1,139,986	8.53
Louisiana	15,462,994	18,045,995	2,583,001	16.70
Maine	2,203,404	2,130,845	(72,559)	−3.29
Maryland	13,998,991	12,763,204	(1,235,787)	−8.83
Massachusetts	10,518,739	9,590,178	(928,561)	−8.83
Michigan	32,076,546	32,197,079	120,533	0.38
Minnesota	7,633,654	6,959,779	(673,875)	−8.83
Mississippi	10,003,654	12,175,423	2,171,769	21.71
Missouri	11,806,230	10,764,013	(1,042,217)	−8.83
Montana	2,103,446	2,130,845	27,399	1.30
Nebraska	2,135,850	2,566,912	431,062	20.18
Nevada	9,719,349	9,151,271	(568,078)	−5.84
New Hampshire	2,103,446	2,130,845	27,399	1.30
New Jersey	23,630,205	21,544,204	(2,086,001)	−8.83
New Mexico	8,848,216	9,150,968	302,752	3.42
New York	60,652,953	55,298,700	(5,354,253)	−8.83
North Carolina	26,199,337	24,910,558	(1,288,779)	−4.92
North Dakota	2,103,446	2,130,845	27,399	1.30
Ohio	38,782,006	42,414,320	3,632,314	9.37
Oklahoma	8,176,426	7,454,637	(721,789)	−8.83
Oregon	8,279,404	10,257,412	1,978,008	23.89
Pennsylvania	33,593,768	31,312,217	(2,281,551)	−6.79
Puerto Rico	30,891,828	29,717,827	(1,174,001)	−3.80
Rhode Island	2,907,668	2,650,988	(256,680)	−8.83
South Carolina	11,326,204	10,326,362	(999,842)	−8.83
South Dakota	2,103,446	2,130,845	27,399	1.30
Tennessee	15,335,341	13,981,585	(1,353,756)	−8.83
Texas	64,789,931	59,070,478	(5,719,453)	−8.83
Utah	2,759,043	2,515,483	(243,560)	−8.83
Vermont	2,103,446	2,130,845	27,399	1.30
Virginia	11,057,427	10,081,312	(976,115)	−8.83
Washington	19,943,123	23,947,398	4,004,275	20.08
West Virginia	6,366,593	7,145,102	778,509	12.23
Wisconsin	8,714,035	7,944,787	(769,248)	−8.83
Wyoming	2,103,446	2,130,845	27,399	1.30
State Total	841,378,282	852,337,815	10,959,533	1.30
American Samoa	224,974	228,013	3,039	1.35
Guam	763,630	773,943	10,313	1.35
Northern Marianas	417,217	422,852	5,635	1.35
Palau	75,000	75,000	0	0.00
Virgin Islands	627,897	636,377	8,480	1.35
Outlying Areas Total	2,108,718	2,136,185	27,467	1.30

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS

State	PY 2019	PY 2020	Difference	% Difference
Total	$1,258,639,000	$1,322,493,000	$63,854,000	5.07
Alabama	18,299,000	17,387,399	(911,601)	−4.98
Alaska	6,395,952	8,421,655	2,025,703	31.67

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2020 ALLOTMENTS VS PY 2019 ALLOTMENTS—Continued

State	PY 2019	PY 2020	Difference	% Difference
Arizona	30,250,131	39,830,842	9,580,711	31.67
Arkansas	6,217,966	6,061,513	(156,453)	−2.52
California	147,573,118	142,073,567	(5,499,551)	−3.73
Colorado	10,043,592	9,986,612	(56,980)	−0.57
Connecticut	14,161,792	13,611,948	(549,844)	−3.88
Delaware	2,402,111	2,343,949	(58,162)	−2.42
District of Columbia	8,437,913	11,110,338	2,672,425	31.67
Florida	52,121,208	50,853,493	(1,267,715)	−2.43
Georgia	38,491,175	36,871,224	(1,619,951)	−4.21
Hawaii	1,604,310	1,618,611	14,301	0.89
Idaho	1,956,691	1,962,590	5,899	0.30
Illinois	59,425,694	56,663,539	(2,762,155)	−4.65
Indiana	13,659,352	13,347,305	(312,047)	−2.28
Iowa	4,116,302	4,077,392	(38,910)	−0.95
Kansas	4,618,755	4,595,051	(23,704)	−0.51
Kentucky	16,788,605	16,051,059	(737,546)	−4.39
Louisiana	21,209,720	20,371,329	(838,391)	−3.95
Maine	2,598,431	2,562,857	(35,574)	−1.37
Maryland	15,260,868	15,019,525	(241,343)	−1.58
Massachusetts	15,766,252	15,428,753	(337,499)	−2.14
Michigan	28,882,600	28,103,101	(779,499)	−2.70
Minnesota	8,618,483	8,623,882	5,399	0.06
Mississippi	12,818,139	16,877,853	4,059,714	31.67
Missouri	13,726,081	13,271,254	(454,827)	−3.31
Montana	1,585,502	1,589,906	4,404	0.28
Nebraska	2,404,721	2,430,569	25,848	1.07
Nevada	14,008,800	13,341,178	(667,622)	−4.77
New Hampshire	1,775,681	1,776,875	1,194	0.07
New Jersey	31,152,114	29,962,189	(1,189,925)	−3.82
New Mexico	17,787,817	18,082,636	294,819	1.66
New York	50,806,192	50,005,712	(800,480)	−1.58
North Carolina	29,098,556	28,414,511	(684,045)	−2.35
North Dakota	825,249	827,550	2,301	0.28
Ohio	38,603,870	37,181,539	(1,422,331)	−3.68
Oklahoma	7,577,124	7,437,134	(139,990)	−1.85
Oregon	11,249,816	11,019,838	(229,978)	−2.04
Pennsylvania	51,039,332	48,858,998	(2,180,334)	−4.27
Puerto Rico	57,872,849	76,202,126	18,329,277	31.67
Rhode Island	3,963,193	3,806,076	(157,117)	−3.96
South Carolina	14,897,573	14,268,943	(628,630)	−4.22
South Dakota	1,177,194	1,190,973	13,779	1.17
Tennessee	18,162,357	17,478,205	(684,152)	−3.77
Texas	61,014,319	59,820,885	(1,193,434)	−1.96
Utah	4,316,698	4,261,672	(55,026)	−1.27
Vermont	865,748	843,187	(22,561)	−2.61
Virginia	13,818,609	13,694,749	(123,860)	−0.90
Washington	26,634,849	26,957,248	322,399	1.21
West Virginia	9,760,842	12,852,260	3,091,418	31.67
Wisconsin	11,431,285	11,212,132	(219,153)	−1.92
Wyoming	1,086,469	1,069,268	(17,201)	−1.58
State Total	1,038,361,000	1,051,713,000	13,352,000	1.29
American Samoa	335,703	352,902	17,199	5.12
Guam	1,139,477	1,197,853	58,376	5.12
Northern Marianas	622,565	654,460	31,895	5.12
Palau	111,914	116,080	4,166	3.72
Virgin Islands	936,939	984,938	47,999	5.12
Outlying Areas Total	3,146,598	3,306,233	159,635	5.07
National Reserve	217,131,402	267,473,767	50,342,365	23.19

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2020 VS PY 2019 ALLOTMENTS

State	PY 2019	PY 2020	Difference	% Difference
Total	$661,187,000	$668,052,000	$6,865,000	1.04
Alabama	8,774,005	8,738,446	(35,559)	−0.41

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2020 VS PY 2019 ALLOTMENTS—Continued

State	PY 2019	PY 2020	Difference	% Difference
Alaska	7,187,418	7,262,044	74,626	1.04
Arizona	13,793,435	14,853,978	1,060,543	7.69
Arkansas	5,116,418	5,159,694	43,276	0.85
California	77,508,834	77,981,894	473,060	0.61
Colorado	10,914,395	11,048,709	134,314	1.23
Connecticut	7,518,868	7,546,033	27,165	0.36
Delaware	1,850,977	1,869,496	18,519	1.00
District of Columbia	1,955,175	1,957,284	2,109	0.11
Florida	37,920,561	38,224,509	303,948	0.80
Georgia	19,757,815	19,810,511	52,696	0.27
Hawaii	2,320,867	2,337,828	16,961	0.73
Idaho	5,988,398	6,050,575	62,177	1.04
Illinois	26,812,565	26,795,752	(16,813)	−0.06
Indiana	12,501,804	12,606,524	104,720	0.84
Iowa	6,002,803	6,039,407	36,604	0.61
Kansas	5,426,648	5,473,903	47,255	0.87
Kentucky	8,154,547	8,261,970	107,423	1.32
Louisiana	8,888,286	8,923,122	34,836	0.39
Maine	3,561,244	3,598,220	36,976	1.04
Maryland	12,406,916	12,493,848	86,932	0.70
Massachusetts	13,762,091	13,843,578	81,487	0.59
Michigan	19,803,803	19,905,550	101,747	0.51
Minnesota	10,851,240	11,396,826	545,586	5.03
Mississippi	5,398,062	5,563,013	164,951	3.06
Missouri	11,705,550	11,734,062	28,512	0.24
Montana	4,893,749	4,944,560	50,811	1.04
Nebraska	5,021,790	4,966,813	(54,977)	−1.09
Nevada	6,023,666	6,071,412	47,746	0.79
New Hampshire	2,571,759	2,621,526	49,767	1.94
New Jersey	18,217,995	18,145,531	(72,464)	−0.40
New Mexico	5,491,649	5,548,668	57,019	1.04
New York	37,872,846	38,073,537	200,691	0.53
North Carolina	19,119,367	19,795,653	676,286	3.54
North Dakota	4,983,302	5,035,043	51,741	1.04
Ohio	23,078,213	23,265,564	187,351	0.81
Oklahoma	6,983,784	7,003,623	19,839	0.28
Oregon	8,080,992	8,221,924	140,932	1.74
Pennsylvania	25,709,054	25,924,310	215,256	0.84
Puerto Rico	6,488,984	6,422,165	(66,819)	−1.03
Rhode Island	2,292,037	2,277,052	(14,985)	−0.65
South Carolina	9,007,952	8,979,979	(27,973)	−0.31
South Dakota	4,605,717	4,653,537	47,820	1.04
Tennessee	12,200,903	12,323,307	122,404	1.00
Texas	52,111,078	52,616,735	505,657	0.97
Utah	5,842,022	5,837,153	(4,869)	−0.08
Vermont	2,157,579	2,179,981	22,402	1.04
Virginia	15,583,311	15,677,914	94,603	0.61
Washington	15,040,605	15,891,995	851,390	5.66
West Virginia	5,271,697	5,326,432	54,735	1.04
Wisconsin	11,469,141	11,531,892	62,751	0.55
Wyoming	3,573,339	3,610,440	37,101	1.04
State Total	659,575,256	666,423,522	6,848,266	1.04
Guam	309,385	312,597	3,212	1.04
Virgin Islands	1,302,359	1,315,881	13,522	1.04
Outlying Areas Total	1,611,744	1,628,478	16,734	1.04

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2020 VS PY 2019 ALLOTMENTS

State	PY 2019	PY 2020	Difference	% Difference
Total	$31,915,000	$32,000,000	$85,000	0.27
Alabama	499,846	505,028	5,182	1.04
Alaska	286,283	285,803	(480)	−0.17
Arizona	638,657	655,740	17,083	2.67
Arkansas	402,114	403,034	920	0.23

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2020 VS PY 2019 ALLOTMENTS—Continued

State	PY 2019	PY 2020	Difference	% Difference
California	2,511,591	2,510,120	(1,471)	−0.06
Colorado	603,421	610,933	7,512	1.24
Connecticut	466,938	467,544	606	0.13
Delaware	300,696	301,515	819	0.27
District of Columbia	291,586	292,370	784	0.27
Florida	1,438,980	1,451,110	12,130	0.84
Georgia	845,383	839,565	(5,818)	−0.69
Hawaii	324,383	322,394	(1,989)	−0.61
Idaho	343,625	346,492	2,867	0.83
Illinois	1,003,089	999,994	(3,095)	−0.31
Indiana	637,315	639,931	2,616	0.41
Iowa	440,689	444,844	4,155	0.94
Kansas	417,133	417,466	333	0.08
Kentucky	485,469	485,412	(57)	−0.01
Louisiana	493,089	488,811	(4,278)	−0.87
Maine	326,438	325,566	(872)	−0.27
Maryland	621,902	620,310	(1,592)	−0.26
Massachusetts	682,901	691,549	8,648	1.27
Michigan	817,191	820,200	3,009	0.37
Minnesota	606,323	605,649	(674)	−0.11
Mississippi	394,080	393,383	(697)	−0.18
Missouri	601,213	601,906	693	0.12
Montana	305,519	306,629	1,110	0.36
Nebraska	362,694	365,116	2,422	0.67
Nevada	419,001	423,009	4,008	0.96
New Hampshire	332,496	334,281	1,785	0.54
New Jersey	769,792	763,266	(6,526)	−0.85
New Mexico	353,927	356,282	2,355	0.67
New York	1,378,366	1,358,016	(20,350)	−1.48
North Carolina	827,448	834,449	7,001	0.85
North Dakota	292,004	291,832	(172)	−0.06
Ohio	920,161	920,499	338	0.04
Oklahoma	461,245	458,826	(2,419)	−0.52
Oregon	492,174	491,128	(1,046)	−0.21
Pennsylvania	992,172	998,348	6,176	0.62
Puerto Rico	372,142	370,188	(1,954)	−0.53
Rhode Island	309,656	309,298	(358)	−0.12
South Carolina	514,950	519,836	4,886	0.95
South Dakota	297,815	298,948	1,133	0.38
Tennessee	623,186	631,278	8,092	1.30
Texas	1,853,513	1,875,706	22,193	1.20
Utah	429,719	430,227	508	0.12
Vermont	284,761	285,048	287	0.10
Virginia	751,857	754,617	2,760	0.37
Washington	684,703	696,101	11,398	1.66
West Virginia	335,764	336,997	1,233	0.37
Wisconsin	615,121	608,159	(6,962)	−1.13
Wyoming	277,883	278,447	564	0.20
State Total	31,738,404	31,823,200	84,796	0.27
Guam	92,976	93,090	114	0.12
Virgin Islands	83,620	83,710	90	0.11
Outlying Areas Total	176,596	176,800	204	0.12

Signed at Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09059 Filed 4–28–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines

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, ''Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines.'' 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 29, 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 Delores Ferrell by telephone at 202–693–3183 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number) or by email at *Ferrell.Delores@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, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4519, Washington, DC 20210; by email: *Ferrell.Delores@dol.gov;* or by Fax: 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Delores Ferrell by telephone at 202–693–3183 (this is not a toll-free number) or by email at *Ferrell.Delores@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.

SQSP is an approach to the unemployment insurance performance management and planning process that allows for an exchange of information between the Federal and state partners to enhance the ability of the program to reflect the joint commitment to performance excellence and client-centered services. As part of UI Performs, a comprehensive performance management system implemented in 1995 for the UI program, SQSP is the principal vehicle that state UI agencies use to plan, record, and manage program improvement efforts as they strive for excellence in service. SQSP also serves as the state plan for the UI program and serves as the grant document through which states receive Federal UI administrative funding. SQSP links program performance with the budget and planning process. The Secretary of Labor is authorized to provide funds to administer the UI program and to govern the expenditures of those funds. Social Security Act sections 302, and 303(a)(8) and (9), authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0132.

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: Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines.

Form: ET Handbook No. 336, 18th Edition.

OMB Control Number: OMB 1205–0132.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Biannual, Annual, and Quarterly.

Total Estimated Annual Responses: 1257.

Estimated Average Time per Response: 3.58 hours.

Estimated Total Annual Burden Hours: 4,496 hours.

Total Estimated Annual Other Cost Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09061 Filed 4–28–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration (ETA) Program Year 2020 Workforce Innovation and Opportunity Act (WIOA) Section 167, National Farmworker Jobs Program Grantee Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces allotments for Program Year (PY) 2020 for the WIOA Title I Section 167 National Farmworker Jobs Program, as required under Section 182(d) of the Workforce Innovation and Opportunity Act of 2014. The Further Consolidated Appropriations Act, 2020, enacted December 20, 2019, provides $85,229,000 for formula grants and another $6,122,000 for migrant and seasonal farmworker housing (of which not less than 70 percent shall be for permanent housing). Another $545,000 will be set aside for discretionary purposes.

DATES: The PY 2020 National Farmworker Jobs Program allotments become effective for the grant period that begins July 1, 2020.

ADDRESSES: Questions on this notice can be submitted to the Employment and

Training Administration, Office of Workforce Investment, 200 Constitution Ave. NW, Room C4510, Washington, DC 20210, Attention: Laura Ibañez, Unit Chief, (202) 693–3645 or Steven Rietzke, Division Chief at (202) 693–3912, or at *NFJP@dol.gov.* Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY–TDD).

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 182(d) of the WIOA, Prompt Allotment of Funds.

ETA developed the formula for the purpose of distributing funds geographically by state service area, on the basis of each state service area's relative share of persons eligible for the program. The formula's original methodology was described in a notice published in the **Federal Register** on May 19, 1999 (64 FR 27390). That information is accessible at *https://www.federalregister.gov/.*

Beginning with PY 2018, ETA incorporated two modifications to the allotment formula, with the goal of providing more accurate estimates of each state service area's relative share of persons eligible for the program. The formula also used updated data from each of the four data files serving as the basis of the formula since 1999. The revised formula is available at *https://www.federalregister.gov/documents/2018/07/11/2018-14747/employment-and-training-administration-eta-program-year-py-2018-workforce-innovation-and-opportunity.* Based on the new estimates, the Department of Labor (DOL or Department) instituted a hold-harmless provision for PY 2018 and two following years. The hold-harmless provision is designed to provide a staged transition from old to new funding levels for state service areas and minimize the impact on those states incurring significant change.

I. Background

The Department is announcing final PY 2020 allotments for the National Farmworker Jobs Program (NFJP). This notice provides information on the amount of funds available during PY 2020 to state service areas awarded grants through the PY 2020 Funding Opportunity Announcement (FOA) for the NFJP Career Services and Training grants and Housing grants. The allotments are based on the funds appropriated in the Further Consolidated Appropriations Act, 2020, Public Law 116–94 (from this point forward will be referred to as the ''the Act''). In appropriating these funds, Congress provided $85,229,000 for Career Services and Training grants; $6,122,000 for Housing grants; and $545,000 for discretionary purposes. Included below is the table listing the PY 2020 allotments for the NFJP Career Services and Training grants. Individual grants are awarded for Housing as a result of the grants competition and are further distributed according to language in the appropriations law requiring that of the total amount available, not less than 70 percent shall be allocated to permanent housing activities, leaving not more than 30 percent to temporary housing activities.

II. Description of Data Files and Review of PY 2018 Modifications to the Allotment Formula

As with all state planning estimates since 1999, the PY 2020 estimates are based on four data sources: (1) State-level, 2012 hired farm labor expenditure data from the United States Department of Agriculture's (USDA) Census of Agriculture (COA); (2) regional-level, 2012 average hourly earnings data from the USDA's Farm Labor Survey; (3) regional-level, 2006–2014 demographic data from the ETA's National Agricultural Workers Survey (NAWS); and, (4) 2010–2014 (5-year file) Lower Living Standard Income Level data from the United States Census Bureau's American Community Survey. A detailed description of how each data source is used within the formula is in the May 19, 1999 FR (pages 27396 to 27399).

Two modifications were incorporated into the formula in PY 2018, and the formula for PY 2020 retains those modifications. Additional information regarding these modifications is located in the May 23, 2018 FR 83 (pages 23937 to 23940) and the July 11, 2018 FR 83 (pages 32151 to 32155).

III. Description of the Hold-Harmless Provision

For PY 2020, the Department will continue the hold-harmless provision to the allotment formula in order to allow a staged transition from the application of the previous formula to the modified formula. The hold-harmless provision provides for a stop loss/stop gain limit to transition to the use of the updated data. Due to the length of time between updates, there were significant changes for a few states, necessitating the stop loss/stop gain approach. This approach is based on a state service area's previous year's allotment percentage share, which is its relative share of the total formula allotments. The staged transition of the hold-harmless provision was implemented specifically as follows:

(1) In PY 2018, state service areas received an amount equal to 95 percent of their PY 2017 allotment percentage share, as applied to the PY 2018 formula funds available;

(2) In PY 2019, state service areas received an amount equal to 90 percent of their PY 2018 allotment percentage share, as applied to the PY 2019 formula funds available;

(3) In PY 2020, state service areas will receive an amount equal to at least 85 percent of their PY 2019 allotment percentage share, as applied to the PY 2020 formula funds available.

In PY 2019 and 2020, the hold-harmless provision also provides that no state service area will receive an amount that is more than 150 percent of their previous year's allotment percentage share.

In PY 2021, since the Department has a responsibility to use the most current and reliable data available, amounts for the new awards will be based on updated data from the sources described in Section II, pending their availability. At that time, the Department will determine whether the changes to state allotments are significant enough to warrant another hold-harmless provision. Otherwise, allotments to each state service area will be for an amount resulting from a direct allotment of the proposed funding formula without adjustment.

IV. Minimum Funding Provisions

A state area which would receive less than $60,000 by application of the formula will, at the option of the DOL, receive no allotment or, if practical, be combined with another adjacent state area. Funding below $60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a state jurisdiction which would receive less than $60,000 may be combined with another adjacent state area.

V. Program Year 2020 State Allotments

For PY 2020, ETA based estimated funding on the funding levels provided in the Act for the migrant and seasonal farmworker program, of which $85,229,000 was allotted to Career Services and Training grants and $6,122,000 was allotted to Housing grants on the basis of the formula. The state service area allotment table shows the application of the third-year (85 percent) hold-harmless and minimum funding provisions versus what was allotted in PY 2019, followed by the difference in dollar amounts from PY

2019, and the total percentage change (positive or negative).

Signed at Washington, DC.

John Pallasch

Assistant Secretary, Employment and Training Administration.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION NATIONAL FARMWORKER JOBS PROGRAM—CAREER SERVICES AND TRAINING GRANTS PY 2020 ALLOCATIONS TO STATE SERVICE AREAS

State	PY 2019 90 StopLoss/ 150 StopGain	PY 2020 85 StopLoss/ 150 StopGain	$ Difference	Difference
Total	$82,447,000	$85,229,000	$2,782,000	3.37
Alabama	751,290	801,605	50,315	6.70
Alaska	.....	.....	.....	0.00
Arizona	2,378,836	2,538,153	159,317	6.70
Arkansas	1,072,255	1,144,067	71,812	6.70
California	21,868,660	23,333,261	1,464,601	6.70
Colorado	1,262,507	1,347,060	84,553	6.70
Connecticut	377,130	402,388	25,258	6.70
Delaware	146,081	155,864	9,783	6.70
Dist of Columbia	.....	.....	.....	0.00
Florida	3,734,826	3,763,684	28,858	0.77
Georgia	1,566,766	1,671,697	104,931	6.70
Hawaii	301,846	322,061	20,215	6.70
Idaho	1,666,122	1,777,707	111,585	6.70
Illinois	1,637,247	1,746,897	109,650	6.70
Indiana	1,073,815	1,145,731	71,916	6.70
Iowa	1,488,387	1,588,068	99,681	6.70
Kansas	1,143,620	1,220,211	76,591	6.70
Kentucky	1,090,762	1,044,219	(46,543)	−4.27
Louisiana	820,452	798,040	(22,412)	−2.73
Maine	308,242	328,886	20,644	6.70
Maryland	362,410	386,681	24,271	6.70
Massachusetts	341,568	364,444	22,876	6.70
Michigan	1,995,828	2,129,494	133,666	6.70
Minnesota	1,527,595	1,629,902	102,307	6.70
Mississippi	1,168,525	1,026,761	(141,764)	12.13
Missouri	923,513	985,363	61,850	6.70
Montana	589,076	628,528	39,452	6.70
Nebraska	1,214,215	1,295,534	81,319	6.70
Nevada	178,911	190,893	11,982	6.70
New Hampshire	108,334	115,590	7,256	6.70
New Jersey	627,196	602,990	(24,206)	−3.86
New Mexico	983,177	1,049,022	65,845	6.70
New York	1,492,399	1,574,968	82,569	5.53
North Carolina	2,472,721	2,638,326	165,605	6.70
North Dakota	776,042	828,016	51,974	6.70
Ohio	1,328,722	1,417,710	88,988	6.70
Oklahoma	1,146,469	1,007,381	(139,088)	−12.13
Oregon	2,293,830	2,447,454	153,624	6.70
Pennsylvania	1,392,650	1,485,920	93,270	6.70
Puerto Rico	2,755,037	2,420,800	(334,237)	−12.13
Rhode Island	56,902	60,713	3,811	6.70
South Carolina	871,010	811,276	(59,734)	−6.86
South Dakota	572,272	610,598	38,326	6.70
Tennessee	838,575	894,737	56,162	6.70
Texas	6,011,223	5,281,950	(729,273)	−12.13
Utah	437,588	466,894	29,306	6.70
Vermont	174,107	185,768	11,661	6.70
Virginia	939,663	1,002,595	62,932	6.70
Washington	4,234,704	4,518,313	283,609	6.70
West Virginia	176,865	155,408	(21,457)	−12.13
Wisconsin	1,536,848	1,639,775	102,927	6.70
Wyoming	230,181	245,597	15,416	6.70

[FR Doc. 2020–09060 Filed 4–28–20; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Aerial Lifts Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 29, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employers who modify an aerial lift for uses other than those provided by the manufacturer must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in conformance with applicable ANSI standards and that the equipment is as safe as it was prior to the modification. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 26, 2020 (85 FR 11110).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Aerial Lifts Standard.

OMB Control Number: 1218–0216.

Affected Public: Private Sector: Business or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 1 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 23, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–09029 Filed 4–28–20; 8:45 am]
BILLING CODE 4510–25–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Crawler, Locomotive, and Truck Cranes Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 29, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Crawler, Locomotive, and Truck Cranes Standard requires that monthly inspections be performed on cranes and running ropes and that a certification record be prepared. Ropes which have been idle for a month or more are required to undergo a thorough inspection and that a certification record be generated. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 26, 2020 (85 FR 11112).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Crawler, Locomotive, and Truck Cranes Standards.

OMB Control Number: 1218–0221.

Affected Public: Private Sector: Business or other for-profits.

Total Estimated Number of Respondents: 3,499.

Total Estimated Number of Responses: 80,896.

Total Estimated Annual Time Burden: 30,511 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 23, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–09062 Filed 4–28–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0087]

Plant Security Force Duties

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 5.43, ''Plant Security Force Duties.'' RG 5.43 was published in January 1975 to provide guidance to applicants and licensees subject to NRC regulations on the organization of plant security forces and the duties of guards, watchmen, and other individuals responsible for security, as described in their facilities' security plans. RG 5.43 is being withdrawn because it contains regulatory guidance that is out of date and is no longer the preferred method for these applicants and licensees to use to meet the requirements. Future applicants and licensees may use several other more relevant regulatory guidance documents to meet those regulatory requirements.

DATES: The withdrawal of RG 5.43 takes effect on April 29, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0087 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–2020–0087. 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 individuals 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 available in ADAMS) is provided the first time that a document is referenced. The basis for withdrawal of RG 5.43 is available in ADAMS under Accession No. ML20048A081.

FOR FURTHER INFORMATION CONTACT: Joseph Willis, Office of Nuclear Security Incident Response, telephone: 301–287–3667, email: *Joseph.Willis@nrc.gov,* and Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301–415–1669, email: *Mekonen.Bayssie@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC is withdrawing RG 5.43, ''Plant Security Force Duties,'' because the guide no longer provides NRC staff-preferred methods for certain applicants and licensees to meet the NRC's regulatory requirements in section 73.50 of title 10 of the *Code of Federal Regulations* (CFR), ''Requirements for physical protection of licensed activities,'' and 73.60, ''Additional requirements for physical protection at nonpower reactors.'' Furthermore, the NRC staff has issued several other more relevant regulatory guidance documents that applicants and licensees may use to meet 10 CFR 73.50 and 73.60. The basis for withdrawal of RG 5.43 is available in ADAMS under Accession No. ML20048A081.

II. General Consideration

The withdrawal of RG 5.43 does not alter any prior or existing NRC licensing approvals, or the acceptability of licensee commitments made regarding the withdrawn guidance. Although RG 5.43 is withdrawn, current licensees referencing this RG may continue to do so, and withdrawal does not affect any existing licenses or agreements. However, by withdrawing RG 5.43, the NRC no longer approves use of the guidance in future requests or applications for NRC licensing actions.

Dated: April 23, 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. 2020–09053 Filed 4–28–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0040]

Information Collection: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collections are entitled, ''DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.''

DATES: Submit comments by June 29, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0040. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0040 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 *http://www.regulations.gov* and search for Docket ID NRC–2020–0040. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0040 on this website.

• *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0040 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.

2. *OMB approval number:* DOE/NRC Form 740M: 3150–0057. DOE/NRC Form 741: 3150–0003. DOE/NRC Form 742: 3150–0004. DOE/NRC Form 742C: 3150–0058.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* DOE/NRC Forms 740M, 741, 742, and 742C.

5. *How often the collection is required or requested:* DOE/NRC Form 741, Nuclear Material Transaction Reports will be collected whenever nuclear material is shipped or received into the Material Balance Area; DOE/NRC Form 742, Material Balance Report will be collected on an annual basis; DOE/NRC Form 742C, Physical Inventory Listing will be collected on an annual basis; DOE/NRC Form 740M, Concise Note Forms are used when needed.

6. *Who will be required or asked to respond:* Persons licensed to possess specified quantities of nuclear material and entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366) are required to respond as follows:

Any licensee who ships, receives, or otherwise undergoes an inventory change of nuclear material is required to submit a DOE/NRC Form 741 to document the change. Additional information regarding these transactions shall be submitted through Form 740M, with Safeguards Information identified and handled in accordance with section 73.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for the Protection of Safeguards Information.''

Any licensee who had possessed in the previous reporting period, at any one time and location, nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742. In addition, each licensee, Federal or State, who is authorized to possess, at any one time or location, one kilogram of foreign obligated source material, is required to file with the NRC an annual statement of source material inventory which is foreign obligated.

Any licensee, who had possessed in the previous reporting period, at any one time and location, special nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742C.

7. *The estimated number of annual responses:*

DOE/NRC Form 740M: 175.
DOE/NRC Form 741: 11,143.
DOE/NRC Form 742: 344.
DOE/NRC Form 742C: 385.

8. *The estimated number of annual respondents:*

DOE/NRC Form 740M: 40.
DOE/NRC Form 741: 344.
DOE/NRC Form 742: 344.
DOE/NRC Form 742C: 385.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:*

DOE/NRC Form 740M: 131.
DOE/NRC Form 741: 13,928.
DOE/NRC Form 742: 1,204.
DOE/NRC Form 742C: 1,490.

10. *Abstract:* Persons licensed to possess specified quantities of nuclear material currently report inventory and transaction of material to the Nuclear Materials Management and Safeguards System via the DOE/NRC Forms: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing. This collection is being revised to include approximately 25 entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366). Part 75 requires

licensees to provide reports of nuclear material inventory and flow for entities under the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366), permit inspections by Agreement (INFCIRC/366). The IAEA inspectors, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures. Reporting of transfer and material balance records to the IAEA will be done through the U.S. State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058.) The NRC needs this information to implement its international obligations under the U.S.-IAEA Caribbean Territories Safeguards.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

IV. Availability of Documents

The supplemental documents related to each information collections are identified in the following table and are available to interested persons in ADAMS.

Documents	ADAMS Accession No.
Supporting statement and DOE/NRC Form 740M, ''Concise Note'' (3150–0057).	ML20106F197 and ML20021A120.
Supporting statement and DOE/NRC Form 741, ''Nuclear Material Transaction Report'' (3150–0003).	ML20021A123 and ML20021A121.
Supporting statement and DOE/NRC Form 742, ''Material Balance Report'' (3150–0004).	ML20024D131 and ML20024D128.
Supporting statement and DOE/NRC Form 742C, ''Physical Inventory Listing''. (3150–0058)	ML20106F177 and ML20024D129.
NUREG/BR–0006, Revision 8 (3150–0003; 3150–0057)	ML18123A473.
NUREG/BR–0007, Revision 7 (3150–0004; 3150–0058)	ML18123A462.
D–24 Personal Computer Data Input for Nuclear Regulatory Commission Licensees.	ML20092K107.

Dated: April 23, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–09041 Filed 4–28–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88734; File No. SR–NYSE–2020–15]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.02 of the NYSE Listed Company Manual To Waive Initial Listing Fees and First Partial Year Annual Fees for Certain Companies Listing Upon Closing of an Acquisition of a Special Purpose Acquisition Company

April 23, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 13, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to waive initial listing fees and the first partial year annual fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company listed on another national securities exchange. 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 amend Section 902.02 of the Manual to waive initial listing fees and the first partial year annual fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company (''SPAC'') listed on another national securities exchange.

When a SPAC consummates its business combination, it may choose a new listing venue for its post-business

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

combination existence as an operating company. In most such cases, the SPAC is the legal acquirer in the business combination transaction and thus the company transferring its listing to the NYSE is the same entity as was listed on the other national securities exchange prior to the acquisition (*i.e.,* the SPAC). When a SPAC that is the legal acquirer transfers its listing to the NYSE following the business combination, the initial listing fee and first partial year annual fee are waived. Specifically, Section 902.02 of the Manual provides that any company listing any class of equity securities upon transfer from another market will not be subject to any initial listing fees in connection with such listing (including, if applicable, the one-time special charge of $50,000 payable in connection with the listing of any new class of common shares). Similarly, Section 902.02 also provides that issuers transferring the listing of their primary class of common shares from another national securities exchange are not required to pay annual fees with respect to that primary class of common shares or any other class of securities transferred in conjunction therewith for the remainder of the calendar year in which the transfer occurs.

However, in fulfilling the requirements for a SPAC to complete an acquisition under applicable exchange rules, occasionally the SPAC is not the legal acquirer in the business combination and, instead, the business combination is structured so that the SPAC is acquired by the operating company. Under the current NYSE rules, a company listing in connection with its acquisition of a SPAC listed on another national securities exchange would not benefit from a similar waiver of listing fees.

To address this disparity, the Exchange proposes to amend the fee waiver provisions of Section 902.02 of the Manual. Specifically, the Exchange proposes to extend the waiver of the initial listing fee applicable to transfers to any company that was unlisted immediately prior to the initial listing on the Exchange of any class of equity securities upon closing of its acquisition of a SPAC that had a class of equity securities listed on another national securities exchange prior to the closing of such acquisition. Similarly, the Exchange proposes to extend to any company that is not listed immediately prior to listing its primary class of common shares upon closing of its acquisition of a SPAC the benefits of the provision in Section 902.02 that waives for companies transferring their primary class of common shares from another exchange the requirement to pay annual fees with respect to that primary class of common shares or any other class of securities transferred in conjunction therewith for the remainder of the calendar year in which the transfer occurs. The decision whether to structure a business combination with the SPAC as the legal acquirer rather than the other party does not result in the listing of a substantively different entity. Accordingly, the Exchange believes there is no basis for charging fees purely on the basis of the structure of the business combination chosen by the parties.

The Exchange does not expect there to be a significant number of listings in which this proposed fee waiver will be applicable. Consequently, the proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

he [sic] Exchange operates in a highly competitive marketplace for the listing of equity securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the Exchange believes that the proposed fee waivers are reasonable because the cost of paying initial listing fees and the first part year of annual fees to the NYSE acts as a disincentive to listing on the Exchange.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes that the proposed fee waivers are equitable as it being implemented solely to avoid an anomalous fee outcome arising from the manner in which a SPAC business combination has been structured.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory, because the proposed waivers are solely intended to avoid the impact on a small group of issuers of an anomalous fee outcome arising from the manner in which a SPAC business combination has been structured and not to provide them with any benefit that would place them in a more favorable position than other newly-listed companies, including specifically other previously unlisted companies that list upon completion of an acquisition of a company listed on the NYSE or another national securities exchange.[7]

A SPAC is a shell company with no business operations. Consequently, the parties to a business combination between a SPAC and an operating company have significant flexibility in how they choose to structure the business combination, including in determining which entity will be the legal acquirer. Accordingly, the Exchange is proposing to amend its fee structure to reflect the incidental nature of the resulting SPAC business combination and to avoid treating companies undergoing similar business combinations disparately

By contrast to a SPAC business combination, there are typically more significant limitations on the ability of the parties to a merger between two operating companies to make decisions

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] Section 902.03 of the Manual includes separate fee limitations that benefit a company that is not listed on a national securities exchange immediately prior to the time that it lists in connection with its acquisition of an NYSE listed company.

about which entity will be the acquirer, including, for example, the desire to maintain the acquirer's SEC registration and concerns about how to present the combined entity to the market. As such, it is much more likely that the listing fee implications of how the transaction is structured would be a major consideration for the parties to a SPAC business combination than would be the case in a merger between two operating companies. As the implications of the proposed fee waivers for decisions relating to the transaction structures utilized by unlisted companies listing in connection with the acquisition of a SPAC are typically greater than for other companies listing in conjunction with merger transactions, the proposed waivers are not unfairly discriminatory.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The proposed waiver will be available to all similarly situated issuers on the same basis. The Exchange does not believe that the proposed waivers will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–15 and should be submitted on or before May 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09036 Filed 4–28–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

DATES AND TIMES: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday May 4, 2020, by remote means and/or at the Commission's headquarters, 100 F St NE, Washington, DC 20549.

The meeting will begin at 2:00 p.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov*.

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTER TO BE CONSIDERED: The agenda for the meeting includes welcome remarks, discussion of public company disclosure considerations in the COVID–19 pandemic context, and discussion of public company shareholder engagement/virtual

shareholder meetings in the COVID–19 pandemic context.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 27, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–09224 Filed 4–27–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10776; 34–88742; File No. 265–32]

SEC Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to Section 40 of the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting by videoconference. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Friday, May 8, 2020, from 1 p.m. to 4 p.m. (ET) and will be open to the public. Written statements should be received on or before May 8, 2020.

ADDRESSES: The meeting will be conducted by remote means (videoconference). Members of the public may attend the meeting by viewing the webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–32 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov.*

Statements also 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 a.m. and 3 p.m. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

Dated: April 24, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–09083 Filed 4–28–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88736; File No. SR–NYSE–2020–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Application of the Proxy Delivery Requirements of NYSE Rule 451(b)(1) Through and Including May 31, 2020

April 23, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 23, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its application of the proxy delivery requirements of NYSE Rule 451(b)(1) through and including May 31, 2020. 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

NYSE Rule 452 provides for limited circumstances in which a member organization may vote shares it holds on behalf of its ''street'' name customers when the beneficial owner has not provided voting instructions with respect to certain ''routine'' matters. This ability on the part of member organizations is subject to certain limitations, including the requirement of Rule 451(b)(1) that the proxy materials mailed to beneficial holders include the following disclosure:

> A request for voting instructions and, as to matters which may be voted without instructions under Rule 452, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock.

The ability of member organizations to vote on ''routine'' matters serves an important purpose for many public companies. The low level of voting response from ''street'' name account holders to proxy solicitations means that it is often difficult for companies to meet applicable quorum requirements under state law, the company's constitutive documents or stock exchange rules. However, the ability of member organizations to vote on routine items in the absence of beneficial owner proxy voting instructions enables beneficial owners to be counted as present for quorum purposes for the meeting as a whole even if they do not submit voting instructions and therefore enables companies to conduct all required business at their shareholder meetings. Generally, Rule 452 does not allow member organizations to vote uninstructed shares on nonroutine matters, so the voting of those shares by member organizations with respect to routine matters does not generally affect the outcome of any vote of any importance to the company and its shareholders, while facilitating the effective conduct of shareholder meetings.

The Exchange has been made aware that the recent ongoing spread of the COVID–19 virus throughout the United States and the social distancing and stay-at-home measures imposed by many state and local governments has severely disrupted the operations of the primary intermediary responsible for distributing proxy materials on behalf of member organizations. The primary intermediary has informed the Exchange that it is having difficulty in some cases meeting the specification of Rule 451(b)(1) to transmit proxy materials to beneficial owners at least 15 days prior to shareholder meetings, due to delays in receiving the printed materials from issuers for distribution and also because its own processing times have been slowed down by reduced staffing levels caused by the disruption associated with the spread of COVID–19.

The Exchange is concerned about the effect on the ability of companies to hold shareholder meetings that may arise out of the current difficulties being experienced in transmitting proxy materials no later than the 15 days in advance of the meeting specified in Rule 451(b)(1). The Exchange notes that it has been the practice since at least the 1990s to apply Rule 451(b)(1) on the basis that member organizations may not vote any uninstructed shares if the mailing of any of the required physical proxy materials is made later than 15 days before the meeting, including shares whose beneficial owner opted for electronic delivery and to whom the materials are transmitted electronically on a timely basis.[4] Consequently, many companies may have difficulty meeting applicable quorum requirements for their scheduled shareholder meetings.

The primary intermediary has informed the Exchange that it would need to undertake significant systems development work to be able to differentiate for voting purposes those shares whose beneficial owners are sent timely electronic distributions from those shares whose beneficial owners are sent physical distributions that are mailed fewer than fifteen days before a shareholder meeting. As this development work would likely take months to complete, it is not possible during the upcoming proxy season, occurring during the current crisis, to allow the voting of uninstructed shares of a company where the materials are transmitted no later than 15 days in advance of the meeting and to disallow the voting on uninstructed shares where the materials were transmitted past that deadline.

To alleviate the problem described above, the Exchange proposes to modify its application of Rule 451(b)(1) temporarily for shareholder meetings occurring on or before May 31, 2020. As proposed, the Exchange would permit member organizations to vote uninstructed shares as long as proxy materials are transmitted to beneficial owners no later than 10 days prior to the shareholder meeting, rather than the fifteen day period required by the text of the rule. All of the other requirements and limitations associated with voting by member organizations would continue to be applied during this period. The Exchange expects that best efforts will be made to ensure that transmissions of proxy materials will continue to be made prior to the fifteenth day before the meeting whenever possible, either in whole or in part. In particular, the Exchange expects electronic transmissions of proxy materials to continue to be made within the normal time frames provided by the rule.

In order to rely on the proposed relief, the intermediary acting as agent for the member organization will be required to post prominently on its website the following disclosures:

- that it is experiencing operational challenges as a result of the disruptive effects of COVID–19 and is therefore experiencing difficulty in some cases in transmitting proxy materials to beneficial owners at least 15 days prior to shareholder meeting dates;
- as a consequence, it is relying on relief provided by the NYSE to shorten from 15 days to 10 days the period required under Rule 451(b)(1) that proxy materials must be transmitted to beneficial owners in order for the member organization to be permitted to vote its customers' uninstructed shares on routine matters;[5]
- a list of the companies whose proxy distributions are affected, including the meeting date and the date on which the transmission was completed; and
- a statement encouraging beneficial owners to submit their voting instructions through the electronic or telephonic means, if any, described in the request for voting instructions sent by the member organization to ensure that such instructions are received in advance of the shareholder meeting.

While the Exchange believes that the proposed temporary modification of Rule 451(b)(1) would provide significant relief to issuers during the ongoing COVID–19 crisis by enabling them to conduct their shareholder meetings as planned, it does not believe that it would have a significant effect on the voting right of beneficial owners or the outcome of any material proposals voted on at those meetings. First, a high percentage of ''street'' name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. The electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. Second, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone,[6] so the Exchange believes that the rule as modified would continue to provide adequate time for most

[4] The Exchange understands that proxy materials are delivered electronically to the beneficial owners of approximately 84% of all shares and approximately 43% of shares held by retail investors, according to data provided by the primary intermediary with respect to the 12 months ended June 30, 2018.

[5] The intermediary should provide a link on its website to this filing as posted on nyse.com.

[6] Based on information provided by the primary intermediary for the 12 months ended December 24, 2019, the Exchange understands that approximately 30% of the shares owned by retail shareholders are voted. Of the voted amount, 26% are voted by paper vote instruction form and 74% are voted by electronic methods including internet or phone.

beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act'')) [7] and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

Rule 451(b) provides that the member organization as record holder may give a proxy to vote shares if the beneficial owner has not provided voting instructions before the tenth day preceding the shareholder meeting. However, the number of shares included in the member organization's proxy is adjusted over the period right up to the time of the meeting to reflect the ability of beneficial owners to continue to provide instructions throughout that period. Supplementary Material .20 to Rule 451 includes forms of letters to be sent to beneficial owners when soliciting voting instructions. The forms of letters provided include the following provision:

> If we do not hear from you by the tenth day before the meeting, we may vote your shares in our discretion to the extent permitted by the rules of the Exchange. If you are unable to communicate with us by such date, we will, nevertheless follow your voting instructions, even if our discretionary vote has already been given, provided your instructions are received prior to the stockholders' meeting.

During the period of the proposed relief from the 15-day requirement, the forms of letters included in proxy mailings must clearly emphasize the ability of beneficial owners to provide voting instructions right up to the time of the meeting.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change is designed to provide significant relief to issuers during the ongoing COVID–19 crisis by enabling them to conduct their shareholder meetings as planned. The Exchange believes that the proposed rule change is consistent with the protection of investors because it would not have a significant effect on the voting rights of beneficial owners or the outcome of any material proposals voted on at shareholder meetings. The Exchange notes that a high percentage of ''street'' name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. Electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. In addition, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the Exchange believes that the rule as modified would continue to provide adequate time for beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide limited relief to member organizations and issuers in relation to difficulties experienced in distributing proxy materials during the current ongoing COVID–19 crisis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. According to the Exchange, the proposed rule change would provide significant relief to issuers during the ongoing COVID–19 crisis by enabling them to conduct their shareholder meetings as planned given the current difficulties being experienced transmitting proxy materials. As noted above, the proposed rule change would temporarily permit member organizations until May 31, 2020 to vote uninstructed shares on routine matters pursuant to NYSE Rule 452 provided that such materials are transmitted to beneficial owners no later than 10 days prior to the shareholder meeting, instead of 15 days in advance of a meeting. The Exchange stated, among other things, that member organizations can only vote on routine matters under its rules and that the proposal would not have a significant effect on the outcome of any material proposals voted on at shareholder meetings. The Exchange further stated that the waiver of the 30-day operative delay will help companies plan, and meet quorum requirements, for shareholder meetings during the upcoming proxy season.

[7] *See* Rule 452, Supplementary Material .11, subsections (2) and (19).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

The Commission notes that while the proposed rule change provides temporary relief in the event that there are delays in distributing proxy materials as a result of COVID–19, the Exchange and the Commission expect that best efforts will be made to ensure that transmissions of proxy materials will continue to be made prior to the 15th day before the meeting. To the extent that materials cannot be distributed prior to the 15th day, the Commission notes that the conditions set forth above requiring, in part, the intermediary acting on behalf of a member organization to disclose prominently on its website that it is experiencing operational challenges as a result of COVID–19, identify the companies whose proxy distributions are affected, and encourage beneficial owners to submit their vote by electronic or telephone means to ensure their instructions are received in advance of the shareholder meeting should help to ensure beneficial owners have adequate time to review their proxy material and vote on a timely basis.

Moreover, the Commission notes that, as discussed above, proxy materials are delivered electronically to the beneficial owners of 84% of all shares,[14] and that the Exchange expects electronic transmissions of proxy materials to continue to be made within the normal time frames provided by its rule. In addition, according to the Exchange, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the rule as modified would continue to provide adequate time for most beneficial owners to review their proxy materials and vote on a timely basis.[15] The proposal also only continues to allow member organizations to vote uninstructed shares on routine matters in accordance with Exchange Rule 452. The Commission also notes that the proposal is a temporary measure designed to respond to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[16]

[14] *See supra* note 4.

[15] *See supra* note 6 and accompanying text.

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–38 and should be submitted on or before May 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09050 Filed 4–28–20; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33852; File No. 812–15117]

The Alger ETF Trust, et al.

April 23, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Applicants: The Alger ETF Trust (the ''Trust''), Fred Alger Management, LLC (the ''Adviser'') and Fred Alger & Company, LLC (the ''Distributor'').

Summary of Application: Applicants request an order (''Order'') that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the ActiveShares ETFs to acquire Shares of the ActiveShares ETFs. The Order would incorporate by reference terms and conditions of a previous order

granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

Filing Date: The application was filed on March 27, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: The Alger ETF Trust, Fred Alger Management, LLC and Fred Alger & Company, LLC, 360 Park Avenue South, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Marc Mehrespand, Senior Counsel, at (202) 551–8453 or Trace Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants:

1. The Trust is a business trust organized under Massachusetts law and will consist of one or more series operating as ActiveShares ETFs. The Trust will be registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the ''Initial Fund''). The Funds will operate as ActiveShares ETFs as described in the Reference Order.[2]

2. The Adviser, a Delaware limited liability company, will be the investment adviser to the Initial Fund. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser will be registered under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief:

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested Order would permit applicants to offer ActiveShares ETFs. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into a licensing agreement with Precidian Funds LLC in order to offer ActiveShares ETFs,[3] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); (b) operates as an ActiveShares ETF as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order (each such company or series and the Initial Fund, a ''Fund'').[4]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09035 Filed 4–28–20; 8:45 am]

BILLING CODE 8011–01–P

[1] Precidian ETFs Trust, *et al.,* Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).

[2] To facilitate arbitrage, an ActiveShares ETF disseminates a ''verified intraday indicative value'' or ''VIIV,'' reflecting the value of its portfolio holdings, calculated every second during the trading day. To protect the identity and weightings of its portfolio holdings, an ActiveShares ETF sells and redeems its Shares in creation units to authorized participants only through an unaffiliated broker-dealer acting on an agency basis.

[3] Aspects of the Funds are covered by intellectual property rights, including but not limited to those which are described in one or more patent applications.

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 29, 2020.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, 202–401–2012 *mary.frias@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: The Small Business Administration requires information to be disclosed to the buyer when a secondary market loan is transferred from one investor to another. This information includes a constant annual prepayment rate based upon the seller's analysis of prepayment histories of SBA guaranteed loans with similar maturities. Additionally, information is required on the terms, conditions and yield of the security being transferred.

Title: ''Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guarantee Interest Certificate''.

Form Number: 1088.

Annual Responses: 856.

Annual Burden: 733.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–09030 Filed 4–28–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2019–0043]

Privacy Act of 1974; System of Records

AGENCY: Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act, we are issuing public notice of our intent to modify an existing system of records entitled, Parking Management Record System, 60–0230, last published in full January 11, 2006. This notice publishes details of the modified system as set forth under the caption, **SUPPLEMENTARY INFORMATION**.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective May 29, 2020. We invite public comment on the routine uses or other aspects of this SORN. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by May 29, 2020.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* please reference docket number SSA–2019–0043. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Boorstein, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: *Elizabeth.Boorstein@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are modifying the existing system of record notice to reflect changes to the process for applying for parking on SSA properties; the categories and types of records captured within this system; and for the storage and retrieval of parking policy violations.

We are also modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we provided a report to OMB and Congress on this modified system of records.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER:

Social Security Administration (SSA), Parking Management Record System, 60–0230

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of Security and Emergency Preparedness, Parking and Credentialing Office, 1501 Robert M. Ball Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Information is also located in additional locations in connection with cloud-based services and kept at an additional location as backup for business continuity purposes.

SYSTEM MANAGER(S):

Director, Office of Security Administration and Project Management, Social Security Administration, 1501 Robert M. Ball Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–5855.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, as amended, (see 40 U.S.C. 101, 121, and 41 CFR 102–74.265–310 and 41 CFR 102–74.430)

PURPOSE(S) OF THE SYSTEM:

The purpose of the SSA Parking Management System is to facilitate and enforce SSA parking policies. The SSA Parking Management System will capture vehicle and owner information on SSA employees, contractors, interns, and visitors to SSA facilities who apply for a parking permit, who have assignment of space for parking, and who park on SSA-controlled property and on property assigned to SSA by the General Services Administration or any other agency. This system will also capture information about those who violate SSA Parking Policy, including parking violation citations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Headquarters SSA employees as well as any visitors, carpool members, contractors, vendors or building tenants utilizing SSA Headquarters parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes all documentation in support of parking applications or assignment of parking, such as vehicle owner name, Social Security number (SSN), vehicle registration number (license plate), state of vehicle registration, vehicle make, model, color. For those that received a parking citation by violating SSA Parking Policy, this also includes vehicle owner home address.

RECORD SOURCE CATEGORIES:

Records are developed from the individual during the parking assignment application process or at the issuance of parking citations due to parking infractions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine use as indicated below:

1. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

2. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

a. SSA, or any component thereof; or

b. any SSA employee in his/her official capacity; or

c. any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

d. the United States or any agency thereof where SSA determines that there is litigation likely to affect the operations of SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose(s) for which the records were collected.

3. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA, as authorized by law, and they need access to personally identifiable information (PII) in SSA records in order to perform their assigned agency functions.

4. To the National Archives Records Administration under 44 U.S.C. 2904 and 2906.

5. To appropriate agencies, entities, and persons when: (a) SSA suspects or has confirmed that there has been a breach of this system of records; (b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. To another Federal agency or Federal entity, when SSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach; or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security resulting from a suspected or confirmed breach.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary: (a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities; or (b) to assist investigations or prosecutions with respect to activities that affect such safety and security, or activities that disrupt the operation of SSA facilities.

8. To the Office of Personnel Management, the Merit Systems Protection Board, or the Office of the Special Counsel when information is requested in connection with appeals, special studies of the civil service and other merit systems, review of those agencies' rules and regulations, investigation of alleged or possible prohibited personnel practices, and for such other function of these agencies as may be authorized by law, *e.g.,* 5 U.S.C. 1205 and 1206.

9. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

10. To the Federal Labor Relations Authority, its General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

11. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Initial parking applications (form SSA–391) are maintained in paper form; these forms are used by employees and contractors who have yet to access SSA systems and are completed prior to their official duty start date. Parking citation records are maintained in an electronic format using the parking citation system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by vehicle owner name, vehicle registration number (license plate), state of vehicle registration, vehicle make, model, or color.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Superseded materials are maintained by the SSA Office of Security Administration and Project Management for historical purposes and the control purpose has been met and the records are then destroyed per General Records Schedule 01–1 (001): The record retention is temporary—destroy when 3 years old, but longer retention is authorized if needed for business use. Superseded materials are maintained by the SSA Protective Security Officer for historical purposes and the control purpose has been met and the records are then destroyed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files with personal identifiers in secure storage areas accessible only by our authorized employees and contractors who have a need for the information when performing their official duties. Security measures include the use of codes and profiles, personal identification number and password, and personal identification verification cards. Further, management grants specific personnel access authority to the parking citation system; parking enforcement officers are the only personnel allowed to electronically upload parking citations. We keep paper records in locked cabinets within secure

areas, with access limited to only those employees who have an official need for access in order to perform their duties. We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (*e.g.,* 5 U.S.C. 552a(i)(1)). Furthermore, employees and contractors with access to databases maintaining PII must sign a sanctions document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals requesting notification of, or access to, a record by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA regulations (20 CFR 401.65(a)).

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA regulations (20 CFR 401.40).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

17 FR 1846, Social Security Administration Parking Management Record System.

72 FR 69723, Social Security Administration Parking Management Record System.

83 FR 54969, Social Security Administration Parking Management Record System.

[FR Doc. 2020–09074 Filed 4–28–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11085]

60-Day Notice of Proposed Information Collection: Statement of Non-Receipt of a U.S. Passport

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 29, 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–2020–0014'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov.*
- *Regular Mail:* Send written comments to: PPT Forms Officer, U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166–1199.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Non-receipt of a U.S. Passport.
- *OMB Control Number:* 1405–0146.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO/CR).
- *Form Number:* DS–86.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 22,868.
- *Estimated Number of Responses:* 22,868.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 5,717 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain a Benefit.

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

The Statement of Non-receipt of a U.S. Passport, form DS–86, is used by the U.S. Department of State to collect information for the purpose of issuing a replacement passport to customers whose passports have been issued but who have not received their passport documents in the mail.

Methodology

The information collected on form DS–86 is used by the Department of State to help ensure that no person bears more than one valid or potentially valid U.S. passport book of the same type and/or passport card at any one time, except as authorized by the Department. The information on the form is also used to address passport fraud and misuse.

When needed, the Statement of Non-receipt of a U.S. Passport is either provided by the Department to the passport applicant or accessed online from the Department's website at *www.eforms.state.gov* or as a printable PDF at *www.travel.state.gov.*

Zachary Parker,

Director.

[FR Doc. 2020–09105 Filed 4–28–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11096]

Notice of Information Collection Under OMB Emergency Review: Request To Change End-User, End-Use and/or Destination of Hardware

ACTION: Notice of request for emergency OMB approval and public comment.

SUMMARY: The Department of State has submitted the information collection request described below to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for public comment from all interested individuals and organizations. Emergency review and approval of this collection has been requested from OMB by April 30, 2020. If granted, the emergency approval is only valid for 180 days. The Department plans to follow this emergency request with a submission for a 3 year approval through OMB's normal PRA clearance process.

DATES: All public comments must be received by April 29, 2020.

ADDRESSES: Direct any comments on this emergency request to both the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) and to The Bureau of Political and Military Affairs, The Directorate of Defense Trade Controls.

You may submit comments by 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–2020–0016'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: Andrea Battista battistaal@state.gov.*

You must include *Emergency Submission Comment on* ''Request to Change End-User, End-Use and/or Destination of Hardware'' in the subject line of your message.

• *Email: oira_submission@omb.eop.gov.*

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 to Andrea Battista, *battistaal@state.gov,* who may be reached on 202–663–3136.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Request to Change End-User, End-Use and/or Destination of Hardware.

• *OMB Control Number:* 1405–0173.

• *Type of Request:* Emergency Review.

• *Originating Office:* Directorate of Defense Trade Controls (DDTC).

• *Form Number:* DS–6004.

• *Respondents:* Business or Nonprofit Organizations.

• *Estimated Number of Respondents:* 1,563.

• *Estimated Number of Responses:* 1,563.

• *Average Time Per Response:* 1 hour.

• *Total Estimated Burden Time:* 1,563.

• *Frequency:* On occasion.

• *Obligation to respond:* Voluntary.

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 of 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

The Request to Change End-User, End-Use and/or Destination of Hardware information collection is used to request DDTC approval prior to any sale, transfer, transshipment, or disposal, whether permanent or temporary, of classified or unclassified defense articles to any end-user, end-use or destination other than as stated on a license or other approval.

Methodology

Applicants are referred to ITAR 123.9 for guidance on information to submit regarding the request to change end-user, end-use and/or destination of hardware. A DS–6004 may be submitted electronically through DDTC's case

management system, The Defense Export Control and Compliance System (DECCS).

Neal Kringel,

Director of Management, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2020–09037 Filed 4–28–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance Friday Harbor Airport, Friday Harbor, WA

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

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a request from the Port of Friday Harbor Executive Director to change certain portions of the airport from aeronautical use to non-aeronautical use at the Friday Harbor Airport, Friday Harbor, WA. The request consists of 24 parcels, or portions thereof that are depicted on the Airport's current Exhibit A—Airport Property Map.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Written comments can be provided to Ms. Cayla D. Morgan, Environmental Protection Specialist, Seattle Airports District Office, 2220 S 216th Street, Des Moines, WA 98198, (206) 231–4130.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Nicholson, Executive Director, Port of Friday Harbor, P.O. Box 889, Friday Harbor, Washington 98250 or Ms. Cayla D. Morgan, Environmental Protection Specialist, Seattle Airports District Office, 2220 S 216th Street, Des Moines, WA 98198, (206) 231–4130. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2), the FAA is considering a proposal from the Executive Director, Port of Friday Harbor, to change a portion of the Friday Harbor Airport from aeronautical use to non-aeronautical use. A total of 24 parcels were included in the request. The FAA has reviewed the request and determined that all of the parcels or portions thereof in the request package except for parcels 44, 55 and 57 can be released from aeronautical use. The FAA concurs that the other parcels in the package are no longer needed for aeronautical purposes or are otherwise inaccessible by aircraft. The land will remain under the Port of Friday Harbor ownership and will be leased at fair market value for non-aeronautical revenue generation. The revenue will support the Airports aviation needs, including upcoming projects associated with the pending B–II classification.

The proposed use of this property is considered compatible with other airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in **Federal Register** on February 16, 1999.

Issued in Des Moines, Washington on April 23, 2020.

Joelle Briggs,

Manager, Seattle Airports District Office, Manager, Seattle Airports District, SEA–630.

[FR Doc. 2020–09025 Filed 4–28–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0224; Notice No. 2020–02]

Hazardous Materials: Notice of Public Meetings in 2020 for International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Hazardous Materials Safety, Department of Transportation (DOT).

ACTION: Notice of 2020 public meetings.

SUMMARY: This notice announces that PHMSA's Office of Hazardous Materials Safety will host three public meetings during 2020 in advance of certain international meetings. The first meeting will be held in preparation of the 57th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG), held June 29 to July 8, 2020, in Geneva, Switzerland. The second meeting will be held in preparation of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) Working Group 20 (WG/20) meeting held September 21–25, 2020, in Montreal, Canada. The third meeting will be held in preparation of the 58th session of the UNSCOE TDG held November 30 to December 8, 2020, in Geneva, Switzerland. For each of these meetings, PHMSA will solicit public input on U.S. government positions regarding proposals submitted by member countries in advance of each meeting.

DATES: Each public meeting will take place approximately two weeks preceding the international meeting. Specific information for each meeting will be posted when available on the PHMSA website at *https://www.phmsa.dot.gov/international-program/international-program-overview* under ''Upcoming Events.''

ADDRESSES: Each public meeting will take place at DOT Headquarters, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Specific information for each meeting will be posted when available on the PHMSA website at *https://www.phmsa.dot.gov/international-program/international-program-overview* under ''Upcoming Events.'' This information will include the public meeting date, time, conference call-in number, and details for advanced registration.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation. Telephone: (202) 366–8553.

SUPPLEMENTARY INFORMATION:

The purpose of PHMSA's public meetings held in advance of certain international meetings is to allow the public to give input on the current meeting proposals.

The 57th and 58th sessions of the UNSCOE TDG will represent the third and fourth meetings scheduled for the 2019–2020 biennium. The UNSCOE TDG will consider proposals for the 22nd Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations starting January 1, 2023. Copies of working documents, informal documents, the agenda, and the post-meeting final report may be obtained from the United Nations Transport Division's website at: *http://www.unece.org/trans/danger/danger.html.*

The ICAO WG/20 meeting will represent the first meeting of the 2020–2021 biennium. The ICAO DGP will consider proposals for the 2023–2024 edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). Copies of working papers, information papers, the agenda, and the post-meeting final report may be obtained from the ICAO DGP website at: *https://www.icao.int/safety/DangerousGoods/Pages/DGPMeetings.aspx.*

These meetings will be open to the public on a first-come, first served basis, as space is limited. Advanced meeting

registration information will be posted on the PHMSA website. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Signed in Washington, DC, on April 24, 2020.

William S. Schoonover,

Associate Administrator, Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–09076 Filed 4–28–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 29, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

OMB Control Number: 1513–0059.

Type of Review: Extension without change of a currently approved collection.

Description: In general, the IRC at 26 U.S.C. 5001 imposes a Federal excise tax on distilled spirits produced or imported into the United States. However, under the IRC at 26 U.S.C. 5214, distilled spirits may be withdrawn free of tax for nonbeverage purposes for use by Federal, State, and local governments, certain educational organizations and institutions, research laboratories, hospitals, blood banks, sanitariums, and nonprofit clinics, subject to regulations prescribed by the Secretary. Under that IRC authority, the TTB regulations in 27 CFR part 22 require tax-free alcohol users to maintain certain usual and customary shipment, loss, consignment, return, and inventory records, which are kept during the normal course of business, in order to maintain accountability over tax-free spirits.

Form: None.

Affected Public: Business or other for-profit; Federal government, State, local, and tribal governments.

Estimated Number of Respondents: 5,600.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 5,600.

Estimated Time per Response: None. (Under the OMB regulations 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents as defined in the Paperwork Reduction Act.).

Estimated Total Annual Burden Hours: None.

2. Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

OMB Control Number: 1513–0119.

Type of Review: Extension without change of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5382(a)(3), importers of natural wine produced after December 31, 2004, must provide the Secretary with a certification, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment. That IRC section also contains alternative certification requirements or exemptions for natural wine produced and imported under certain international agreements, as well as for such wine imported by an owner or affiliate of a domestic winery. In addition, the Federal Alcohol Administration Act at 27 U.S.C. 201 *et seq.* (FAA Act) vests the Secretary with authority to prescribe regulations regarding the identity and quality of alcohol beverages. Under those authorities, the TTB wine regulations in 27 CFR part 4 and its alcohol beverage import regulations in 27 CFR part 27 implement the IRC's proper cellar treatment certification requirement for imported natural wine.

Form: None.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 50.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 50.

Estimated Time per Response: 0.33 hours (20 minutes).

Estimated Total Annual Burden Hours: 17 hours.

3. Title: Tax Class Statement Required on Hard Cider Labels.

OMB Control Number: 1513–0138.

Type of Review: Extension without change of a currently approved collection.

Description: The IRC at 26 U.S.C. 5041 imposes six Federal excise tax rates on wine, the lowest of which is the hard cider tax rate listed in section 5041(b)(6), while the IRC at 26 U.S.C. 5368(b) provides that wine can only be removed in containers bearing the marks and labels evidencing compliance with chapter 51 of the IRC as the Secretary may by regulation prescribe. Also, section 335(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, Pub. L. 144–113) recently modified the definition of hard cider in the IRC at 26 U.S.C. 5041(g) to broaden the range of products eligible for the hard cider tax rate. In addition, TTB's FAA Act-based wine labeling regulations in 27 CFR part 4 allow the term ''hard cider'' to appear on wine labels even if the product does not meet the definition of ''hard cider'' for tax purposes under the IRC. In light of this, in order to adequately identify products eligible for the hard cider tax rate, the TTB regulations in 27 CFR parts 24 and 27 require the tax class statement, ''Tax class 5041(b)(6),'' to appear on containers of domestic and imported wines, respectively, for which that tax rate is claimed. The placement of the hard cider tax class statement on such wine labels is necessary to protect the revenue as it evidences compliance with the IRC's statutory requirements and identifies products for which the

taxpayer is claiming the hard cider tax rate.

Form: None.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 820.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 820.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 820 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 23, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–09065 Filed 4–28–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Split-Interest Trust Information Return

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 29, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Services (IRS)

Title: Split-Interest Trust Information Return.

OMB Control Number: 1545–0196.

Type of Review: Revision of a currently approved collection.

Description: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Form: 5227.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 199,900.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 199,900.

Estimated Time per Response: 45 hours, 24 minutes.

Estimated Total Annual Burden Hours: 9,076,744 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 23, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–09067 Filed 4–28–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 29, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Fiscal Service (FS)

1. Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

OMB Control Number: 1530–0001.

Type of Review: Extension without change of a currently approved collection.

Description: The information collected on this form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Form: FS Form 3144.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 85.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 85.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 64 hours.

2. Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.

OMB Control Number: 1530–0036.

Type of Review: Extension without change of a currently approved collection.

Description: The information is necessary to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Form: FS Form 1851.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 10,600.

Frequency of Response: Occasionally.

Estimated Total Number of Annual Responses: 10,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,650 hours.

3. Title: Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

OMB Control Number: 1530–0038.

Type of Review: Extension without change of a currently approved collection.

Description: The information is requested to support payment of an Armed Forces Leave Bond or check issued under Section 6 of the Armed Forces Leave Act of 1946, as amended, where the owner died without assigning the bond to the Administrator of

Veterans Affairs prior to payment, or without presenting the check for payment.

Form: FS Form 2066.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 100.

Frequency of Response: Occasionally.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 23, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–09066 Filed 4–28–20; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Community Development Financial Institutions Program and New Markets Tax Credit Program Annual Report including Awards Management and Information System

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 29, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions Fund (CDFIF)

Title: CDFI Program and NMTC Program Annual Report including AMIS.

OMB Control Number: 1559–0027.

Type of Review: Revision of a currently approved collection.

Description: This collection captures quantitative information from Community Development Financial Institutions (CDFIs) and Community Development Entities (CDEs) at the institution and transaction levels. This information is used to assess: (1) The recipient's/allocatee's activities as detailed in its application materials; (2) the recipient's/allocatee's approved use of the assistance; (3) the recipient's/allocatee's financial condition; (4) the socio-economic characteristics of recipient's/allocatee's borrowers/investees, loan and investment terms, repayment status, and community development outcomes; and (5) overall compliance with the terms and conditions of the assistance/allocation agreement entered into by the CDFI Fund and the recipient/allocatee. A CDFI Program or Native American CDFI Assistance Program (NACA Program) recipient must submit an Annual Report that is comprised of several sections that depend on the program and the type of award. The specific components that comprise a recipient's Annual Report are set forth in the assistance agreement that the recipient enters into with the CDFI Fund in order to receive a CDFI Program or a NACA Program award. The current CDFI/NACA reporting requirements can be found in the assistance agreement templates located on the CDFI Fund website at *www.cdfifund.gov.* For CDFI/NACA recipients, three significant changes were made to annual reporting. First, as part of its IT modernization strategy, the CDFI Fund developed a unified technology platform called the Awards Management Information System (AMIS) that facilitates better data collection and efficiency for users, improves data validations, and enhances computing capacity. Second, in developing the AMIS-based Compliance and Performance Reporting platform (ACPR), we sought to reduce the reporting burden by eliminating the Institution Level Report (ILR) which cut aggregate recipient reporting time by 3,066 hours. Third, the CDFI/NACA Transaction Level Report (TLR) requirements were substantially reduced by 70% by limiting transactional reporting to only newly originated and closed loans and investments and eliminating reporting on outstanding loans and investments. For NMTC Program allocatees, the reporting structure remained the same. Each allocatee must submit an Annual Report that comprises: (i) A financial statement that has been audited by an independent certified public accountant; (ii) an Institution Level Report (ILR) (including the IRS Compliance Questions section), if the allocatee has issued any Qualified Equity Investments; and (iii) a Transaction Level Report (TLR) if the allocatee has issued any Qualified Low-Income Community Investments in the form of loans or investments. The components that comprise an allocatee's Annual Report are set forth in the allocation agreement that the allocate enters into with the CDFI Fund in order to receive a NMTC Program allocation. These NMTC requirements can be found in the allocation agreement templates located on the CDFI Fund website at *www.cdfifund.gov.* With the efficiency gains from the implementation of AMIS, the average NMTC reporting time has gone down slightly, while the total number of reporting entities has remained the same so there is a slight net reduction in total burden. Altogether, the total annual burden for both CDFI/NACA and NMTC annual reporting has decreased substantially from 51,645 hours in 2017 to 34,000 hours in 2020.

Affected Public: Business or other for-profits, non-profits, State, local and tribal entities.

Estimated Number of Respondents: 575.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 575.

Estimated Time per Response: 120 hours.

Estimated Total Annual Burden Hours: 34,000 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 23, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–09063 Filed 4–28–20; 8:45 am]

BILLING CODE 4810–70–P

FEDERAL REGISTER

Vol. 85 Wednesday,
No. 83 April 29, 2020

Part II

The President

Proclamation 10015—World Intellectual Property Day, 2020

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Vol. 85, No. 83
Wednesday, April 29, 2020

Presidential Documents

Title 3—

The President

Proclamation 10015 of April 24, 2020

World Intellectual Property Day, 2020

By the President of the United States of America

A Proclamation

Our Nation's history is defined by discovery, ingenuity, and innovation. Americans are known for their resourcefulness and ability to find solutions to a wide range of challenges, including the development of technologies that advance our security, health, and prosperity. This resourcefulness has been a driving force of economic growth and human development since the founding of our Nation, and our future depends on the continued protection of our intellectual property. On World Intellectual Property Day, we renew our resolve to protect and secure the works and innovations of American artists, inventors, and other creators who continually push the boundaries of human knowledge and understanding.

Our Founding Fathers recognized the vital role that intellectual property plays in society and in supporting a robust economy. The Intellectual Property Clause of the Constitution reflects their understanding that laws must be in place to ''promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'' More than two centuries later, we remain committed to this idea, upholding and strengthening an intellectual property system that encourages greater American innovation and advances our global competitiveness.

My Administration is building on our Nation's history of securing intellectual property rights. In the United States, intellectual property-intensive industries account for nearly one-third of all employment and approximately 40 percent of our country's gross domestic product, an estimated $6.6 trillion. To support these industries, in January of this year I signed the United States-Mexico-Canada Agreement (USMCA) into law, replacing the outdated and unbalanced North American Free Trade Agreement. USMCA furthers my Administration's pro-growth agenda by establishing ground-breaking protections for trade secrets, strengthening border security, and enhancing trademark, copyright, and patent provisions. These are the most comprehensive intellectual property standards ever included in a free trade agreement. Additionally, earlier this year I signed an Executive Order on Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders, which is aimed at finding improved ways to protect intellectual property rights holders from an increasing amount of counterfeit and pirated goods marketed online.

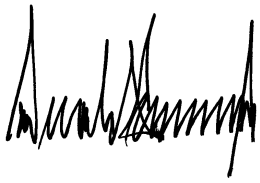
The importance of intellectual property has never been more apparent than it is now, as we continue the ongoing battle against the coronavirus. To respond to this national and international emergency, the Federal, State, and local Governments have partnered with the private sector to develop new and powerful tools to combat the spread of the virus and provide care to those in need, focusing every available resource on the fight against the invisible enemy. Relying on strong intellectual property protections, these industries are able to act boldly to invent new tests, begin developing experimental treatments and vaccines, and rapidly produce and reengineer medical equipment to help win this war. These efforts are saving tens

of thousands of lives and reflect the unrivaled power of American industry and innovation.

This month, we pay tribute to our Nation's long history of ingenuity and advancement, and we recommit to protecting, promoting, and prioritizing a business and economic environment that supports those who carry on this legacy. The pioneering spirit of these artists, authors, inventors, and other creators has improved our lives and the lives of millions of people around the world, and will continue to propel us toward a better future.

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 26, 2020, as World Intellectual Property Day. I encourage Americans to observe this day to celebrate the benefits of intellectual property to our economy and our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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.



[FR Doc. 2020–09263
Filed 4–28–20; 11:15 am]
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