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Title 3—

The President

Proclamation 10232 of July 15, 2021

National Atomic Veterans Day, 2021

By the President of the United States of America

A Proclamation

On July 16, 1945, the United States detonated the world's first nuclear device in Alamogordo, New Mexico. Better known by its code name, ''Trinity,'' the successful test of the first atomic bomb brought forth a new age of science that changed the lives of many of those who served in our Armed Forces, and forever altered the nature and the risks of war. Just weeks later, the world witnessed the horrors of nuclear destruction at Hiroshima and Nagasaki, which marked the end of World War II but opened our eyes to the truth that a nuclear war must never be fought.

Many brave men and women have risked their lives in service to our Nation, but few know the story of our ''Atomic Veterans''—American military service members who participated in nuclear tests between 1945 and 1962, served with United States military forces in or around Hiroshima and Nagasaki through mid-1946, or were held as prisoners of war in or near Hiroshima or Nagasaki. These veterans served at testing sites like the Bikini Atoll and witnessed the destructive power of nuclear weapons firsthand. On National Atomic Veterans Day, we recognize and honor the contributions of America's Atomic Veterans for their sacrifice and dedication to our Nation's security, and recommit to supporting our Atomic Veterans and educating ourselves on the role these patriots played in our national story.

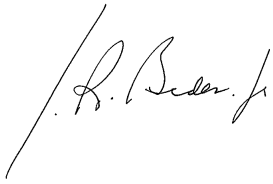
Atomic Veterans served our Nation with distinction, but their service came at a great cost. Many developed health conditions due to radiation exposure, yet because they were not able to discuss the nature of their service, they were unable to seek medical care or disability compensation from the Department of Veterans Affairs for their illnesses. Decades later in 1996, the United States Congress repealed the Nuclear Radiation and Secrecy Agreements Act, allowing Atomic Veterans to tell their stories and file for benefits. By then, thousands of Atomic Veterans had died without their families knowing the true extent of their service.

Our Nation has one truly sacred obligation: to properly prepare and equip our troops when we send them into harm's way, and to care for them and their families when they return from service. As Commander in Chief, I am committed to fulfilling our obligation to the Atomic Veterans and their families, and ensuring that all of our Nation's veterans have timely access to needed services, medical care, and benefits.

On this National Atomic Veterans Day, our country remembers the service and sacrifices of Atomic Veterans. Their heroism and patriotism will never be forgotten and we always honor their bravery and devotion to duty.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., 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 July 16, 2021, as National Atomic Veterans Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor our Nation's Atomic Veterans whose brave service and sacrifice played an important role in the defense of our Nation.

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



[FR Doc. 2021–15520
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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

[DHS Docket No. DHS–2021–0026]

Ratification of Security Directive

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of ratification of directive.

SUMMARY: DHS is publishing official notice that the Transportation Security Oversight Board (TSOB) has ratified Transportation Security Administration (TSA) Security Directive Pipeline–2021–01, which is applicable to certain owners and operators (Owner/Operators) of critical pipeline systems and facilities and requires actions to enhance pipeline cybersecurity.

DATES: The ratification was executed on July 3, 2021, and took effect on that date.

FOR FURTHER INFORMATION CONTACT: John D. Cohen, DHS Coordinator for Counterterrorism and Assistant Secretary for Counterterrorism and Threat Prevention, DHS Office of Strategy, Policy, and Plans, (202) 282–9708, *john.cohen@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Ransomware Attack on the Colonial Pipeline Company

On May 8, 2021, the Colonial Pipeline Company announced that it had halted its pipeline operations due to a ransomware attack. This attack temporarily disrupted critical supplies of gasoline and other refined petroleum products throughout the East Coast of the United States. Cybersecurity incidents affecting surface transportation systems, including pipelines, are a growing threat. The cyber-attack on Colonial Pipeline and resulting disruption of gasoline supplies to the East Coast demonstrate how criminal cyber actors are able to disrupt pipeline systems and networks in ways that threaten our national and economic security.

B. TSA Security Directive Pipeline–2021–01

On May 27, 2021, the Senior Official Performing the Duties of the TSA Administrator issued Security Directive Pipeline-2021–01 (security directive) requiring Owner/Operators of critical pipeline systems and facilities to take crucial measures to enhance pipeline cybersecurity. TSA issued this security directive in accordance with 49 U.S.C. 114(*l*)(2)(A), which authorizes TSA to issue emergency regulations or security directives without providing notice or public comment where ''the Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security. . . .'' TSA took this emergency action in response to the attack on Colonial Pipeline, which demonstrated the significant threat such attacks pose to the country's infrastructure and its national and economic security as a result. The directive became effective on May 28, 2021 and is set to expire on May 28, 2022.

This security directive seeks to immediately enhance the cybersecurity of critical pipeline systems and facilities by requiring covered Owner/Operators to take three crucial actions to enhance pipeline cybersecurity. First, it requires TSA-specified Owner/Operators of critical pipelines to promptly report cybersecurity incidents to the Cybersecurity and Infrastructure Security Agency (CISA). Second, it requires those Owner/Operators to designate a Cybersecurity Coordinator who must be available to TSA and CISA at all times to coordinate cybersecurity practices and address any incidents that arise. Third, it requires Owner/Operators to review their current cybersecurity practices against TSA's Pipeline Security Guidelines related to cybersecurity and to assess cyber risks, identify any gaps, and develop necessary remediation measures, along with a timeline for achieving them.

II. TSOB Ratification

TSA has broad statutory responsibility and authority to safeguard the nation's transportation system, including pipelines.[1] The TSOB—a body consisting of the heads of various interested Cabinet agencies, or their designees, and a representative of the National Security Council—reviews certain regulations and security directives consistent with law.[2] Security directives issued pursuant to the procedures in 49 U.S.C. 114(*l*)(2) ''shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Administrator.''[3] The chairman of the TSOB convened the Board for review of TSA Security Directive Pipeline–2021–01.[4] Following its review, on July 3, 2021, the TSOB ratified the security directive.

John K. Tien,

Deputy Secretary of Homeland Security & Chairman of the Transportation Security Oversight Board.

[FR Doc. 2021–15306 Filed 7–19–21; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0302; Project Identifier MCAI–2020–01596–R; Amendment 39–21618; AD 2021–13–13]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all

[1] *See, e.g.,* 49 U.S.C. 114(d), (f), (*l*), (m).

[2] *See, e.g.,* 49 U.S.C. 115; 49 U.S.C. 114(*l*)(2).

[3] 49 U.S.C. 114(*l*)(2)(B).

[4] The Deputy Secretary of Homeland Security serves as chairman of the TSOB. DHS Delegation No. 7071.1, *Delegation to the Deputy Secretary to Chair the Transportation Security Oversight Board* (Apr. 2, 2007). Although the Department of Energy (DOE) does not have a TSOB member under 49 U.S.C. 115(b), DOE was asked to review TSA Security Directive Pipeline–2021–01 during the TSOB ratification process and concurred with the ratification.

Leonardo S.p.a. Model AW189 helicopters. This AD was prompted by the identification of misleading information in the emergency procedure for the ''1(2) FUEL LOW'' caution message. This AD requires revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 24, 2021.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customerportal.leonardocompany.com/en-US/*. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0302.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0302; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mitch Soth, Flight Test Engineer, Southwest Section, Flight Test Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *mitch.soth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model AW189 helicopters. The NPRM published in the **Federal Register** on April 19, 2021 (86 FR 20336). In the NPRM, the FAA proposed to require revising page 3–118 of Section 3, Emergency and Malfunction Procedures, of the existing RFM for your helicopter to add remaining flight times (minutes) based on TQ value (%) and conditions that further reduce the remaining flight times. The NPRM was prompted by EASA AD 2019–0136, dated June 11, 2019 (EASA AD 2019–0136), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Leonardo S.p.A. (formerly Finmeccanica Helicopter Division, AgustaWestland) Model AW189 helicopters. EASA advises of the identification of misleading information in the AW189 RFM Emergency procedure associated with the ''1(2) FUEL LOW'' caution message. In particular, the procedure at issue instructs the pilot to land as soon as practicable within 20 minutes. However, this remaining flight time is guaranteed only if a constant torque value of 50% is maintained. The correct time limit depends on the fuel consumption at different engine power settings. Accordingly, EASA AD 2019–0136 requires amending section 3 of the AW189 RFM, ''Emergency and malfunction procedures,'' informing all flight crews, and thereafter, operating the helicopter accordingly. This condition, if not addressed, could result in the wrong estimation of the remaining flight time in a low fuel condition, possibly resulting in an uncommanded engine in-flight shut-down and forced landing, with consequent damage to the helicopter or injury to occupants.

EASA initially issued EASA AD 2019–0103, dated May 9, 2019 (EASA AD 2019–0103), to address this unsafe condition. EASA issued EASA AD 2019–0136 to supersede EASA AD 2019–0103 to require using the corrected amendment of the AW189 RFM.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Since the FAA issued the NPRM, the website address for Leonardo S.p.a. has changed. This AD updates that contact information to obtain service documentation. Additionally, the FAA made edits to clarify that AW189—RFM, Document No. 189G0290X002, Record of Temporary Revisions, TR No. 3–1, Revision A, dated May 24, 2019 (TR 3–1 Rev A) is included in Annex A of Leonardo Helicopters Document No. 189G0257A061, ''AW189—MAF for EASA RFM Issue 2 TR 3–1, Low Fuel Caution Procedure,'' Issue B, dated May 22, 2019. This AD is otherwise adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed TR 3–1 Rev A, which specifies remaining flight times (minutes) based on TQ value (%) if the XFEED is closed or if the XFEED is open with both fuel pumps ON. TR 3–1 Rev A also specifies that the remaining flight times (minutes) are further reduced if the XFEED is open, both fuel pumps are ON and one tank has emptied, and the 2 engines are supplied from the remaining tank.

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

Differences Between This AD and the EASA AD

EASA AD 2019–0136 requires revising the existing RFM for your helicopter within 14 days, whereas this AD requires that action within 14 hours time-in-service after the effective date of this AD instead. EASA AD 2019–0136 requires removing the RFM changes previously required by EASA AD 2019–0103, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 4 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter takes about 0.25 work-hour for an estimated cost of $21 per helicopter and $84 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–13–13 Leonardo S.p.a.: Amendment 39–21618; Docket No. FAA–2021–0302; Project Identifier MCAI–2020–01596–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AW189 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7300, Engine fuel and control.

(e) Unsafe Condition

This AD was prompted by the identification of misleading information in the emergency procedure for the ''1(2) FUEL LOW'' caution message. The FAA is issuing this AD to prevent the wrong estimation of the remaining flight time in a low fuel condition. The unsafe condition, if not addressed, could result in an uncommanded engine in-flight shut-down and forced landing, with subsequent damage to the helicopter or injury to the occupants.

(f) Compliance

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

(g) Required Actions

Within 14 hours time-in-service after the effective date of this AD, revise page 3–118 of Section 3, Emergency and Malfunction Procedures, of the existing Rotorcraft Flight Manual for your helicopter by adding page 3–118, Temporary Revision 3–1 Rev. A, of AW189—RFM, Document No. 189G0290X002, Record of Temporary Revisions, dated May 24, 2019, as contained in Annex A of Leonardo Helicopters Document No. 189G0257A061, ''AW189—MAF for EASA RFM Issue 2 TR 3–1, Low Fuel Caution Procedure,'' Issue B, dated May 22, 2019 (TR 3–1 Rev A). Using a different document with information identical to the information in page 3–118 of TR 3–1 Rev A is acceptable for compliance with the requirement of this paragraph. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9(a)(1) through (4) and § 91.417(a)(2)(v). The record must be maintained as required by § 91.417, § 121.380, or § 135.439.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Mitch Soth, Flight Test Engineer, Southwest Section, Flight Test Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *mitch.soth@faa.gov.*

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019–0136, dated June 11, 2019. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0302.

(k) Material Incorporated by Reference

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

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

(i) AW189—RFM, Document No. 189G0290X002, Record of Temporary Revisions, dated May 24, 2019, as contained in Annex A of Leonardo Helicopters Document No. 189G0257A061, ''AW189—MAF for EASA RFM Issue 2 TR 3–1, Low Fuel Caution Procedure,'' Issue B, dated May 22, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customerportal.leonardocompany.com/en-US/.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 9, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15300 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0339; Project Identifier MCAI–2020–01605–T; Amendment 39–21636; AD 2021–14–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a design review that identified rib 0 of the center wing box (CWB) as an area where a single failure of a clamshell type refuel/defuel line coupling could lead to the accumulation of dangerous levels of electrostatic charges within the fuel tank. This AD requires replacing the clamshell type refuel/defuel line coupling in the CWB at rib 0 with a threaded type fuel coupling, and installing an additional support bracket and clamp in the CWB at rib 0, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 24, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; internet *https://tc.canada.ca/en/aviation.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0339.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0339; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2020–04, dated March 9, 2020 (TCCA AD CF–2020–04) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on April 26, 2021 (86 FR 21967). The NPRM was prompted by a design review that identified rib 0 of the CWB as an area where a single failure of a clamshell type refuel/defuel line coupling could potentially lead to the accumulation of dangerous levels of electrostatic charges within the fuel tank. The NPRM proposed to require replacing the clamshell type refuel/defuel line coupling in the CWB at rib 0 with a threaded type fuel coupling, and installing an additional support bracket and clamp in the CWB at rib 0, as specified in TCCA AD CF–2020–04.

The FAA is issuing this AD to address failure of a clamshell type refuel/defuel line coupling, which could lead to fuel tank ignition. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated its support for the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2020–04 describes procedures for replacing the clamshell type refuel/defuel line coupling in the CWB at rib 0 with a threaded type fuel coupling, and installing an additional support bracket and clamp in the CWB at rib 0. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 47 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
27 work-hours × $85 per hour = $2,295	$7,191	$9,486	$445,842

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–14–09 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21636; Docket No. FAA–2021–0339; Project Identifier MCAI–2020–01605–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2020–04, dated March 9, 2020 (TCCA AD CF–2020–04).

(d) Subject

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

(e) Reason

This AD was prompted by a design review that identified rib 0 of the center wing box (CWB) as an area where a single failure of a clamshell type refuel/defuel line coupling could lead to the accumulation of dangerous levels of electrostatic charges within the fuel tank. The FAA is issuing this AD to address failure of a clamshell type refuel/defuel line coupling, which could lead to fuel tank ignition.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF–2020–04.

(h) Exceptions to TCCA AD CF–2020–04

(1) Where TCCA AD CF–2020–04 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where TCCA AD CF–2020–04 refers to hours air time, this AD requires using flight hours.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada Civil Aviation (TCCA) AD CF–2020–04, dated March 9, 2020.

(ii) [Reserved]

(3) For TCCA AD CF–2020–04, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0339.

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

Issued on June 25, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15351 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0561; Project Identifier AD–2021–00623–T; Amendment 39–21647; AD 2021–14–20]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737 airplanes. This AD was prompted by reports of latent failures of the cabin altitude pressure switches. This AD requires repetitive functional tests of the pressure switches, and on-condition actions, including replacement, if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2021.

The FAA must receive comments on this AD by September 3, 2021.

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

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

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0561.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0561; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA requires every proposed transport category airplane design with a pressurized cabin to include a system that warns the flightcrew of cabin depressurization. 14 CFR 25.841(b). On Boeing Model 737 airplanes, such warning systems include a cabin altitude pressure switch. The functions of this pressure switch are twofold: To detect if a certain cabin pressure altitude has been exceeded; and if so, to send a signal to the parts of the system that provide aural and visual warnings to the flightcrew. When this switch fails, it fails latently; that is, without making the failure known to the flightcrew or maintenance personnel. Due to the importance of the functions provided by this switch, in 2012 the FAA mandated that all Boeing Model 737 airplanes utilize two switches, to provide redundancy in case of one switch's failure. AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012).[1]

The FAA has received reports of latent failures of these cabin altitude pressure switches. In September 2020, an operator reported that on three of its airplanes, both pressure switches failed the on-wing functional test. The affected switches were on three different models of the Boeing 737.

The airplane manufacturer investigated, and initially found, for reasons that included the expected failure rate of the switches, that it did not pose a safety issue. Boeing decided in November 2020 that the failures were not a safety issue. Subsequent investigation and analysis led the FAA and the airplane manufacturer to determine, in May of 2021, that the failure rate of both switches is much higher than initially estimated, and therefore does pose a safety issue.

The FAA does not yet have sufficient information to determine what has caused this unexpectedly high failure rate, so a terminating corrective action cannot yet be developed. However, a latent failure of both pressure switches could result in the loss of cabin altitude warning, which could delay flightcrew recognition of a lack of cabin pressurization, and result in incapacitation of the flightcrew due to hypoxia (a lack of oxygen in the body), and consequent loss of control of the airplane. Therefore addressing these failures requires immediate action. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021. This service information specifies procedures for repetitive functional tests of the cabin altitude pressure switches, on-condition actions including follow-on functional testing and replacement of failed switches, sending a report to Boeing about any pressure switches that fail the initial functional test, and reporting to Boeing the airplanes in the operator's fleet that have been tested. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the Service Information.'' This AD also requires reporting to Boeing the results of the first functional test if any pressure switch failed, and sending reports to Boeing of the airplanes in the operator's fleet that have been tested.

[1] This airworthiness directive was eventually superseded by AD 2015–21–11, Amendment 39–18304 (80 FR 65927, October 28, 2015) (AD 2015–21–11).

Effect of Certain Installation Procedures on Accomplishment of AD Requirements

As previously noted, the FAA issued AD 2015–21–11, applicable to certain Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2015–21–11 requires, among other actions, the installation of a redundant cabin altitude pressure switch in accordance with specified Boeing service information. The FAA has since approved numerous supplemental type certificates (STCs) and other means for installing the redundant pressure switch. As a result of its oversight of these newly-installed switches, the FAA has determined that use of approved maintenance procedures for the cabin altitude pressure switch functional test other than those specified in the task cards identified in Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, is acceptable for the functional test; therefore, those other procedures do not require approval of an alternative method of compliance (AMOC).

Differences Between This AD and the Service Information

Although Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, affects ''all 737CL'' airplanes (the 737 Classics include Model 737–100, –200, –200C, –300, –400, and –500), Boeing did not send the MOM to Model 737–100, –200 and –200C operators. Additionally, Boeing did not reference procedures for performing the cabin altitude pressure switch functional test for Model 737–100, –200, and –200C series airplanes. There are no Model 737–100 series airplanes operating worldwide; however, the applicability of this AD includes those airplanes in the event any of those airplanes are returned to service in the U.S. The FAA has also included Model 737–200 and –200C series airplanes in the applicability of this AD. Furthermore, the FAA requested that Boeing make the service information available to Model 737–200 and –200C operators. Boeing Model 737–200 and –200C operators may reference 737–200 Airplane Maintenance Manual (AMM) 21–33–11/501 for additional guidance on performing the cabin altitude pressure switch functional test.

Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, uses permissive language, such as ''recommends'' and ''requesting,'' in its ''Functional Test Requirements'' and ''Reporting Requirements'' sections. However, the regulatory text in paragraphs (g) and (h) of this AD makes the language in those sections mandatory unless an exception in paragraph (j) of this AD applies.

Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, recommends returning failed pressure switches to the switch manufacturer. Although the FAA also recommends that operators return failed pressure switches in order to provide the switch manufacturer with additional data related to the unsafe condition, this AD does not require that action.

Although Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, identifies specific AMM task cards for use in accomplishing the functional test, paragraph (j)(1) of this AD clarifies that any approved maintenance procedures may be used for the functional test. This provides the operator an option to use the AMM task card or any approved maintenance procedure for the functional test without needing to request an AMOC.

Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, specifies certain on-condition actions, including an additional step while performing the functional test on the switch by increasing the altitude setting on the switch to an altitude of up to 20,000 feet if the cabin altitude warning does not activate by 11,000 feet during the initial functional test. The service information specifies repeating the functional test at intervals, but does not explicitly state that the on-condition additional functional testing is limited to the initial functional test only. Paragraph (j)(3) of this AD requires the on-condition additional functional test step of increasing the altitude setting to 20,000 feet only during the initial functional test (if applicable).

Although Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, specifies that failed switches be replaced with ''new or serviceable'' switches, this AD requires replacement with ''serviceable'' switches, which include any switches that are eligible for installation. This is to ensure that any installed switch is serviceable.

Interim Action

The FAA considers this AD to be an interim action. The reporting that is required by this AD will enable the airplane manufacturer to obtain better insight into the nature, cause, and extent of the switch failures, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because, as previously noted, the unexpectedly high rate of latent failure, of both pressure switches on the same airplane, could result in the cabin altitude warning system not activating if the cabin altitude exceeds 10,000 feet, resulting in hypoxia of the flightcrew, and loss of control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2021–0561 and Project Identifier AD–2021–00623–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://*

www.regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 2,502 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Functional test	1 work-hour × $85 per hour = $85 per test	$0	$85 per test ...	$212,670 per test.

In addition, the FAA has determined that preparing and sending a monthly report of tested airplanes takes about 1 work-hour per operator. Since operators are required to submit this report for their affected fleet(s), the FAA has determined that a per-operator estimate is more appropriate than a per-airplane estimate. Therefore, the FAA estimates the average total cost of the monthly report to be $85 (1 work-hour × $85) per report, per operator.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
On-condition functional test and switch replacement ..	1 work-hour × $85 per hour = $85	$1,278	$1,363
Reporting	1 work-hour × $85 per hour = $85	0	85

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not 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 currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–14–20 The Boeing Company: Amendment 39–21647; Docket No. FAA–2021–0561; Project Identifier AD–2021–00623–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 20, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of latent failures of the cabin altitude pressure switches. The FAA is issuing this AD to address the unexpectedly high rate of latent failure of both pressure switches on the same airplane which could result in the cabin altitude warning system not activating if the cabin altitude exceeds 10,000 feet, resulting in hypoxia of the flightcrew, and loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Functional Tests

Except as specified in paragraph (j) of this AD: At the latest of the times specified in paragraphs (g)(1) through (3) of this AD, perform the initial functional test of the cabin altitude pressure switches, and before further flight, do all applicable on-condition actions, in accordance with the ''Functional Test Requirements'' section of Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021. Repeat the functional test thereafter at intervals not to exceed 2,000 flight hours and do all applicable on condition actions before further flight.

(1) Within 2,000 flight hours since the last functional test of the cabin altitude pressure switches.

(2) Prior to the accumulation of 2,000 total flight hours on the airplane.

(3) Within 90 days after the effective date of this AD.

Note 1 to paragraph (g): Additional guidance for performing the functional test required by paragraph (g) of this AD can be found in 737–200 Airplane Maintenance Manual (AMM) 21–33–11/501, 737CL AMM TASK CARD 31–026–01–01, 737CL AMM TASK CARD 31–010–01–01, 737NG AMM TASK CARD 31–020–00–01, and 737MAX AMM TASK CARD 31–020–00–01, and other approved maintenance procedures.

(h) Reporting for Switch Failure

If any switch fails the initial functional test required by paragraph (g) of this AD: At the applicable time specified in paragraph (h)(1) or (2) of this AD, report the results of that functional test, in accordance with Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021.

(1) If the functional test was done on or after the effective date of this AD: Submit the report within 10 days after the functional test.

(2) If the functional test was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(i) Repetitive Reporting of Tested Fleet

Within 40 days, but no earlier than 30 days, after the effective date of this AD: Send a report to Boeing listing the total number of airplanes, including tail numbers, in the operator's fleet that have been tested since the effective date of this AD, in accordance with Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021. Thereafter, send a report for the number of airplanes tested, at intervals of 30 days for a total period of 12 months. A report is not required for any 30-day interval in which no airplanes were tested.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, refers to certain task cards for the functional test, that service information is not required by this AD, and any approved maintenance procedures are acceptable for the functional test.

(2) Where Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, specifies replacing failed switches with ''new or serviceable'' switches, this AD requires replacement with ''serviceable'' switches, which include any switches that are eligible for installation.

(3) Where Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021, specifies the on-condition additional step of increasing the altitude to 20,000 feet if the cabin altitude warning does not activate by 11,000 feet, this AD requires that additional step only during the initial functional test.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Related Information

For more information about this AD, contact Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Multi Operator Message MOM–MOM–21–0292–01B, dated June 23, 2021.

(ii) [Reserved]

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

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

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

Issued on July 2, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15391 Filed 7–15–21; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0348; Project Identifier 2018–SW–076–AD; Amendment 39–21645; AD 2021–14–18]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. (Type Certificate Previously Held by Agusta S.p.A.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2011–18–52 for certain Agusta S.p.A. (now Leonardo S.p.a.) Model AB139 and AW139 helicopters. AD 2011–18–52 required revising the life limit for certain part-numbered tail rotor (T/R) blades, updating the helicopter's historical records, repetitively inspecting each T/R blade for a crack or damage, and depending on the results, replacing the T/R blade. This AD was prompted by the manufacturer developing improved T/R blades using different materials and establishing life limits for each improved blade. This AD retains certain requirements from AD 2011–18–52, revises certain requirements from AD 2011–18–52, and expands the applicability to include the newly-designed T/R blades. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 24, 2021.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0348.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0348; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–18–52, Amendment 39–17020 (77 FR 23109, April 18, 2012) (AD 2011–18–52). AD 2011–18–52 applied to Agusta S.p.A. (now Leonardo S.p.a.) Model AB139 and AW139 helicopters with a T/R blade part number (P/N) 3G6410A00131 or P/N 4G6410A00131 installed. The NPRM published in the **Federal Register** on May 10, 2021 (86 FR 24780). AD 2011–18–52 required, within 5 hours time-in-service (TIS), establishing a life limit of 600 hours TIS or 1,500 takeoff and landing cycles (cycles), whichever occurs first, on the affected T/R blades and updating the helicopter's historical records. If a T/R blade's total number of cycles was unknown, determining the T/R blade cycles by multiplying the T/R blade's hours TIS by 4 was required. For a T/R blade that, on the effective date of AD 2011–18–52, had already exceeded 600 hours TIS or 1,500 cycles, the AD required replacing the T/R blade with an airworthy T/R blade within 5 hours TIS.

AD 2011–18–52 also required, within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, inspecting the T/R blade for a crack or damage that exceeds the limits of the applicable maintenance manual. The inspection was required to be accomplished using a mirror, magnifying glass (5X or greater), and light source; or borescope. If there was a crack, or if there was damage that exceeded the limits of the applicable maintenance manual, AD 2011–18–52 required, before further flight, replacing the T/R blade with an airworthy T/R blade.

AD 2011–18–52 was prompted by a fatal accident involving an Agusta Model AW139 helicopter, which may have been caused by cracks in a T/R blade. EASA, which is the Technical Agent for the Member States of the European Union, issued EASA Emergency AD 2011–0156–E, dated August 25, 2011 (EASA AD 2011–0156–E) to require repetitive inspections and reducing the life limit of the T/R blades. According to EASA, this condition, if not detected and corrected, could result in failure of a T/R blade and subsequent loss of control of the helicopter.

After the FAA issued AD 2011–18–52, EASA issued a series of ADs as follows:

- EASA AD 2012–0030, dated February 17, 2012 (EASA AD 2012–0030), which superseded Emergency AD 2011–0156–E, advised that the manufacturer developed improved, newly-designed T/R blades P/N 3G6410A00132 and P/N 4G6410A00132, established life limits for each improved T/R blade, added repetitive inspections for the improved T/R blades, and advised that each T/R blade P/N had its own individual life limit.
- EASA AD 2012–0076, dated May 2, 2012 (EASA AD 2012–0076), which superseded EASA AD 2012–0030 and was issued after the manufacturer developed another version of improved T/R blades P/N 3G6410A00133 and P/N 4G6410A00133 with different materials. AD 2012–0076 required interim life limits for the new improved version of the T/R blades while also retaining the inspection requirements of EASA AD 2012–0030.
- EASA AD 2012–0076R1, dated July 13, 2012 (EASA AD 2012–0076R1), which revised EASA AD 2012–0076 after a modification was developed to allow installation of certain part-numbered T/R blades under certain conditions.
- EASA AD 2012–0076R2, dated February 20, 2014 (EASA AD 2012–0076R2), which revised EASA AD 2012–0076R1, was issued after another modification was developed. EASA AD 2012–0076R2 requires removing the 25 hours TIS inspection of certain part-numbered T/R blades, extending the life

limit of certain part-numbered T/R blades, retaining the repetitive inspections of certain part-numbered T/R blades and depending on the inspection results, performing certain applicable corrections.

Also, after AD 2011–18–52 was issued, the FAA issued an NPRM (78 FR 54596), which published in the **Federal Register** on September 5, 2013. The NPRM proposed to require retaining the inspection requirements for certain part-numbered blades and expand the applicability to include the newly designed blades and establish life limits for those blades. The NPRM also proposed to require replacing any cracked blade or any blade that has reached its life limit. That NPRM was prompted by improved modifications of the T/R blades. However, because the FAA determined that the NPRM did not adequately address the identified unsafe condition, the NPRM was withdrawn on February 25, 2021 (86 FR 11477).

Additional review also revealed necessary changes to address the unsafe condition. Therefore, in the NPRM published in the **Federal Register** on May 10, 2021 (86 FR 24780), the FAA proposed to clarify the repetitive inspection for T/R blade P/Ns 3G6410A00131 and P/N 4G6410A00131 from, ''visually inspect the T/R blade for a crack or damage'' to ''visually inspect the T/R blade for a crack and damage.'' The NPRM further proposed to revise that repetitive inspection from ''damage that exceeds the limits of the applicable maintenance manual'' to ''damage that exceeds allowable limits'' to meet current publishing requirements. The NPRM also clarified the inspection area for that repetitive inspection by proposing to require using a figure in the related service information instead of using a figure in the body of the AD action. The NPRM also proposed to revise the requirements of AD 2011–18–52 by removing unnecessary information, including the special flight permits paragraph.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed AgustaWestland Mandatory Bollettino Tecnico No. 139–265, Revision B, dated February 18, 2014. This service information specifies a precautionary inspection for a crack, a life limit for the affected T/R blades, and a quarantine of T/R blades that have exceeded their life limit. This service information also provides instructions for mixed usage of the affected T/R blades and sending certain data to the manufacturer.

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

Differences Between This AD and the EASA AD

The EASA AD does not list the T/R blade life limits and instead references the Airworthiness Limitations Section of AW139 AMPI Chapter 4, while this AD includes the life limits in the AD. The EASA AD requires reporting information to Product Support Engineering, whereas this AD does not. The EASA AD requires contacting AgustaWestland if a crack or damage is found during the inspection, whereas this AD requires removing the T/R blade from service.

Costs of Compliance

The FAA estimates that this AD affects 130 helicopters of U.S. Registry and that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Inspecting one T/R blade for a crack will take about 1 work-hour for an estimated cost of $85 per T/R blade per inspection cycle and up to $44,200 for the U.S. fleet per inspection cycle.

Replacing one T/R blade will take about 8 work-hours and parts will cost about $40,560 for an estimated cost of $41,240 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2011–18–52, Amendment 39–17020 (77 FR 23109, April 18, 2012); and

■ b. Adding the following new AD:

2021–14–18 Leonardo S.p.a. (Type Certificate Previously Held by Agusta S.p.A.): Amendment 39–21645; Docket No. FAA–2021–0348; Project Identifier 2018–SW–076–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

This AD replaces AD 2011–18–52, Amendment 39–17020 (77 FR 23109, April 18, 2012) (AD 2011–18–52).

(c) Applicability

This AD applies to Leonardo S.p.a. (type certificate previously held by Agusta S.p.A.) Model AB139 and AW139 helicopters, certificated in any category, with tail rotor (T/R) blade, part number (P/N) 3G6410A00131, 3G6410A00132, 3G6410A00133, 4G6410A00131, 4G6410A00132, or 4G6410A00133, installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD defines the unsafe condition as a crack in a T/R blade. This condition could result in failure of a T/R blade and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For T/R blade P/Ns 3G6410A00131 and 4G6410A00131, within 5 hours time-in-service (TIS) after May 3, 2012 (the effective date of AD 2011–18–52), establish a life limit of 600 hours TIS or 1,500 takeoff and landing cycles (cycles), whichever occurs first, on the affected T/R blades and update the helicopter's historical records. If a T/R blade's total number of cycles is unknown, determine the T/R blade cycles by multiplying the T/R blade's hours TIS by 4.

(2) For T/R blade P/Ns 3G6410A00131 and 4G6410A00131, thereafter following paragraph (g)(1) of this AD, remove any T/R blade from service before accumulating 600 total hours TIS or 1,500 total cycles, whichever occurs first.

(3) For T/R blade P/Ns 3G6410A00132, 3G6410A00133, 4G6410A00132, and 4G6410A00133, within 5 hours TIS after the effective date of this AD, determine the total number of cycles. If a T/R blade's total number of cycles is unknown, determine the T/R blade cycles by multiplying the blade's hours TIS by 4. Before further flight, remove any T/R blade from service that has accumulated or exceeded its life limit as follows. Thereafter, remove any T/R blade from service before accumulating its life limit as follows:

(i) T/R blade P/Ns 3G6410A00132 and 4G6410A00132: 1,200 total hours TIS or 3,200 total cycles, whichever occurs first.

(ii) T/R blade P/N 3G6410A00133: 40,000 total cycles.

(iii) T/R blade P/N 4G6410A00133: 4,033 total hours TIS or 40,000 cycles, whichever occurs first.

Note 1 to paragraph (g)(3): A combination of T/R blades having different P/Ns can be installed on the same helicopter. The eligible combinations of T/R blades P/N are listed in AgustaWestland Mandatory Bollettino Tecnico No. 139–265, Revision B, dated February 18, 2014 (BT No. 139–265).

(4) For T/R blade P/Ns 3G6410A00131 and P/N 4G6410A00131, within 25 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 25 hours TIS, visually inspect the T/R blade for a crack and damage that exceeds allowable limits. Inspect in the area depicted in Figure 1 of BT No. 139–265 using a mirror, a 5X or higher power magnifying glass, and a flashlight, or borescope. If there is a crack or damage that exceeds allowable limits, before further flight, remove the T/R blade from service.

(5) As of the effective date of this AD, do not install on any helicopter any T/R blade P/N 3G6410A00131 or P/N 4G6410A00131, unless the actions required by paragraphs (g)(1), (2), and (4) of this AD have been accomplished.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2012–0076R2, dated February 20, 2014. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0348.

(j) Material Incorporated by Reference

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

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

(i) AgustaWestland Mandatory Bollettino Tecnico No. 139–265, Revision B, dated February 18, 2014.

(ii) [Reserved]

(3) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 2, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15303 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0175; Project Identifier 2001–SW–33–AD; Amendment 39–21643; AD 2021–14–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters (type certificate previously held by Eurocopter France) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. This AD was prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. This AD requires measuring the 9-degree frame flange (frame) for the correct edge distance of the four attachment holes for the stretcher support and inspecting for cracks, and repairing the frame, if necessary, and installation of a reinforcement plate (reinforcing angle), as specified in two Direction Générale de l'Aviation Civile (DGAC) ADs, which are incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 24, 2021.

ADDRESSES: For DGAC material incorporated by reference (IBR) in this AD, contact the European Union Aviation Safety Agency (EASA), Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find the DGAC material on the EASA website at *https://ad.easa.europa.eu.* For American Eurocopter material, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the DGAC and American Eurocopter material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. Service information that is incorporated by reference is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0175.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0175; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the DGAC ADs, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Blaine Williams, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, CA 90712; telephone 562–627–5371; email *blaine.williams@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The DGAC, which was the Technical Agent for France, issued DGAC AD 2001–061–053(A), dated February 21, 2001 (DGAC AD 2001–061–053(A)) for certain Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters; and DGAC AD 2001–283–025(A), dated July 11, 2001 (DGAC AD 2001–283–025(A)) for all Model SA–366G1 helicopters (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for those helicopters.

The FAA issued a second supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters (type certificate previously held by Eurocopter France) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. The second SNPRM published in the **Federal Register** on May 7, 2021 (86 FR 24556). The second SNPRM proposed to require inspecting the frame for the correct edge distance of the four attachment holes of the stretcher support and for a crack, and repairing the frame, if necessary, and installation of a reinforcement plate (reinforcing angle) on the frame, as specified in DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A). The second SNPRM also included references to an engineering report that lists approved U.S. alternative fasteners and materials that may be used in any required repairs. The second SNPRM was issued because a significant amount of time elapsed since the first SNPRM was published.

The FAA is issuing this AD to address failure of the 9-degree frame due to a crack at the stretcher support attachment holes, which could result in loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the second SNPRM or on the determination of the costs.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) describe procedures for measuring the edge distance of the webs at the four attachment holes of the stretcher support on the left and right sides of the 9-degree frame, and additional actions depending on the findings. The additional actions include repetitively inspecting the frame for cracking, repair if necessary, and installation of a reinforcement plate (reinforcing angle) on the frame. These documents are distinct since they refer to different helicopter models.

American Eurocopter Engineering Report No. AEC/03R–E–005, ''Addendum ASB 53.00.42 and 53.00.43 AS365,'' dated January 29, 2003, specifies U.S. and European rivet equivalent part numbers, U.S. rivet part numbers with acceptable substitute materials with greater strength properties, and 5 rivet, 6 rivet, and pin Hi-lok alternatives.

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

Differences Between This AD and the MCAI

The FAA has determined that acceptable U.S. alternatives to the fasteners and materials needed to perform repairs or modifications are listed in American Eurocopter Engineering Report No. AEC/03R–E–005 ''Addendum ASB 53.00.42 and 53.00.043 AS365'', dated January 29, 2003.

Where DGAC AD 2001–061–053(A) exempts helicopters that were delivered after January 31, 2001, from the applicability, this AD does not exempt those helicopters.

Costs of Compliance

The FAA estimates that this AD affects 31 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$100	$355	$11,005

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

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
Up to 8 work-hours × $85 per hour = $680	$250	Up to $930

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–14–16 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–21643; Docket No. FAA–2021–0175; Project Identifier 2001–SW–33–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters (type certificate previously held by Eurocopter France) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code 5311, Fuselage Main, Frame.

(e) Reason

This AD was prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. The FAA is issuing this AD to address failure of the 9-degree frame flange (frame) due to a crack at the stretcher support attachment holes, which could result in loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with the applicable Direction Générale de l'Aviation Civile (DGAC) ADs specified in paragraphs (g)(1) and (2) of this AD.

(1) For Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters: DGAC AD 2001–061–053(A), dated February 21, 2001, (DGAC AD 2001–061–053(A)).

(2) For Model SA–366G1 helicopters: DGAC AD 2001–283–025(A), dated July 11, 2001 (DGAC AD 2001–283–025(A)).

(h) Exceptions to DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A)

(1) Where paragraph 3.1 of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies an initial compliance time to do the measurement, for this AD, do the measurement within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Where paragraph 3.1. of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies to do a measurement, for this AD, do an inspection of the area around the attachment holes for cracks concurrently with the measurement.

(3) Where paragraph 3.2.1.a) of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies ''every 550 flight hours, check that there is no crack in the flange,'' for this AD, inspect (check) the area around the attachment holes for cracks at intervals not to exceed 550 hours TIS.

(4) Where paragraph 3.2.1.b) of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) requires installation of a reinforcement plate (reinforcing angle) on the flange for certain helicopters, do the

installation within 550 hours TIS after accomplishment of the measurement specified in paragraph 3.1. of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A).

(5) Where the service information referred to in DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies to perform a dye penetrant crack inspection ''if in doubt,'' this AD requires performing a dye penetrant inspection.

(6) Where paragraph 3.2.2. of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies to do various actions specified in paragraphs 3.2.2.a), b), and c) of those ADs, for this AD, if any frame is cracked, before further flight, repair the frame. Acceptable U.S. alternatives to the fasteners and materials needed to perform repairs or modifications are listed in American Eurocopter Engineering Report No. AEC/03R–E–005, ''Addendum ASB 53.00.42 and 53.00.43 AS365'', dated January 29, 2003.

(7) Where the Note in paragraph 3.2.2. of DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A) specifies the instructions are no longer applicable after a customized repair has been carried out, for this AD, modifying or repairing the frame constitutes terminating action for the requirements of this AD.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Blaine Williams, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, CA 90712; telephone 562–627–5371; email *blaine.williams@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Direction Générale de l'Aviation Civile (DGAC) AD 2001–061–053(A), dated February 21, 2001.

(ii) DGAC AD 2001–283–025(A), dated July 11, 2001.

(iii) American Eurocopter Engineering Report No. AEC/03R–E–005, ''Addendum ASB 53.00.42 and 53.00.43 AS365'', dated January 29, 2003.

(3) For DGAC AD 2001–061–053(A) and DGAC AD 2001–283–025(A), contact the European Union Aviation Safety Agency (EASA), Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find these DGAC ADs on the EASA website at *https://ad.easa.europa.eu.*

(4) For American Eurocopter material identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(5) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 2, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15302 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0031; Project Identifier MCAI–2020–01420–T; Amendment 39–21625; AD 2021–13–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by reports of corrosion on the waste box, waste access doubler, and waste service door of the rear fuselage due to contamination from waste valve leakage. This AD requires an inspection for corrosion of the waste box, waste access doubler, and waste service door, and corrective actions if necessary, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 24, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; internet *https://tc.canada.ca/en/aviation.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0031.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0031; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2020–42, issued October 16, 2020 (TCCA AD CF–2020–42) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on February 24, 2021 (86 FR 11173). The NPRM was prompted by reports of corrosion on the waste box, waste access doubler, and waste service door of the rear fuselage due to contamination from waste valve leakage. The NPRM proposed to require an inspection for corrosion of the waste box, waste access doubler, and waste service door, and corrective actions if necessary, as specified in TCCA AD CF–2020–42.

Comments

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

Request To Require Additional Service Information

Delta Air Lines (DAL) asked that Airbus Canada Service Bulletin BD500–383004, Issue No. 001, dated January 29, 2021, also be mandated either in the proposed AD or in additional rulemaking by the FAA and TCCA. DAL stated that the proposed AD, as written, does not address the root cause of the corrosion, which is leakage from the waste disposal ball valve. DAL added that the actions specified in the proposed AD will act as an effective method of ensuring that existing corrosion is identified and addressed, but do not address the root cause of the corrosion. DAL stated that Airbus Canada Service Bulletin BD500–383004 would address that root cause by providing instructions for the retrofit of an improved valve, which resists leakage more effectively than the valve with the original configuration. DAL noted that if fluid leakage from the waste servicing system is the root cause for corrosion of the fuselage, proactive retrofit of the ball valve to the improved configuration would properly address that root cause.

The FAA does not agree with the commenter. The FAA is currently reviewing Airbus Canada Service Bulletin BD500–383004, Issue No. 001, dated January 29, 2021, and gathering more information about the new valve. After completing this review the FAA might consider further rulemaking. The FAA has not changed this AD in this regard.

Request To Clarify Exception to TCCA AD CF–2020–42

DAL asked for clarification that the exception identified in paragraph (h) of the proposed AD does not deviate from the TCCA AD. DAL stated that TCCA AD CF–2020–42 and Airbus Canada Service Bulletin BD500–536004, Issue No. 001, dated August 13, 2020, both include instructions for implementation of corrective action to documented discrepancies, and neither include any allowance to defer the corrective action beyond the maintenance opportunity in which the inspection is performed and the corrosion is documented.

The FAA disagrees that this AD does not deviate from the TCCA AD. Paragraph (h) of this AD is included as an exception to the MCAI because the TCCA AD does not explicitly state in the ''Compliance'' or ''Corrective Actions'' sections that when corrosion is found, the corrective action of corrosion repair must be done before further flight. The inclusion of paragraph (h) of this AD requires that the corrective action is done ''before further flight'' after detection of corrosion, as identified in the applicable service information specified in TCCA AD CF–2020–42, instead of the compliance time specified in TCCA AD CF–2020–42 for all applicable actions. The FAA has revised paragraph (h) of this AD to specify that the corrective action (corrosion repair) must be done before further flight after corrosion is detected.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2020–42 describes procedures for a general visual inspection for corrosion of the waste box, waste access doubler, and waste service door 146BR of the rear fuselage; application of protective coating in the waste box area; and corrective actions. The corrective actions include repair of any corrosion found. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 28 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$0	$680	$19,040

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–13–20 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21625; Docket No. FAA–2021–0031; Project Identifier MCAI–2020–01420–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2020–42, issued October 16, 2020 (TCCA AD CF–2020–42).

(d) Subject

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

(e) Reason

This AD was prompted by reports of corrosion on the waste box, waste access doubler, and waste service door of the rear fuselage due to contamination from waste valve leakage. The FAA is issuing this AD to address this corrosion, which could lead to cracking or holes in the waste box or airplane skin, and consequent cabin pressure leakage and catastrophic structural damage of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF–2020–42.

(h) Exception to TCCA AD CF–2020–42

Where TCCA AD CF–2020–42 specifies a compliance time of ''Within 14,200 flight cycles or 56 months from the aeroplane date of manufacture, as identified on the identification plate of the aeroplane'' or ''Within 9,900 flight cycles or 56 months from the aeroplane date of manufacture, as identified on the identification plate of the aeroplane,'' depending on airplane configuration, to accomplish all applicable actions, this AD requires that corrosion repair be done before further flight after detection of corrosion, as identified in the applicable service information specified in TCCA AD CF–2020–42.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada Civil Aviation (TCCA) AD CF–2020–42, issued October 16, 2020.

(ii) [Reserved]

(3) For TCCA AD CF–2020–42, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; internet *https://tc.canada.ca/en/aviation.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0031.

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

Issued on June 18, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15346 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0272; Project Identifier MCAI–2020–01485–T; Amendment 39–21628; AD 2021–14–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a report that certain airplanes have navigation units with outdated magnetic variation (MagVar) tables. This AD requires revising the existing airplane flight manual (AFM) and applicable corresponding operational procedures to update the flight management system (FMS) limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 24, 2021.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–33, dated September 29, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on April 12, 2021 (86 FR 18921). The NPRM was prompted by a report that certain airplanes have navigation units with outdated MagVar tables. The NPRM proposed to require revising the existing AFM and applicable corresponding operational procedures to update the FMS limitations. The FAA is issuing this AD to address outdated MagVar tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the primary flight displays (PFDs) and multi-function displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs, and can lead to significantly inaccurate heading, course, and bearing calculations. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information. This service information describes procedures for revising the existing AFM to update the FMS limitations. These documents are distinct since they apply to different airplane configurations.

- Flight Management System (FMS) limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 58, dated January 15, 2020. (For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- FMS limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), Revision 58, dated January 15, 2020. (For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), use Document Identification No. CH 300 AFM–M.)

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

Costs of Compliance

The FAA estimates that this AD affects 318 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$27,030

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–14–01 Bombardier, Inc.: Amendment 39–21628; Docket No. FAA–2021–0272; Project Identifier MCAI–2020–01485–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20407 inclusive, equipped with FMC–5000 flight management computers.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report that certain airplanes have navigation units with outdated magnetic variation (MagVar) tables. The FAA is issuing this AD to address outdated MagVar tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the primary flight displays (PFDs) and multi-function displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs, and can lead to significantly inaccurate heading, course, and bearing calculations.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 60 days after the effective date of this AD: Revise the existing AFM and applicable corresponding operational procedures to incorporate the information specified in the Flight Management System (FMS) limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the applicable AFM, specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *AFM Revision*

Bombardier, Inc., Model–	AFM–	Publication No.–	Revision–	Dated–
BD-100-1A10 airplanes	Bombardier Challenger 300 Airplane Flight Manual (Imperial Version)[1]	CSP 100-1	58	January 15, 2020
BD-100-1A10 airplanes	Bombardier Challenger 300 Airplane Flight Manual (Metric Version)[2]	CSP 100-1 (Metric)	58	January 15, 2020

[1] For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100-1, use Document Identification No. CH 300 AFM-I.

[2] For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100-1 (Metric), use Document Identification No. CH 300 AFM-M.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–33, dated September 29, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Flight Management System (FMS) limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 58, dated January 15, 2020.

(ii) FMS limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), Revision 58, dated January 15, 2020.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

Note 1 to paragraph (j)(3): For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

Note 2 to paragraph (j)(3): For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), use Document Identification No. CH 300 AFM–M.

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

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

Issued on June 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15349 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1156; Airspace Docket No. 20–ANE–7]

RIN 2120–AA66

Establishment of Class E Airspace; Monhegan Island, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Monhegan Island Heliport, Monhegan Island, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Monhegan Island Heliport, Monhegan Island, ME, to support instrument flight rules operations at this heliport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 5043, January 19, 2021) for Docket No. FAA–2020–1156 to establish Class E airspace extending upward from 700 feet above the surface at Monhegan Island Heliport, Monhegan Island, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Monhegan Island Heliport, Monhegan Island, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Subsequent to publication of the Notice of Proposed Rulemaking, the FAA found the geographic coordinates of Monhegan Island Heliport were incorrect. This action corrects the error. These changes are necessary for continued safety and management of IFR operations in the area.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E,

Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ANE ME E5 Monhegan Island, ME [New]

Monhegan Island Heliport, ME
(Lat. 43°45′52″ N, long. 69°18′52″ W)

That airspace extending upward from 700 feet above the surface of the earth within a 6-mile radius of Monhegan Island Heliport.

Issued in College Park, Georgia, on July 12, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–15284 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1305

[Docket No. DEA–662]

RIN 1117–AB61

Clarification Regarding the Supplier's DEA Registration Number on the Single-Sheet DEA Form 222

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Direct final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is issuing this direct final rule to amend DEA regulations to clarify that either the purchaser or the supplier may enter a supplier's DEA registration number on the Single-Sheet DEA Form 222.

DATES: This direct final rule is effective on October 18, 2021 without further action, unless significant adverse comment is received by August 19, 2021. If the Drug Enforcement Administration (DEA) receives significant adverse comment, it will publish a withdrawal of the rule in the **Federal Register** by September 20, 2021. Electronic comments must be submitted, and written comments must be postmarked, on or before August 19, 2021. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–662'' on all correspondence, including any attachments.

Electronic comments: DEA encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

Paper comments: Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–2265.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

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

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

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

An electronic copy of this direct final rule is available at *http://www.regulations.gov* under FDMS Docket ID: DEA–2020–0036.

Legal Authority and Background

The Controlled Substances Act (CSA) grants the Attorney General authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances; maintenance and submission of records and reports; and for the efficient execution of his statutory functions.[1] The CSA further authorizes the Attorney General to promulgate rules and regulations relating to the registration and control of importers and exporters of controlled substances.[2] The Attorney General has delegated this authority to the Administrator of DEA.[3]

The DEA Form 222 is used by DEA registrants to order schedule I and II controlled substances. In September 2019, DEA issued a final rule to implement a new single-sheet DEA Form 222 (single-sheet form) to replace the three-part carbon copy form (triplicate form), and allowed a transition period for use of existing stocks of the triplicate form until October 30, 2021 (or earlier if the registrant exhausts its supply).[4] Both the single-sheet and triplicate forms require certain information to be completed

[1] 21 U.S.C. 821, 827, 871(b).

[2] 21 U.S.C. 958(f).

[3] 28 CFR 0.100(b).

[4] New Single-Sheet Format for U.S. Official Order Form for Schedule I and II Controlled Substances (DEA Form 222) 84 FR 51368, Sept. 30, 2019.

pertaining to the supplier (*i.e.,* supplier name, address, and DEA registration number). The final rule set forth a procedure for the supplier filling DEA Forms 222 and providing its DEA registration number, among other things, and specifically provides that ''[a] supplier may fill the order . . . and must record on the original DEA Form 222 its DEA registration number.'' [5]

As previously noted, both the single-sheet and triplicate forms require the supplier's DEA registration number to be recorded. On the triplicate form, the field for the supplier's DEA registration number is located within a section titled ''TO BE FILLED IN BY SUPPLIER.'' However, on the single-sheet form, the field for the supplier's DEA registration number is located directly above a section titled ''TO BE FILLED IN BY PURCHASER.'' This has led to some confusion regarding who must record the supplier's DEA registration number on the single-sheet DEA Form 222.

Clarification on Completing the Supplier's DEA Registration Number Information

Since the publication of the single-sheet final rule, DEA has received inquiries regarding whether the purchaser or the supplier should enter the supplier's DEA registration number on the single-sheet form. DEA is amending its regulations to clarify that either the purchaser or the supplier may fill in this information. DEA also notes that the single-sheet form has been slightly modified—and approved by the Office of Management and Budget (OMB) in July 2020—by the addition of a line that separates the field for the supplier's DEA registration number from the field titled, ''PART 2: TO BE FILLED IN BY PURCHASER,'' in which the supplier's business name and address are recorded. This revised version of the form is being provided to any registrant requesting paper DEA Forms 222 pursuant to 21 CFR 1305.11.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from prior public notice provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), if it is determined to be unnecessary, impracticable, or contrary to the public interest. This rule clarifies that either the purchaser or supplier may enter the supplier's DEA registration number on the single-sheet DEA Form 222. Furthermore, DEA notes that this rule does not impose any new requirements as the supplier's DEA registration number is already required to be entered on the single-sheet form.[6] Therefore, DEA concludes it is unnecessary to issue this rule for public notice and comment, prior to issuing a final rule, and finds good cause to exempt this rule from the provisions of the APA under 5 U.S.C. 553(b)(B). For the same reasons, DEA has determined that this rule is suitable for direct final rulemaking. Although DEA does not expect to receive significant adverse comment on this rule, DEA has decided to allow for public comment. If DEA receives significant adverse comment within 30 days of the publication of this final rule, it will publish a timely withdrawal of the rule in the **Federal Register**.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This direct final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this direct final rule is not a significant regulatory action as defined by E.O. 12866, section 3(f).

Analysis of Benefits and Costs

DEA has analyzed the economic impact of this direct final rule and estimates the annual cost to be $0. This rule is minor and technical in nature, merely clarifying existing DEA regulations and requirements. Current regulations require the supplier's DEA registration number to be entered on the single-sheet DEA Form 222. Thus, this rule does not impose any new requirement and there is no new cost or labor burden associated with this rule.

While this direct final rule will result in no economic impact on registrants or DEA, DEA believes there are certain benefits of this rule. This rule is expected to enhance clarity as well as flexibility, by clearly stating that either the purchaser or the supplier may enter the supplier's DEA registration number on the DEA Form 222. While DEA does not have a basis to quantify the benefits, DEA believes the benefits are real and welcomed by the affected registrants.

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

This direct final rule does not have federalism implications warranting the application of E.O. 13132. The direct 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or other laws. As explained above, DEA determined that there is good cause to exempt this direct final rule from notice and comment. Consequently, the RFA does not apply to this direct final rule.

Unfunded Mandates Reform Act of 1995

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

[5] 21 CFR 1305.13(b).

[6] 21 CFR 1305.13(b).

Paperwork Reduction Act of 1995

This direct final rule does not impose a new collection requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). This direct final rule does not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. Although the direct final rule is applicable to an existing collection of information, the rule merely clarifies certain recordkeeping requirements that already apply to registrants using DEA Form 222 and therefore does not impose any new collection of information requirement. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

OIRA has determined that this direct final rule is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA), 5 U.S.C. 804(2). This direct final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, DEA is submitting a copy of this direct final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1305

Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1305 as follows:

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

■ 2. In § 1305.12, add a sentence to the end of paragraph (c) to read as follows:

§ 1305.12 Procedure for executing DEA Forms 222.

* * * * *

(c) * * * The supplier's DEA registration number may be entered by the purchaser or the supplier.

* * * * *

■ 3. In § 1305.13, revise the first sentence of paragraph (b) to read as follows:

§ 1305.13 Procedure for filling DEA Forms 222.

* * * * *

(b) A supplier may fill the order, if possible and if the supplier desires to do so, and must record on the original DEA Form 222 its DEA registration number (if not previously entered by the purchaser) and the number of commercial or bulk containers furnished on each item and the date on which containers are shipped to the purchaser. * * *

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2021–15323 Filed 7–19–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2020–0004]

RIN 1218–AD36

Occupational Exposure to COVID–19; Emergency Temporary Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The period for submitting public comments is being extended by 30 days to allow stakeholders interested in the emergency temporary standard (ETS) additional time to review the ETS and collect information and data necessary for comment.

DATES: The comment period for the interim final rule (ETS) that was published June 21, 2021, at 86 FR 32376, effective June 21, 2021, is extended. Comments on any aspect of the ETS and whether the ETS should be adopted as a permanent standard must be submitted by August 20, 2021.

ADDRESSES:

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2020–0004, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2020–0004). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA–2020–0004 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number (OSHA–2020–0004) plus a unique four-digit code (*e.g.,* OSHA–2020–0004–1033). When citing materials in the docket, OSHA includes the term ''Document ID'' followed by the last four digits of the Document ID number (*e.g.,* Document ID 1033). Document ID numbers are used to identify docket materials in this notice. However, OSHA identified supporting information in the ETS (86 FR 32376) by author name and publication year, when appropriate. The agency has also provided a spreadsheet in the docket that identifies the full Document ID for each reference cited in the ETS (see Document ID 1042). This information can be used to search for a supporting document in the docket at *http://www.regulations.gov.* Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For technical inquiries: Contact Andrew Levinson, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION: On June 21, 2021, OSHA issued an ETS to protect healthcare and healthcare support service workers from occupational exposure to COVID–19 in settings where people with COVID–19 are reasonably expected to be present.

The public comment period for the ETS was to close on July 21, 2021, 30 days after publication of the ETS. However, OSHA received requests from several stakeholders to extend the comment period by an additional 30 days, through August 20, 2021 (Document ID 1078; 1079; 1080; 1082; 1083; 1086; 1088; 1089). These stakeholders explained that they need additional time to thoroughly review the ETS, gather input from members, and prepare informed comments (see, *e.g.,* Document ID 1078; 1079; 1080; 1082; 1083; 1086; 1087; 1088; 1089).

OSHA agrees to an extension and believes a 30-day extension of the public comment period is sufficient and appropriate in order to address these stakeholder requests. Therefore, the public comment period will be extended until August 20, 2021.

Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document pursuant to the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8–2020 (85 FR 58393 (Sept. 18, 2020)); 29 CFR part 1911; and 5 U.S.C. 553.

Signed at Washington, DC, on July 12, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–15326 Filed 7–19–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0211]

RIN 1625–AA08

Special Local Regulations, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Choptank River. This action is necessary to provide for the safety of life on navigable waters located at Cambridge, MD, during a high-speed power boat racing event on July 24, 2021 and July 25, 2021. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Event Patrol Commander.

DATES: This rule is effective from 9 a.m. July 24, 2021, through 6 p.m. on July 25, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0211 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Samuel M. Danus, Waterways Management Division, U.S. Coast Guard; telephone 410–576–2519, email *Samuel.M.Danus@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On February 22, 2021, the Kent Narrows Racing Association of Chester, MD, notified the Coast Guard that it will be conducting the Thunder on the Choptank from 9:30 a.m. to 5:30 p.m. on July 24, 2021, and those same hours on July 25, 2021. The high-speed power boat racing event consists of approximately 50 participating inboard and outboard hydroplane and runabout race boats of various classes, 16 to 21 feet in length. The vessels will be competing on a designated, marked 1-mile oval course located in the Choptank River in a cove located between Hambrooks Bar and the shoreline at Cambridge, MD. Details of the event were provided to the Coast Guard on April 19, 2021. In response, on June 7, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Choptank River, Cambridge, MD (86 FR 30221). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 22, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the regulated area is needed prior to the start of the event on July 24, 2021, in order to safeguard the public from hazards from power boat racing, including risks of injury or death resulting from near or actual contact among participant vessels, spectator vessels or waterways users if normal traffic were to interfere with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to operate within certain waters of the Choptank River at Cambridge, MD. The purpose of this rulemaking is to protect event participants, spectators, and transiting vessels on certain waters of Choptank River before, during, and after the scheduled event

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 7, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The COTP Maryland-National Capital Region is establishing special local regulations from 9 a.m. on July 24, 2021 until 6 p.m. on July 25, 2021. The special local regulations will be enforced from 9 a.m. to 6 p.m. on July 24th and those same hours on July 25th. The regulated area will cover all navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude

38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W; thence west along the Hambrooks Bay breakwall to latitude 38°35′33″ N, longitude 076°05′17″ W; thence south and east along the shoreline to and terminating at the point of origin in Dorchester County, MD.

This regulation provides additional information about areas within the regulated area, and the restrictions that apply to mariners. These areas include a ''Race Area,'' ''Buffer Area'' and ''Spectator Area''.

The duration of the rule and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat races, scheduled from 9:30 a.m. until 5:30 p.m. on July 24, 2021, and July 25, 2021. The COTP and Coast Guard Event Patrol Commander (PATCOM) will have the authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Thunder on the Choptank participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area while the rule is being enforced. Vessel operators could request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while within the regulated area. Vessels will be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels will be allowed to enter the race area. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the location, size and duration of the regulated area, which impacts a portion of the Choptank River for a total of 18 hours. The regulated area extends across the entire width of the Choptank River between Cambridge, MD and Trappe, MD. The majority of the vessel traffic through this area consists of passenger, recreational and fishing vessels transiting along the Choptank River or into Cambridge Creek. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule allows vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 for 18 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0211 to read as follows:

§ 100.501T05–0211 Special Local Regulations, Choptank River, Cambridge, MD.

(a) *Locations.* All coordinates reference Datum NAD 1983. (1) *Regulated area.* All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude 38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W; thence west along the Hambrooks Bay breakwall to latitude 38°35′33″ N, longitude 076°05′17″ W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area:

(2) *Race Area.* Located within the waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD. The Race Area is within the Buffer Area.

(3) *Buffer Area.* All navigable waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N, longitude 076°04′50.1″ W; thence southeast to latitude 38°35′17.7″ N, longitude 076°04′29″ W; thence south to latitude 38°35′01″ N, longitude 076°04′29″ W; thence west to the shoreline at latitude 38°35′01″ N, longitude 076°04′41.3″ W.

(4) *Spectator Area.* All navigable waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35′28″ N, longitude 076°04′50″ W; thence northeast to latitude 38°35′30″ N, longitude 076°04′47″ W; thence southeast to latitude 38°35′23″ N, longitude 076°04′29″ W; thence southwest to latitude 38°35′19″ N, longitude 076°04′31″ W; thence northwest to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

Buffer Area is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Course Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a course area within the regulated area defined by this section.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the ''Thunder on the Choptank'' powerboat races, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special Local Regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation

for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter the buffer area or race area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 6 p.m. on July 24, 2021 and from 9 a.m. to 6 p.m. on July 25, 2021.

Dated: July 12, 2021.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2021–15124 Filed 7–19–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0511]

RIN 1625–AA00

Safety Zone; Waterview Loft Fireworks, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters near Waterview Lofts in the Detroit River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards during a firewroks event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Detroit.

DATES: This rule is effective from 9 p.m. through 10 p.m. on August 14, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0511 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Tracy Girard, U.S. Coast Guard Sector Detroit; (313) 568–9564, *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so is impracticable. The Coast Guard did not receive notice of the fireworks with sufficient time to provide notice and opportunity for public comment. We must establish this safety zone by August 14, 2021 in order to protect the public form the hazards associated with a fireworks event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to protect from potential safety hazards associated with the fireworks display are effectively mitigated.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks starting August 14, 2021, will be a safety concern for anyone within a 150-yard radius of the fireworks location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while fireworks show is being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 9 p.m. through 10 p.m. on August 14, 2021. The safety zone will cover all navigable waters within a 150 yards radius of location 42°19.547′ N 083°02.42′ W (WGS 84) which the expected location of the fireworks barge in the vicinity of the Waterview Lofts in the Detroit River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks show is being displayed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Detroit River for less than an hour during the night when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less then an hour that will prohibit entry within 150 yards radius of 42°19.547′ N 083°02.42′ W (WGS 84). It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0511 to read as follows:

§ 165.T09–0511 Safety Zones; Waterview Loft Fireworks, Detroit River, Detroit, MI.

(a) *Location.* This safety zone is established to encompass all U.S. navigable waters of the Detroit River within a 150-yard radius of 42°19.547′ N 083°02.42′ W (WGS 84).

(b) *Enforcement period.* The safety zone described in paragraph (a) will be enforced from 9 p.m. through 10 p.m. on August 14, 2021.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the COTP Detroit or a designated on-scene representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP Detroit or a designated on-scene representative.

(3) The ''on-scene representative'' of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a federal, state, or local law enforcement officer designated by the COTP Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones must contact the COTP Detroit or an on-scene representative to obtain permission to do so. The COTP Detroit or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or an on-scene representative.

Dated: July 12, 2021.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2021–15144 Filed 7–19–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0537]

Safety Zone; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Events at Lakeshore State Park

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a swim event taking place at Lakeshore State Park in Milwaukee, WI from August 5 through August 8, 2021, in order to provide for the safety of life on navigable waterways during this event. During the enforcement period, no vessel may enter, move within, or exit the safety zone without permission from the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in row (2) of Table 4 to 33 CFR 165.929 will be enforced from 10 a.m. on August 5, 2021, through 5 p.m. on August 8, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce to Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone listed in 33 CFR 165.929, Table 4(2) for a swimming event taking place within the Lakeshore State Park Lagoon from 10 a.m. on August 5, 2021 through 5 p.m. on August 8, 2021. This action is being taken to provide for the safety of life on navigable waterways during this 3-day swim event. The safety encompasses waters of the Lakeshore State Park Lagoon and the adjacent harbor.

Pursuant to 33 CFR 165.23 and 165.929, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Lake Michigan via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Lake Michigan or a designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.929 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Lake Michigan determines that the safety zone need not be enforced for the full duration stated in this notice he may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: July 12, 2021.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2021–15133 Filed 7–19–21; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 86, No. 136
Tuesday, July 20, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0508; Project Identifier MCAI–2021–00070–T]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–03–03, which applies to certain ATR–GIE Avions de Transport Régional Model ATR72 airplanes. AD 2021–03–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–03–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 3, 2021.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0508.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0508; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0508; Project Identifier MCAI–2021–00070–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–03–03, Amendment 39–21406 (86 FR 11103, February 24, 2021) (AD 2021–03–03), for certain ATR–GIE Avions de Transport Régional Model ATR72 airplanes. AD 2021–03–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–03–03 to address fatigue cracking and damage in principal structural elements, which

could result in reduced structural integrity of the airplane.

Actions Since AD 2021–03–03 Was Issued

Since the FAA issued AD 2021–03–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0020, dated January 15, 2021 (EASA AD 2021–0020) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR72 airplanes. EASA AD 2020–0020 refers to ATR ATR72 Time Limits Document. Revision 18, dated October 9, 2020. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after October 9, 2020, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0020 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2021–03–03. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0020 described previously, as incorporated by reference. Any differences with EASA AD 2021–0020 are identified as exceptions in the regulatory text of this AD.

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

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0020 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0020 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2021–0020 that is required for compliance with EASA AD 2021–0020 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0508 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

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

Costs of Compliance

The FAA estimates that this proposed AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–03–03 to be $7,650 (90 work-hours × $85 per work-hour).

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by

■ a. Removing Airworthiness Directive (AD) 2021–03–03, Amendment 39–21406 (86 FR 11103, February 24, 2021), and

■ b. Adding the following new AD:

ATR–GIE Avions de Transport Régional: Docket No. FAA–2021–0508; Project Identifier MCAI–2021–00070–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 3, 2021.

(b) Affected ADs

This AD replaces AD 2021–03–03, Amendment 39–21406 (86 FR 11103, February 24, 2021) (AD 2021–03–03).

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 9, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2021–03–03, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before December 12, 2019, except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0173, dated August 5, 2020 (EASA AD 2020–0173). Accomplishing the maintenance or inspection program revision required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0173, With Revised Exceptions

This paragraph restates the requirements of paragraph (l) of AD 2021–03–03, with revised exceptions.

(1) Where EASA AD 2020–0173 refers to its effective date, this AD requires using March 31, 2021 (the effective date of AD 2021–03–03).

(2) The requirements specified in paragraphs (1) and (3) of EASA AD 2020–0173 do not apply to this AD.

(3) Paragraph (4) of EASA AD 2020–0173 specifies revising ''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (4) of EASA AD 2020–0173 within 90 days after March 31, 2021 (the effective date of AD 2021–03–03).

(4) Except as provided by paragraph (2) of EASA AD 2020–0173, the initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2020–0173 is at the applicable ''associated thresholds'' specified in paragraph (4) of EASA AD 2020–0173, or within 90 days after March 31, 2021 (the effective date of AD 2021–03–03), whichever occurs later.

(5) The provisions specified in paragraphs (5) and (6) of EASA AD 2020–0173 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2020–0173 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (m) of AD 2021–03–03, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0173.

(j) New Maintenance Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0020, dated January 15, 2021 (EASA AD 2021–0020). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2021–0020

(1) Where EASA AD 2021–0020 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0020 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0020 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) Except as provided by Note 1 of EASA AD 2021–0020, the initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0020 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0020, or within 90 days after the

effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0020 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0020 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0020.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(n) Related Information

(1) For information about EASA AD 2021–0020, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0508.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

Issued on June 17, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15333 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0572; Project Identifier MCAI–2021–00391–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model A119 and AW119 MKII helicopters. This proposed AD was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. This proposed AD would require repetitive inspections of affected torque tube assemblies for any deficiency and corrective action if necessary; and the replacement of any affected part with a serviceable part, which is terminating action for the repetitive inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 3, 2021.

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

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

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view the EASA material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of the EASA material at the FAA, call (817) 222–5110. EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0572; Project Identifier MCAI–2021–00391–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0096, dated March 31, 2021 (EASA AD 2021–0096), to correct an unsafe condition for Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation, Model A119 and AW119MKII helicopters, all serial numbers.

This proposed AD was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. Investigations revealed that these events were due to an erroneous manufacturing process, affecting certain collective torque tube assemblies. The affected batch numbers were identified. Leonardo S.p.a. Model A119 helicopters are similar in design and may be subject to the same unsafe condition revealed on the Model AW119 MKII helicopters. The FAA is proposing this AD to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants. See EASA AD 2021–0096 for additional background information.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0096 requires repetitive inspections of the affected torque tube assemblies for any deficiency (*i.e.,* any play) by marking the torque tube assembly and the collar and applying specific loads to determine if there is any play; and replacement of any affected part that has any play with a serviceable part. EASA AD 2021–0096 also requires the eventual replacement of any affected part with a serviceable part, and specifies that replacement of an affected part on a helicopter constitutes terminating action for the repetitive inspections for that helicopter.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0096, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0096 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance EASA AD 2021–0096 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0096 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0096. Service information specified in EASA AD 2021–0096 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2021–0096 supersedes EASA AD 2019–0057, dated March 20, 2019 (EASA AD 2019–0057). The Group 1 helicopters identified in both EASA AD 2021–0096 and EASA AD 2019–0057 are helicopters with collective stick torque tube assemblies having part number (P/N) 109–0011–03–105 and batch number 823207 or earlier. Paragraph (1) of EASA AD 2021–0096 addresses Group 1 helicopters that have incorporated the actions required by paragraph (2) of EASA AD 2019–0057. The FAA did not issue an AD that corresponds to EASA AD 2019–0057, therefore, this proposed AD would require, for Group 1 helicopters, an initial inspection of the torque tube assembly within 50 hours time-in-service (TIS) after the effective date of the FAA AD and repetitive inspections thereafter at intervals not to exceed 100 hours TIS.

In addition, where paragraph (5) of EASA AD 2021–0096 specifies, for Group 1 helicopters, replacement of an affected part with a serviceable part ''within 36 months after April 3, 2019 [the effective date of EASA AD 2019–0057]'', for this proposed AD, the compliance time would be within 24 months after the effective date of the FAA AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 136 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170 per inspection cycle..	$0	$170 per inspection cycle.	$23,120 per inspection cycle.
Replacement	16 work-hours × $85 per hour = $1,360	9,928	$11,288	$1,535,168

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2021–0572; Project Identifier MCAI–2021–00391–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 3, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119 MKII helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control

(e) Unsafe Condition

This AD was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. The FAA is issuing this AD to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0096, dated March 31, 2021 (EASA AD 2021–0096).

(h) Exceptions to EASA AD 2021–0096

(1) Where EASA AD 2021–0096 refers to flight hours (FH), this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2021–0096 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1) and (2) of EASA AD 2021–0096 specify the compliance times for Group 1 helicopters to inspect the affected part, this AD requires an initial inspection within 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS.

(4) Where paragraph (5) of EASA AD 2021–0096 specifies, for Group 1 helicopters, replacement of an affected part with a serviceable part ''within 36 months after April 3, 2019 [the effective date of EASA AD 2019–0057],'' for this AD, that replacement must be done within 24 months after the effective date of this AD.

(5) Where the service information referenced in EASA AD 2021–0096 specifies to return a torque tube assembly to the manufacturer, this AD does not include that requirement.

(6) Where the service information referenced in EASA AD 2021–0096 specifies to contact the manufacturer ''in case of doubt'' regarding the batch number on a torque tube assembly, determining the batch number is required by this AD but contacting the manufacturer is not required.

(7) The ''Remarks'' section of EASA AD 2021–0096 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0096 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2021–0096, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on July 13, 2021.

Lance T. Gant, Director,

Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15299 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0517; Airspace Docket No. 21–ACE–15]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Newton-City-County Airport, Newton, KS. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Newton non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 3, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0517/Airspace Docket No. 21–ACE–15 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Newton-City-County Airport, Newton, KS, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0517/Airspace Docket No. 21–ACE–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E surface airspace at Newton-City-County Airport, Newton, KS by removing the Newton NDB and associated extensions from the airspace legal description;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (reduced from a 6.8-mile) radius of Newton-City-County Airport; removing the Newton NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Newton NDB which provided navigation information for the instrument procedures this airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designates as Surface Areas.

* * * * *

ACE KS E2 Newton, KS [Amended]

Newton-City-County Airport, KS
(Lat. 38°03′26″ N, long. 97°16′31″ W)

Within a 4.2-mile radius of Newton-City-County Airport.

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

* * * * *

ACE KS E5 Newton, KS [Amended]

Newton City-County Airport, KS
(Lat. 38°03′26″ N, long. 97°16′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Newton City-County Airport.

Issued in Fort Worth, Texas, on July 14, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–15301 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0050; FF09E21000 FXES11110900000 212]

RIN 1018–BF01

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the designated critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we propose to withdraw the January 15, 2021, final rule that would have excluded approximately 3.4 million acres of designated critical habitat for the northern spotted owl. Instead, we propose to revise the species' designated critical habitat by excluding approximately 204,797 acres (82,879 hectares) in Benton, Clackamas, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties, Oregon, under section 4(b)(2) of the Act as previously proposed. This proposed revision focuses only on exclusions under section 4(b)(2) of the Act; we are not proposing any other revisions to the northern spotted owl's critical habitat designation.

DATES: We will accept comments received or postmarked on or before September 20, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 3, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R1–ES–2020–0050, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the

Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail: Public Comments Processing, Attn: FWS–R1–ES–2020–0050, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the proposed critical habitat exclusions, maps and the coordinates or plot points or both of the subject areas are included in the administrative record and are available at *http://www.fws.gov/oregonfwo* and at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Ph.D., State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Portland, OR 97266; telephone 503–231–6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Comments previously submitted in response to our August 11, 2020, proposed revision to critical habitat for the northern spotted owl (85 FR 48487) do not need to be resubmitted. We will consider those previously submitted comments in our final rule. In addition, we considered comments submitted in response to our March 1, 2021, final rule (86 FR 11892) extending the effective date of the January 15, 2021, final rule (86 FR 4820; hereafter referred to as the ''January Exclusions Rule'') in our April 30, 2021, final rule extending the effective date of the January Exclusions Rule to December 15, 2021 (86 FR 22876). We have also taken these comments into account in this proposed rule. Parties who would like to have the comments they submitted in response to our March 1, 2021, rule reconsidered here should resubmit their comments in response to this proposed rule.

We particularly seek comments concerning:

(1) The reasons why we should or should not withdraw the January Exclusions Rule, which would exclude approximately 3.4 million acres of designated critical habitat for the northern spotted owl.

(2) The reasons why we should or should not exclude areas as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information regarding:

(a) The related benefits of including or excluding specific areas;

(b) Whether the benefits of exclusion outweigh those of inclusion; and

(c) Whether the exclusion will not result in the extinction of the species.

(3) Any probable economic, national security, or other relevant impacts of the designation on areas that are being considered for exclusion.

(4) Any additional areas, including Federal lands, that should be considered for exclusion under section 4(b)(2) of the Act and any probable economic, national security, or other relevant impacts of excluding those areas. If you think we should exclude any additional areas, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

(5) Specifically, any National Forest System lands managed by the U.S. Department of Agriculture's (USDA's) Forest Service (USFS) that should be considered for exclusion under section 4(b)(2) of the Act and any probable economic, national security, or other relevant impacts of excluding those areas.

(6) Any significant new information or analysis concerning economic impacts that we should consider in the balancing of the benefits of inclusion versus the benefits of exclusion in the final determination.

(7) Whether and how ongoing litigation challenging the Bureau of Land Management's (BLM) management of Oregon and California Railroad Revested Lands (''O&C lands'') should be addressed in our final rule. See the *BLM Harvest Land Base* section below for more information regarding this litigation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a final determination, as section 4(b)(2) of the Act directs that designations or revisions to critical habitat must be made on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final revision may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final revision may not exclude all areas proposed, or it may exclude additional areas if we find that the benefits of exclusion outweigh the benefits of inclusion, or it may remove areas if we find that the area does not meet the definition of ''critical habitat.'' Any changes made in the final rule should be of a type that could have been reasonably anticipated by the public. Changes in a final revision would be reasonably anticipated if: (1) We base them on the best scientific and commercial data available and take into consideration the relevant impacts; (2) we articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion; and (3) we base removal of designation of any areas on a determination either that the area does not meet the definition of ''critical habitat'' or that the benefits of excluding

the area will outweigh the benefits of including it in the designation.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On December 4, 2012, we published in the **Federal Register** (77 FR 71876) a final rule designating revised critical habitat for the northern spotted owl and announcing the availability of the associated economic analysis and environmental assessment. For additional information on previous Federal actions concerning the northern spotted owl, refer to that December 4, 2012, final rule.

In 2013, the December 4, 2012, revised critical habitat designation was challenged in court in *Carpenters Industrial Council et al.* v. *Bernhardt et al.,* No. 13–361–RJL (D.D.C.) (now retitled *Pacific Northwest Regional Council of Carpenters et al.* v. *Bernhardt et al.* with the substitution of named parties). In 2015, the district court ruled that the plaintiffs lacked standing. The D.C. Circuit reversed and remanded, and the case remained pending before the district court.

On April 13, 2020, we entered into a stipulated settlement agreement resolving the litigation. The settlement agreement was approved and ordered by the court on April 26, 2020. Under the terms of the settlement agreement, the Service agreed to submit to the **Federal Register***:* By July 15, 2020, a proposed revised critical habitat rule that identifies proposed exclusions under section 4(b)(2) of the Act, and on or before December 23, 2020, a final revised critical habitat rule, or withdrawal of the proposed rule if the Service determines not to exclude any areas from the designation under section 4(b)(2) of the Act.

On August 11, 2020 (85 FR 48487), we published in the **Federal Register** a proposed revised critical habitat rule to exclude 204,653 acres (82,820 hectares) within 15 counties in Oregon under section 4(b)(2) of the Act. (In this proposed rule, we propose to exclude 204,797 acres (82,879 hectares) within the same 15 counties in Oregon. The difference in the proposed exclusions from 204,653 acres to 204,797 acres is the result of a discrepancy that we later identified in our acreage calculations.) We opened a 60-day comment period on the August 11, 2020, proposed rule, which closed on October 13, 2020. On January 15, 2021, we published in the **Federal Register** the January Exclusions Rule (86 FR 4820), excluding approximately 3,472,064 acres (1,405,094 hectares) within 45 counties in Washington, Oregon, and California under section 4(b)(2) of the Act. Our August 11, 2020, proposed rule (85 FR 48487) and our January Exclusions Rule met the stipulations of the settlement agreement.

The initial effective date of the January Exclusions Rule was March 16, 2021. On March 1, 2021, we extended the effective date of the January Exclusions Rule to April 30, 2021 (86 FR 11892). At that time, we also opened a 30-day comment period, inviting comments on the impact of the delay of the effective date of the January Exclusions Rule, as well as comments on issues of fact, law, and policy raised by that final rule. After considering comments received in response to our March 1, 2021, final rule delaying the effective date, on April 30, 2021, we again extended the effective date of the January Exclusions Rule to December 15, 2021 (86 FR 22876).

Review and Reconsideration of the January 15, 2021, Final Rule

In our March 1, 2021, final rule (86 FR 11892) extending the effective date of the January Exclusions Rule, we acknowledged that the additional areas excluded in that final rule (more than 3.2 million acres) and the rationale for the additional exclusions were not presented to the public for notice and comment. We noted that several members of Congress expressed concerns regarding the additional exclusions, among other concerns, which they identified in a February 2, 2021, letter to the Inspector General of the Department of the Interior seeking review of the January 15, 2021, final rule. We also noted we received at least two notices of intent to sue from interested parties regarding allegations of procedural defects, among other potential defects, with respect to our rulemaking for the final critical habitat exclusions.

We received a number of comments in response to our March 1, 2021, final rule wherein we invited public comment on (1) any issues or concerns about whether the rulemaking process was procedurally adequate; (2) on whether the Secretary's conclusions and analyses in the January Exclusions Rule were consistent with the law, and whether the Secretary properly exercised his discretion under section 4(b)(2) of the Act in excluding the areas at issue from critical habitat; and (3) whether, and with what supporting rationales, the Service should reconsider, amend, rescind, or allow to go into effect the January Exclusions Rule. Commenters identified potential defects in the January Exclusions Rule—both procedural and substantive. We summarized these comments in our April 30, 2021, final rule delaying the effective date of the January Exclusions Rule until December 15, 2021 (86 FR 22876).

Based on these comments and concerns, we reconsidered the rationale and justification for the large exclusion of critical habitat identified in the January Exclusions Rule. As a result, the Service now concludes that there was insufficient rationale and justification to support the exclusion of approximately 3,472,064 acres (1,405,094 hectares) from critical habitat for the northern spotted owl, an exclusion that removed an additional approximately 3.2 million acres from designation as compared with the August 2020 proposed rule. Our reexamination of the January Exclusions Rule identified defects and shortcomings, which we summarize in the following paragraphs.

As a procedural matter, we find it would be necessary and appropriate to solicit and consider additional notice and an opportunity to comment on the exclusions made final in the January Exclusions Rule before those exclusions could go into effect. The January Exclusions Rule excluded substantially more acres (36 percent of designated critical habitat versus the 2 percent proposed in the August 2020 proposed revised rule). The January Exclusions Rule also excluded critical habitat in a much broader geographic area than proposed, including adding exclusions in Washington and California when only exclusions in Oregon had been included in the proposed rule. The January Exclusions Rule also included new rationales for the exclusions that were not identified in the August 11, 2020, proposed revised critical habitat rule (85 FR 48487). These included generalized assumptions about the economic impact of both the listing of the northern spotted owl and the

subsequent designation of areas as critical habitat; the stability of local economies and protection of the local custom and culture of counties; the presumption that exclusions would increase timber harvest and result in longer cycles between harvest, that timber harvest designs would benefit the northern spotted owl, and that the increased harvest would reduce the risk of wildfire; and that northern spotted owls may use areas that have been harvested if some forest structure was retained. The public did not have an opportunity to review or comment on these new rationales.

Additionally, the January Exclusions Rule excluded all of the Oregon and California Railroad Revested Lands (O&C lands) managed by BLM and USFS. The O&C lands were revested to the Federal Government under the Chamberlin-Ferris Act of 1916 (39 Stat. 218). The Oregon and California Revested Lands Sustained Yield Management Act of 1937 (Pub. L. 75–405) (O&C Act) addresses the management of O&C lands. The January Exclusions Rule failed to reconcile a change in our prior findings that areas designated on lands managed under the O&C Act were essential to the conservation of the species. The Service previously concluded in our 2012 critical habitat rule (77 FR 71876) that the O&C lands and other lands managed as ''matrix'' lands for timber production significantly contribute to the conservation of the northern spotted owl, that recovery of the owl cannot be attained without the O&C lands, and that our modeling showed that not including some of these O&C lands in the critical habitat network resulted in a significant increase in the risk of extinction.

In response to our March 1, 2021, rule (86 FR 11892) extending the effective date of the January Exclusions Rule, some commenters stated that we provided sufficient notice and an opportunity for the public to be aware of the potential for the expansion of the exclusions from the proposed to final rules. Industry groups asserted that the August 11, 2020, proposed revised critical habitat rule (85 FR 48487) made clear that additional exclusions were being considered, in part, based on our request for information on additional exclusions we should consider (AFRC 2021, pp. 5–6). In contrast, many other commenters objected to a lack of notice and opportunity to comment on the significant changes. These included comments from the newly impacted State fish and wildlife agencies (Washington Department of Fish and Wildlife 2021, California Department of Fish and Wildlife 2021). In order to ensure a robust opportunity for public input on the changes, we are erring on the side of transparency. If we were proposing to implement the January Exclusions Rule, we would open a public comment period on that rule and consider that feedback before deciding to implement the rule. Based on our review, however, we are now proposing to withdraw the January Exclusions Rule, prior to its implementation, due to a number of concerns that the exclusions would be inconsistent with the conservation purposes of the Act as we summarize below.

First, the large additional exclusions made in the January Exclusions Rule were premised on inaccurate assumptions about the status of the owl and its habitat needs particularly in relation to barred owls. The large additional exclusions were based in part on an assumption that barred owl control is the fundamental driver of northern spotted owl recovery, when in fact the best scientific data indicate that protecting late-successional habitat also remains critical for the conservation of the spotted owl as well (FWS 2020, p. 83).

In addition, in concluding that the exclusions of the January Exclusions Rule will not result in the extinction of the northern spotted owl (a finding necessary for any section 4(b)(2) exclusions) the January Exclusions Rule relied, in part, upon a large-scale barred owl removal program that is not yet in place. The Service is in the process of developing a barred owl management strategy, but it is premature to conclude that a barred owl management plan will be implemented. Considerable economic, logistical, social, and legal issues must be addressed prior to implementation of such a strategy.

Since completion of the recovery plan for the northern spotted owl (FWS 2011), the Service has worked closely with Federal and State land managers to minimize or avoid impacts to extant spotted owls due to timber harvest, while at the same time carrying out the barred owl removal experiment (Wiens *et al.* 2021) and initiating development of a barred owl management program. This approach has allowed for some timber harvest to proceed under State and Federal land management plans (*e.g.,* BLM's 2016 Resource Management Plans in western Oregon (BLM RMPs)) while minimizing impacts to long-term spotted owl recovery prospects. Potential timber harvest on the critical habitat that would be excluded in the January Exclusions Rule would far exceed the level of impact to spotted owls that the Service anticipated in those land management plans. Thus, it is premature to rely solely on an anticipated barred owl management program to offset the potential loss of millions of acres of spotted owl critical habitat over time or to conclude it would not result in the extinction of the subspecies.

Second, the January Exclusions Rule undermined the biological redundancy of the critical habitat network by excluding large areas of critical habitat across the designation and did not address the ability of the remaining units and subunits to function in that network. The 2012 critical habitat designation (77 FR 71876) provided for biological redundancy in northern spotted owl populations and habitat by maintaining sufficient habitat on a landscape level in areas prone to frequent natural disturbances, such as the drier, fire-prone regions of its range (Noss *et al.* 2006, p. 484; Thomas *et al.* 2006, p. 285; Kennedy and Wimberly 2009, p. 565).

In the development of habitat conservation networks generally, the intent of spatial redundancy is to increase the likelihood that the network and populations can sustain habitat losses by inclusion of multiple populations unlikely to be affected by a single disturbance event. This redundancy is essential to the conservation of the northern spotted owl because disturbance events such as fire can potentially remove large areas of habitat with negative consequences for northern spotted owls. This redundancy can also allow for a relatively small amount of human-caused disturbance such as timber harvest without jeopardizing the species or adversely modifying its critical habitat, provided that disturbance is carefully planned and evaluated within the appropriate temporal and spatial context such as projects consistent with BLM's 2016 RMPs. The modeling and evaluation process used by the Service in our 2012 final critical habitat rule (77 FR 71876) addresses spatial redundancy at two scales: By (1) making critical habitat subunits large enough to support multiple groups of owl sites; and (2) distributing multiple critical habitat subunits within a single geographic region. This approach was particularly the case in the fire-prone Klamath and Eastern Cascades portions of the range. This increased habitat redundancy also provides for the conservation of northern spotted owls as they face growing competition from barred owls.

The exclusions in the January Exclusions Rule also failed to consider the needs for connectivity between critical habitat units, particularly in

southern Oregon where the bulk of the additional areas were excluded in the January Exclusions Rule. Successful dispersal of northern spotted owls is essential to maintaining genetic and demographic connections among populations across the range of the species (FWS 2020, p. 24). Some subunits that were designated to provide this support were reduced in the January Exclusions Rule by over 50 to 90 percent. If these exclusions were implemented, these subunits would no longer provide the demographic support for which they were designated. Again, as described above, the Service anticipates and plans for a relatively small amount of human-caused and natural disturbance in these units, meted out over space and time in a manner that supports recovery over the long term. The January Exclusions Rule could lead to timber harvest that would greatly accelerate those impacts well beyond what was anticipated in the recovery plan for the northern spotted owl (FWS 2011) and various land management plans.

The January Exclusions Rule also overstates the conservation value of non-designated habitat for the owl on protected Federal lands such as national parks and designated wilderness areas. These Federal lands are generally protected from proposed Federal activities that would result in significant removal of suitable owl habitat, and so they may provide areas that can serve as refugia for northern spotted owls. These protected areas, however, are relatively small and widely dispersed across the range of the owl. They are disjunct from one another and cannot be relied on to sustain the species unless they are part of and connected to a wider reserve network as provided by the 2012 critical habitat designation (77 FR 71876). As discussed above, that network would be greatly diminished and fragmented by the January Exclusions Rule if implemented.

Third, under section 4(b)(2) of the Act, the Secretary cannot exclude areas from critical habitat if he or she finds, ''based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' The January Exclusions Rule relied upon a determination by the Secretary that the exclusions will not result in the extinction of the northern spotted owl based in part on a narrow interpretation of this requirement. In a memorandum to the Secretary (FWS 2021*a*), the Director suggested that the phrase in the Act ''will result in extinction'' requires the extinction outcome to be immediately determinative and proximal. However, critical habitat designations serve to identify those specific areas that are essential to the conservation of a species; ''conservation'' under the Act means improving the status of the listed species to the point at which the protections of the Act are no longer necessary, *i.e.,* the species is recovered. Species listed as threatened or endangered species are by definition likely to be in danger of extinction or already in danger of extinction, and our listing action affirms that they are likely to become extinct unless affirmatively conserved. While the language of section 4(b)(2) uses the phrase ''will result in extinction,'' we interpret that language within the context of the purpose of critical habitat designations and the purpose of the Act—such that exclusions under section 4(b)(2) that are reasonably certain to lead to the eventual extinction of the species are prohibited, not just exclusions that are immediate and directly caused by the exclusion.

A determination of immediate proximal extinction as a result of a critical habitat exclusion under section 4(b)(2) may be possible for the rarest and most imperiled of species, but it is less likely to be determined for many listed species, especially those that are long-lived or thinly dispersed over large geographic ranges. The northern spotted owl is both: Individual northern spotted owls can live up to 20 years, and they are widely distributed at low densities across three States. For example, if the bulk of the northern spotted owl's habitat were to be removed except for the portion that exists in national parks, one could reasonably conclude the subspecies would not go extinct immediately, say within 1 to 5 years. Individual northern spotted owls remaining in those parks scattered across the range might persist for one or a few generations (that is, greater than 20 years). However, the subspecies is still likely to go extinct in this scenario. Basic conservation biology principles and metapopulation dynamics predict that those remnant and now isolated northern spotted owl subpopulations would likely die off without regular genetic and demographic interaction with northern spotted owls from neighboring subpopulations.

Forces working against the persistence of these isolated subpopulations include genetic inbreeding and catastrophic stochastic events such as wildfire. Therefore, it is a reasonable scientific conclusion that the subspecies would go extinct under such conditions, but this extinction process will occur over decades as these forces manifest themselves and as long-lived individuals die off. The extinction would not occur immediately, as it might with rarer and more short-lived species, but eventual extinction is still a scientifically predictable outcome with a high likelihood of certainty. The Act requires us to use the best available science when applying the discretion afforded in section 4(b)(2), and this includes making a reasonable and defensible scientific interpretation of extinction risk that is relevant to the species under consideration. In this current proposal, we correct the previous misapplication of section 4(b)(2) extinction risk, which could not meet the Act's purpose of conserving listed species and the ecosystems on which they depend.

Further, the January Exclusions Rule did not consider that a reduction in habitat conservation, in concert with the impacts from the barred owl, will exacerbate and accelerate the risk of extinction as discussed in our recent 12-month finding and supporting documentation that the species is in decline and warrants reclassification as endangered (85 FR 81144)—that is, that the species is in danger of extinction throughout all or a significant portion of its range. The species has experienced rapid population declines and potential extirpation in Washington and parts of Oregon, is functionally extinct in British Columbia, and continues to exhibit similar declines in other parts of the range. Northern spotted owls are declining at a rate of 5.3 percent across their range and populations in Oregon and Washington have declined by over 50 percent, with some declining by more than 75 percent, since 1995 (Franklin et al. 2021). Franklin et al. (2021, p. 18) emphasizes the importance of maintaining northern spotted owl habitat, regardless of occupancy, in light of competition from barred owls to provide areas for recolonization and connectivity for dispersing northern spotted owls. The January Exclusions Rule, if implemented, would work at cross purposes with this recommendation.

Specifically, much of the areas excluded by the January Exclusions Rule are allocated by USFS and BLM as Late-Successional Reserves and managed for late-successional forest-dependent species, such as the northern spotted owl, in accordance with the Northwest Forest Plan (NWFP) (USFS and BLM 1994*a,* USFS and BLM 1994*b*) and the BLM RMPs (BLM 2016*a,* BLM 2016*b*). The NWFP and the BLM RMPs provide adequate landscape-scale conservation for the northern spotted

owl while allowing for relatively small areas of critical habitat to be harvested over time. If the January Exclusions Rule enabled subsequent habitat removal on these lands that is inconsistent with the current NWFP and BLM RMPs, as suggested in the January Exclusions Rule's identification of increased timber harvest as a benefit of exclusion, it would preclude the recovery of the northern spotted owl and result in the species' eventual extinction.

In sum, substantial issues have been raised that our January Exclusions Rule would preclude the conservation of the northern spotted owl, a species we recently found warrants reclassifying as an endangered species in danger of extinction throughout its range (85 FR 81144, December 15, 2020). Upon review and reconsideration as described above, the Service now proposes to withdraw the January Exclusions Rule and return to the original August 11, 2020, proposed exclusion of 204,797 acres (82,879 hectares) within 15 counties in Oregon (as adjusted from 204,653 acres (82,820 hectares) to correct a discrepancy in acreage calculations, as explained above under Previous Federal Actions). The proposed exclusion of these 204,797 acres is a scientifically sound application of the Service's discretionary authority under section 4(b)(2) of the Act. This exclusion, which is consistent with existing Federal land management plans and the recovery plan for the northern spotted owl (FWS 2011), provides sufficient habitat conservation for long-term northern spotted owl recovery while also allowing carefully considered timber harvest and other activities to proceed on portions of these Federal lands.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Our regulation at 50 CFR 424.02 also now defines the term ''habitat'' for the purposes of designating critical habitat only, as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species. This new regulatory definition has a narrow scope and would only be relevant if we were considering designating areas that are outside of the geographical area occupied at the time of listing. We did not consider including areas outside the geographical area occupied at the time of listing in this proposed revised rule; rather, we are proposing to exclude areas from it. Nonetheless, we have taken the opportunity provided by this proposed revision to review the existing designation for conformance with the new regulatory definition. All the areas within the designation of critical habitat are within the geographical area occupied at the time of listing and encompass forested areas with specific characteristics, described further below, which are the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not change land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. When a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, the Service identifies to the extent known, using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed,

upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will consider unoccupied areas to be essential only when a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

In our December 4, 2012, final rule (77 FR 71876) designating critical habitat, we determined that all units and subunits met the first prong of Act's definition of critical habitat of being within the geographical area occupied by the species at the time of listing. Our determination was based on the northern spotted owl's wide-ranging use of the landscape, and the distribution of known owl sites at the time of listing across the units and subunits designated as critical habitat. We recognize that, subsequent to listing, some areas within these units and subunits have at times not been used by individual northern spotted owls due to displacement by competition with the nonnative barred owl. However, we anticipate many of these areas will be used by individual northern spotted owls in the future if barred owl management is implemented and effective, as these areas currently or periodically contain the resources and conditions necessary to support one or more life processes of the owl.

At a finer scale within the occupied geographic area within some of these units and subunits, the forest mosaic contains some areas of younger forest that may not have been occupied at the time of listing. These areas were included in the designation to provide connectivity (physical and biological feature (PBF) 4—dispersal habitat) between occupied areas, room for population growth, and the ability to provide sufficient suitable habitat on the landscape for the owl in the face of natural disturbance regimes (*e.g.,* fire). These areas are essential for the conservation of the species; therefore, they meet the second prong in the Act's definition of critical habitat.

Our December 4, 2012, final rule (77 FR 71876) includes four PBFs (formerly referred to as primary constituent elements, or PCEs) specific to the northern spotted owl. In summary, PBF 1 is forest types that may be in early-, mid-, or late-seral stages and that support the northern spotted owl across its geographical range; PBF 2 is nesting and roosting habitat; PBF 3 is foraging habitat; and PBF 4 is dispersal habitat (see 77 FR 71876, December 4, 2012; pp. 72051–72052, for a full description of the PBFs). In areas occupied at the time of listing, not all of the designated critical habitat contains all of the PBFs, because not all life-history functions require all of the PBFs. Some subunits contain all PBFs and support multiple life processes, while some subunits may contain only PBFs necessary to support the species' particular use of those subunits as habitat. However, all of the areas occupied at the time of listing and designated as critical habitat support at least PBF 1, in conjunction with at least one other PBF. Thus, PBF 1 must always occur in concert with at least one additional PBF (*i.e.,* PBFs 2, 3, or 4) (77 FR 71876, December 4, 2012; p. 71908).

When determining critical habitat boundaries for the December 4, 2012, final rule, we made every effort to avoid including areas that lack physical or biological features for the northern spotted owl. Due to the limitations of mapping at fine scales, we were often not able to segregate these areas from areas shown as critical habitat on maps suitable in scale for publication within the Code of Federal Regulations (CFR). The following types of areas are not critical habitat because they cannot support northern spotted owl habitat and are not included in the 2012 designation: Meadows and grasslands, oak and aspen (*Populus* spp.) woodlands, and manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), and the land on which they are located. Thus, we included regulatory text in the December 4, 2012, final rule clarifying that these areas were not included in the designation even if they occur within the mapped boundaries of critical habitat (77 FR 71876, December 4, 2012; p. 72052).

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is the status analysis in the listing rule and other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Critical habitat designated at a particular point in time may not include all of the areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

The proposed exclusion of 204,797 acres (82,879 hectares) within 15 counties in Oregon as described in this

document does not change the majority of the December 4, 2012, final rule currently in effect. The only sections of the rule that published at 77 FR 71876 (December 4, 2012) that would change with this proposed revision are table 8 in the Exclusions discussion (pp. 71948–71949), the subunit maps related to the proposed exclusions (pp. 72057 2012;72058, 72062, 72065 2012;72067), and the index map of Oregon (p. 72054). The regulations concerning critical habitat have been revised and updated since 2012 (81 FR 7414, February 11, 2016; 84 FR 45020, August 27, 2019; 85 FR 81411, December 16, 2020; 85 FR 82376, December 18, 2020). Our December 4, 2012, designation of critical habitat for the northern spotted owl and the revisions proposed in this rule are in accordance with the requirements of the revised critical habitat regulations, with the exception of the use of the term ''primary constituent element'' (PCE) in the December 4, 2012, final rule; here, we use the term ''physical or biological feature'' (PBF), as noted above, in accordance with the updated critical habitat regulations. The primary constituent elements (PCEs) are, however, the physical and biological features (PBFs) as described in the revised regulations: They are essential to the conservation of the species, and they may require special management considerations or protection.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the Secretary determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In accordance with our recently finalized regulation at 50 CFR 17.90(a) regarding the application of section 4(b)(2) of the Act (85 FR 82376, December 18, 2020), based on the best information available regarding economic, national security, and other relevant impacts, in this proposed rule we identify the areas that the Service has reason to consider for exclusion and explain why they are proposed for exclusion. ''Economic impacts'' may include, but are not limited to, the economy of a particular area, productivity, jobs, and any opportunity costs arising from the critical habitat designation (such as those anticipated from reasonable and prudent alternatives that may be identified through a section 7 consultation) as well as possible benefits and transfers (such as outdoor recreation and ecosystem services). ''Other relevant impacts'' may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

We did not exclude areas from our December 4, 2012, final critical habitat designation (77 FR 71876) based on economic impacts, and we are not now proposing to exclude any areas solely on the basis of economic impacts. Refer to the December 4, 2012, rule (77 FR 71876) for a description of the purpose and process of evaluating the economic impacts that may result from a designation of critical habitat. The final economic analysis of the 2012 critical habitat designation for the northern spotted owl found the incremental effects of the designation to be relatively small due to the extensive conservation measures already in place for the species because of its listed status under the Act and because of the measures provided under the NWFP (USFS and BLM 1994) and other conservation programs (IEc 2012, pp. 4–32, 4–37). Thus, we concluded that the future probable incremental economic impacts were not likely to exceed $100 million in any single year, and impacts that are concentrated in any geographic area or sector were not likely as a result of designating critical habitat for the northern spotted owl. The incremental effects included: (1) An increased workload for action agencies and the Service to conduct reinitiated section 7 consultations for ongoing actions in newly designated critical habitat (areas proposed for designation that were not already included within the extant designation); (2) the cost to action agencies of including an analysis of the effects to critical habitat for new projects occurring in occupied areas of designated critical habitat; and (3) potential project alterations in areas where owls are not currently present within designated critical habitat.

Although we considered the incremental impact of administrative costs to Federal agencies associated with consulting on critical habitat under section 7 of the Act, economic impacts are not the primary reason for the exclusions we are proposing in this document. See the December 4, 2012, final rule for a summary of the final economic analysis and our consideration of economic impacts (77 FR 71876; pp. 71878, 71945–71947, 72046–72048). Our critical habitat regulations require that at the time of publication of a proposed rule to designate critical habitat, the Secretary make available for public comment a draft economic analysis of the designation (85 FR 82376, December 18, 2020). However, we have reviewed the 2012 final economic analysis (IEc 2012) and determined that because the January Exclusions Rule has not gone into effect and we are not designating additional critical habitat in this rule (we are only proposing to exclude (*i.e.,* remove) additional areas from critical habitat), the economic impact will simply be reduced and a new economic analysis is thus unnecessary.

Further, we have determined that the exclusion of the Harvest Land Base lands from critical habitat for the northern spotted owl would not result in changes in management or conservation outcomes under section 7 consultation for those lands. The BLM considered the critical habitat designation in revising their RMPs in 2016, and the design and implementation of future projects will follow their management direction for each land use allocation as required by the RMPs. We analyzed the RMPs and concluded that the land use allocations and the management direction—including carefully designed timber harvest within the Harvest Land Base—would not jeopardize the owl's continued existence, nor destroy or adversely modify its designated critical habitat. With the exclusions of the Harvest Land Base areas from critical habitat proposed here, the RMP land use allocations and management directions will continue to apply. The only change in section 7 outcomes as a result of these exclusions would be that BLM would no longer have to consult on areas where critical habitat is excluded

if there are no effects anticipated to the species.

We note that during the public comment period on our prior proposed revised critical habitat rule (85 FR 48487, August 11, 2020), the American Forest Resource Council (AFRC 2020) and other commenters provided a new report prepared by The Brattle Group (2020) (Brattle report) critiquing the 2012 critical habitat economic analysis (IEc 2012). The Brattle report included updated estimates of the economic impacts of the 2012 rule using more recent data and/or different assumptions. We contracted with IEc to review the Brattle report and provided a response to the report in the January 15, 2021, final rule (86 FR 4820, pp. 4825–4827). The Brattle report does not alter our assessment that because we are removing areas from designation (rather than adding them), no new economic analysis is needed. Because the entire 2012 designation did not reach the threshold for economic significance under Executive Order 12866, these exclusions, which represent a reduction in the overall cost, also do not meet this threshold.

During the development of a final revised designation, we will consider any additional economic impact information we receive during the public comment period (see **DATES**), and, therefore, additional areas not considered in this proposed rule may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations.

Consideration of Impacts on National Security

We did not exclude areas from our December 4, 2012, revised critical habitat designation based on impacts on national security, but we did exempt Joint Base Lewis-McChord lands based on the integrated natural resources management plan under section 4(a)(3) of the Act (77 FR 71876, pp. 71944–71945). In this document, we are not proposing to exclude any areas from the critical habitat designation on the basis of impacts on national security. However, during the development of a final rule we will consider any additional information received through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(a)(3) and our implementing regulations.

Consideration of Other Relevant Impacts

When identifying the benefits of inclusion of an area as designated critical habitat, we primarily consider the additional regulatory benefits that that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus (that is, an activity or program authorized, funded, or carried out in whole or in part by a Federal agency), the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, or in the continuation, strengthening, or encouragement of partnerships.

In the case of the northern spotted owl, the benefits of including an area as designated critical habitat include public awareness of the presence of northern spotted owls and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for northern spotted owls through the Act's section 7(a)(2) mandate that Federal agencies insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Additionally, continued implementation of an ongoing management plan for the area that provides conservation equal to or greater than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate existing conservation plans when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies, and actions contained in a management plan, will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation under section 4(b)(2) of the Act.

The final decision on whether to exclude any areas under section 4(b)(2) will be based on the best scientific data available at the time of the final designation, including information that we obtain during the comment period. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Proposed Exclusions

We are proposing to exclude the following areas under section 4(b)(2) of the Act from the critical habitat designation for the northern spotted owl. Table 1, below, identifies the specific critical habitat units from the December 4, 2012, final rule (77 FR 71876; codified at 50 CFR 17.95(b)), that we propose to exclude, at least in part, the approximate areas (ac, ha) of lands involved, and a brief summary of the rationale for the proposed exclusions. The Table 8 Addendum that follows displays this same information but in the format used in Table 8 in the December 4, 2012, final rule (77 FR 71876, pp. 71948–71949).

TABLE 1—AREAS PROPOSED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas proposed for exclusion, in acres (hectares)	Rationale for proposed exclusion
1	NCO 4	179,745 (72,740)	1,840 (744)	BLM Harvest Land Base.
1	NCO 5	142,937 (57,845)	8,780 (3,553)	BLM Harvest Land Base.
2	ORC 1	110,657 (44,781)	1,280 (518)	BLM Harvest Land Base.
2	ORC 2	261,405 (105,787)	7,906 (3,199)	BLM Harvest Land Base/Indian Lands.
2	ORC 3	203,681 (82,427)	4,956 (2,006)	BLM Harvest Land Base/Indian Lands.
2	ORC 5	176,905 (71,591)	14,998 (6,070)	BLM Harvest Land Base.
2	ORC 6	81,900 (33,144)	4,300 (1,740)	BLM Harvest Land Base/Indian Lands.
6	WCS 1	92,586 (37,468)	881 (356)	BLM Harvest Land Base.
6	WCS 2	150,105 (60,745)	1,083 (438)	BLM Harvest Land Base.
6	WCS 3	319,736 (129,393)	1,923 (778	BLM Harvest Land Base.
6	WCS 4	379,130 (153,429)	6 (2)	BLM Harvest Land Base.
6	WCS 5	356,415 (144,236)	2 (<1)	BLM Harvest Land Base.
6	WCS 6	99,558 (40,290)	18,529 (7,498)	BLM Harvest Land Base.
8	ECS 1	127,801 (51,719)	16,622 (6,727)	BLM Harvest Land Base.
8	ECS 2	66,086 (26,744)	2,380 (963)	BLM Harvest Land Base.
9	KLW 1	147,326 (59,621)	14,887 (6,025)	BLM Harvest Land Base/Indian Lands.
9	KLW 2	148,929 (60,674)	<1 (<1)	BLM Harvest Land Base.
9	KLW 3	143,862 (58,219)	1,656 (670)	BLM Harvest Land Base.
9	KLW 4	158,299 (64,061)	785 (318)	BLM Harvest Land Base.
9	KLW 5	31,085 (12,580)	<1 (<1)	BLM Harvest Land Base.
10	KLE 1	242,338 (98,071)	30 (12)	BLM Harvest Land Base/Indian Lands.
10	KLE 2	101,942 (41,255)	29,958 (12,124)	BLM Harvest Land Base/Indian Lands.
10	KLE 3	111,410 (45,086)	48,334 (19,560)	BLM Harvest Land Base.
10	KLE 4	254,442 (102,969)	1 (<1)	BLM Harvest Land Base.
10	KLE 5	38,283 (15,493)	12,241 (4,954)	BLM Harvest Land Base.
10	KLE 6	167,849 (67,926)	11,403 (4,614)	BLM Harvest Land Base.

TABLE 8 ADDENDUM [1]—ADDITIONAL LANDS PROPOSED FOR EXCLUSION FROM THE DESIGNATION OF CRITICAL HABITAT UNDER SECTION 4(b)(2) OF THE ACT

Type of agreement	Critical habitat unit	State	Landowner/agency	Acres	Hectares
Resource Management Plan	NCO	OR	BLM Harvest Land Base	10,620	4,298
	ORC	OR	BLM Harvest Land Base	27,866	11,277
	WCS	OR	BLM Harvest Land Base	22,438	9,080
	ECS	OR	BLM Harvest Land Base	19,002	7,690
	KLW	OR	BLM Harvest Land Base	13,508	5,46
	KLE	OR	BLM Harvest Land Base	91,184	36,901
Tribal lands	ORC	OR	CTCLUSI2	5,575	2,256
	KLE	OR	CCBUTI3	10,783	4,364
	KLW	OR	CCBUTI	3,821	1,546
Total additional lands proposed for exclusion under section 4(b)(2) of the Act.				204,797	82,879

[1] This table is an addendum to table 8 of the December 4, 2012, final rule (77 FR 71876); table 8 appears at 77 FR 71948–71949.
[2] CTCLUSI is the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.
[3] CCBUTI is the Cow Creek Band of Umpqua Tribe of Indians.
[4] Total is slightly higher due to rounding of partial acres.

We specifically solicit comments on the inclusion or exclusion of these areas from the critical habitat designation for the northern spotted owl (77 FR 71876, December 4, 2012), codified at 50 CFR 17.95(b). These proposed exclusions are based on new information that has become available since the December 4, 2012, critical habitat designation for the northern spotted owl, including the BLM's 2016 revision to its RMPs for western Oregon (BLM 2016a, b) and the Western Oregon Tribal Fairness Act (Pub. L. 115–103). In the paragraphs below, we provide a detailed analysis of our consideration of these lands for exclusion under section 4(b)(2) of the Act.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are other conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we consider any Tribal forest management plans and partnerships and consider the government-to-government relationship of the United States with

Tribes. We also consider any social impacts that might occur because of the designation.

Indian Lands

Several Executive Orders, Secretarial Orders, and departmental policies address how we engage with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Indian lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (''Services''), Secretarial Order 3206, ''American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997) (S.O. 3206), affirms that Tribes may participate fully in the listing process, including designation of critical habitat. The appendix to S.O. 3206 also states: ''In keeping with the trust responsibility, [the Services] shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider exclusions of Indian lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal comments in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Indian lands or waters as critical habitat, nor does it state that Indian lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority.

In our December 4, 2012, final rule (77 FR 71876), we prioritized areas for critical habitat designation by looking first to Federal lands, followed by State, private, and Indian lands. No Indian lands were designated in our final rule because we found that we could achieve the conservation of the northern spotted owl by limiting the designation to other lands. However, on January 8, 2018, the Western Oregon Tribal Fairness Act (Pub. L. 115–103) was passed by Congress and signed by the President. This act mandated that certain lands managed by BLM be taken into trust by the United States for the benefit of the Cow Creek Band of Umpqua Tribe of Indians (CCBUTI) and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI). In January 2020, BLM released its decision record (BLM 2020) transferring management authority of approximately 17,800 acres (7,203 hectares) to CCBUTI and 14,700 acres (5,949 hectares) to CTCLUSI. Of the transferred lands, 20,179 acres (8,166 hectares) are located within designated critical habitat for the northern spotted owl. We have considered this new information and are now proposing these lands for exclusion under section 4(b)(2) of the Act, as explained below.

Of the lands transferred in trust to the CCBUTI, 14,604 acres (5,910 hectares) are located within currently designated critical habitat. These lands will be managed under the Tribe's Forest Resource Management Plan (CCBUTI 2019) using a ''continuous forest management'' approach that provides for a continued supply of timber, a steady stream of income, and a reduction in the risk of wildfire and disease. The land within the CCBUTI conveyance is in the Klamath Physiographic Province, an area disproportionally impacted by fire. The objectives in the CCBUTI forest management plan addresses fire risk and disease concerns to alleviate the risk of wildfire. Of the lands transferred in trust to the CTCLUSI, 5,575 acres (2,256 hectares) are located within the critical habitat designation. The Tribe is developing a management plan for these recently transferred lands (Andringa 2020, pers. comm.). We will continue to provide technical assistance to the Tribes on the conservation of endangered and threatened species and on the development and implementation of their forest management plans; however, these plans are not the basis of our proposal to exclude these lands from the critical habitat designation.

In accordance with S.O. 3206 and other directives, we believe that fish, wildlife, and other natural resources on Indian lands may be more appropriately managed under Tribal authorities, policies, and programs than through Federal regulation where Tribal management addresses the conservation needs of listed species. Supporting Tribal management strengthens the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend. Additionally, the Indian lands proposed for exclusion represent only 0.21 percent of the current critical habitat designation. Although these lands contribute to the conservation of the northern spotted owl, we believe the conservation needs of the northern spotted owl can be achieved by limiting the designation to the other lands in the critical habitat designation. We also find that the benefit of our partnerships with these Tribal governments and our acknowledgment of Tribal sovereignty over managing these lands by excluding them from the critical habitat designation outweigh the conservation value of including these 20,179 acres (8,166 hectares) in the designation.

Federal Lands

O&C Lands—In general, our proposed exclusions of critical habitat for the northern spotted owl are focused on the Oregon and California Railroad Revested Lands (O&C lands), particularly those areas that have been identified primarily for commercial timber harvest under Federal resource management plans. The O&C lands were revested to the Federal Government under the Chamberlin-Ferris Act of 1916 (39 Stat. 218). The Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act; Pub. L. 75–405) addresses the management of O&C lands. The O&C Act identifies the primary use of revested timberlands for permanent forest production. These lands occur in western Oregon in a checkerboard pattern intermingled with private land across 18 counties. Most of these lands (82 percent) are administered by BLM (FWS 2019, p. 1) pursuant to its RMPs. BLM's RMPs identify certain revested timberlands for commercial timber harvest. The opening statement of the O&C Act provides that these lands be managed ''for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting

watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.'' The counties where O&C lands are located participate in a revenue-sharing program with the Federal Government based on commercial receipts (*e.g.,* income from commercial timber harvest) generated on these Federal lands.

Since the mid-1970s, scientists and land managers have recognized the importance of forests located on O&C lands to the conservation of the northern spotted owl and have attempted to reconcile this conservation need with other land uses (Thomas et al. 1990, entire). Starting in 1977, BLM worked closely with scientists and other State and Federal agencies to implement northern spotted owl conservation measures on O&C lands. Over the ensuing decades, the northern spotted owl was listed as a threatened species under the Act, critical habitat was designated (57 FR 1796, January 15, 1992) and revised two times (73 FR 47326, August 13, 2008; 77 FR 71876, December 4, 2012) on portions of the O&C lands, and a recovery plan for the northern spotted owl was completed (73 FR 29471, May 21, 2008; p. 29472) and revised (76 FR 38575, July 1, 2011). These and other scientific reviews consistently recognized the need for large portions of the O&C forest to be managed for northern spotted owl conservation while also allowing for other uses of these lands, including timber harvest.

BLM Harvest Land Base—Based on new information available since the publication of the December 4, 2012, revised critical habitat designation (77 FR 71876), we are proposing to exclude from critical habitat 184,618 acres (74,650 hectares) of BLM lands where programmed timber harvest is planned to occur under the revised RMPs (BLM 2016a, b), *i.e.,* the ''Harvest Land Base'' that we describe in detail further below. Approximately 172,430 acres (69,779 hectares) of this Harvest Land Base is O&C lands.

In 2011, the Service revised the recovery plan for the northern spotted owl (see 76 FR 38575, July 1, 2011), and the revised plan recommended ''continued application of the reserve network of the NWFP until the 2008 designated spotted owl critical habitat is revised and/or the land management agencies amend their land management plans taking into account the guidance in this Revised Recovery Plan'' (USFWS 2011, p. II–3). On December 4, 2012, the Service published a final rule revising the northern spotted owl critical habitat designation (77 FR 71876), and in 2016, BLM revised its RMPs for western Oregon, resulting in two separate plans (BLM 2016a, b). BLM's 2016 revision of its RMPs fully considered the 2011 recovery plan recommendation. These two BLM plans, the Northwestern Oregon and Coastal Oregon Record of Decision and Resource Management Plan (BLM 2016a) and the Southwestern Oregon Record of Decision and Resource Management Plan (BLM 2016b), address all or part of six BLM districts across western Oregon.

The RMPs provide direction for the management of approximately 2.5 million acres (1 million hectares) of BLM-administered lands, for the purposes of producing a sustained yield of timber, contributing to the recovery of endangered and threatened species, providing clean water, restoring fire-adapted ecosystems, and providing for recreation opportunities (BLM 2016a, p. 20). The management direction provided in the RMPs is used to develop and implement specific projects and actions during the life of the plans.

The RMP revisions assigned land use allocations (LUAs) across BLM-managed lands in western Oregon; the LUAs define areas where specific activities are allowed, restricted, or excluded. The BLM LUAs include Late Successional Reserves (LSR), Congressionally Reserved lands, District Designated Reserves, and Riparian Reserves (collectively considered ''reserve'' LUAs) and Eastside Management Area and Harvest Land Base (BLM 2016a, pp. 55–74).

Reserve LUAs comprise 74.6 percent (1,847,830 acres (747,790 hectares)) of the acres of BLM land within LUAs (FWS 2016, p. 9). These lands are managed for various purposes, including preserving wilderness areas, natural areas, and structurally complex forest; recreation management; maintaining facilities and infrastructure; some timber harvest and fuels management; and conserving lands along streams and waterways. Of these lands, 51 percent (948,466 acres (383,830 hectares)) are designated as LSR, 64 percent of which (603,090 acres (244,061 hectares)) are located within the critical habitat designation for the northern spotted owl (FWS 2016, p. 9). The management objectives on LSRs are designed to promote older, structurally complex forest and to promote or maintain habitat for the northern spotted owl and marbled murrelet (*Brachyramphus marmoratus*), although some timber harvest of varying intensity is allowed. The recovery plan for the northern spotted owl relies on the LSR network as the foundation for northern spotted owl recovery on Federal lands (FWS 2011, p. III–41). The Service found that the anticipated level of timber harvest in LSRs under these RMPs was not likely to jeopardize the species or destroy or adversely modify critical habitat (FWS 2016, pp. 700–703).

The Harvest Land Base allocation comprises 19 percent (469,215 acres (189,884 hectares)) of the overall LUAs and is where the majority of programmed timber harvest will occur (FWS 2016, p. 9; BLM 2016a, pp. 59–63). Of these acres, 39 percent (184,618 acres (74,650 hectares)) are located within the critical habitat designation for the northern spotted owl. Over 90 percent of these acres (172,430 acres (69,779 hectares)) are located on O&C lands. Under the management direction for the Harvest Land Base, timber harvest intensity varies based on the sub-allocation (moderate intensity timber area, light intensity timber area, or uneven-aged timber area) within the Harvest Land Base (BLM 2016a, pp. 59–63).

The management direction specific to the northern spotted owl (BLM 2016a, p. 100) applies to all LUAs designated in the RMPs. This direction provides for the management of habitat to facilitate movement and survival between and through large blocks of northern spotted owl nesting and roosting habitat.

We completed a programmatic section 7 consultation on the RMPs in 2016, under the assumption that BLM will implement actions consistent with the RMPs over an analytical timeframe of 50 years (FWS 2016, p. 2). This approach allowed for the broad-scale evaluation of BLM's program to ensure that the management direction and objectives of the program are consistent with the conservation of listed species, while also providing a reliable mechanism for site-specific consultation at the stepped-down, project-level scale. The adequacy of this approach for the conservation of listed species is further sustained by the requirement for the action agency to reinitiate consultation under certain circumstances.

Reinitiation of the programmatic section 7 consultation may occur at any time during the course of program implementation if: (1) The amount or extent of incidental take is exceeded; (2) new information reveals that the effects of the action may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) a new species

is listed or critical habitat designated that may be affected by the identified action, consistent with our August 27, 2019, final rule revising portions of our regulations that implement section 7 of the Act (see 84 FR 44976, pp. 45017–45018). The biological opinion on the RMPs also describes some additional specific conditions concerning northern spotted owl demographics and barred owl management implementation under which reinitiation of consultation would be necessary (FWS 2016, pp. 703–705).

BLM incorporated key aspects of the recovery plan for the northern spotted owl into its RMPs, consistent with its authorities and resources. Important features of BLM's approach include:

- Overall impacts to extant northern spotted owls are minimized. Take of northern spotted owl territorial pairs or resident singles from timber harvest will be avoided to the greatest possible extent during the first 5 to 8 years of the RMPs as the barred owl removal experiment (FWS 2013) is conducted and evaluated. Subsequent effects to northern spotted owls would be meted out over time in the Harvest Land Base and minimized in other land use allocations.
- If the barred owl removal experiment leads to a longer term barred owl management program, BLM will support such a program on the lands they manage. Barred owl management would help offset the adverse effects associated with the RMPs and is expected to result in a net positive impact on the recovery of northern spotted owls when considering the overall effect of the RMPs over the next 50 years.
- There will be a net increase in suitable habitat for northern spotted owls during the life of the RMPs due to forest ingrowth outpacing harvest, and the RMPs contain more reserve acres and habitat than the NWFP.
- As individual projects are proposed under these RMPs, BLM will consult at the project-specific level with the Service as necessary, providing assurances that jeopardy and adverse modification will be avoided and an opportunity to further minimize impacts to northern spotted owls as on-the-ground actions are designed and implemented.
- BLM will reinitiate section 7 consultation with the Service if the population projections for the northern spotted owl described in the biological opinion on the RMPs are not realized within the timeframes anticipated in the consultation.

For these reasons, as described in its biological opinion issued to the BLM (FWS 2016, pp. 4–5), the Service expects an overall net improvement in northern spotted owl populations on BLM lands under the RMPs, including when taking into account any take or adverse impacts to northern spotted owls due to timber harvest, fuels management, recreation, and other activities occurring under the RMPs. Our analysis of the impacts on the lands within the Harvest Land Base recognized that while this LUA was not intended to be relied upon for demographic support of northern spotted owls, the management direction under the RMPs includes provisions that would contribute to the further development of late-successional habitat, including additional critical habitat PBFs, over time (FWS 2016, p. 553; 77 FR 71876, December 4, 2012, pp. 71906–71907). Although late-successional habitat within the Harvest Land Base may not remain on the landscape for the long term, the presence of northern spotted owl habitat within the Harvest Land Base in the short term would assist in northern spotted owl movement (PBF 4) across the landscape and could potentially provide refugia from barred owls while habitat continues to mature into more complex habitat and develop additional PBFs over time in reserved LUAs (FWS 2016, p. 553; 77 FR 71876, December 4, 2012; pp. 71906–71907).

The spatial configuration of reserves; the management of those reserves to retain, promote, and develop northern spotted owl habitat; and the management and scheduling of timber sales within the Harvest Land Base are all expected to provide for northern spotted owl dispersal between physiographic provinces and between and among large blocks of habitat designed to support clusters of reproducing northern spotted owls (FWS 2016, p. 698). In particular, BLM refined their preferred alternative management approach to minimize the creation of strong barriers to northern spotted owl east-west movement and survival between the Oregon Coast Range and Oregon Western Cascades physiographic provinces, and north-south movement and survival between habitat blocks within the Oregon Coast Range province, by augmenting its allocation to LSRs in those areas (BLM 2016c, p. 17). Therefore, BLM-planned timber harvest during the interim period while a barred owl management strategy is considered is not expected to substantially influence the distribution of northern spotted owls at the local, action area, or rangewide scales.

The area included in the 2012 critical habitat designation (77 FR 71876) was increased from previous designations in part to account for and buffer localized impacts to habitat as a consequence of natural (*e.g.,* wildfire) and human-caused disturbance (*e.g.,* timber harvest). That is, we anticipate some loss of habitat within individual critical habitat units and, for the human-caused impacts, have worked closely with land managers to ensure these impacts are consistent with the long-term recovery of the species. Of the designated critical habitat on BLM-managed lands in western Oregon addressed by the RMPs, 15 percent of critical habitat is designated on the Harvest Land Base and 85 percent is designated on other LUAs. The Harvest Land Base portion of the BLM landscape is expected to provide less contribution to northern spotted owl critical habitat over time, while the reserve portions of the BLM lands will provide the necessary contributions for northern spotted owl conservation (FWS 2016, p. 554).

Although the loss of some or all the PBFs within northern spotted owl critical habitat within the Harvest Land Base is an adverse effect and cannot be discounted, as we noted in the 2016 biological opinion on the RMPs (FWS 2016, p. 691), the protection, ingrowth, and further development of PBFs within northern spotted owl critical habitat in reserve LUAs are expected to improve the function of all critical habitat units within the areas covered by the RMPs. The reserve LUAs have the additional advantage of improving critical habitat conditions in areas where barred owl management is most likely to be implemented. Barred owl management, if implemented, would be most likely to occur where we anticipate the future core of the northern spotted owl population to reside and where critical habitat can provide the greatest value.

Additionally, we noted that the functionality of the critical habitat network on BLM-managed lands and rangewide was anticipated to improve, in part as the land management agencies updated their land management plans to incorporate recommendations of the revised recovery plan for the northern spotted owl (USFWS 2011, p. II–3). Accordingly, we found in our 2016 biological opinion on the RMPs (FWS 2016, p. 700) that, even with the projected timber harvest in the Harvest Land Base, the management direction implemented under the RMPs is fully consistent with the revised recovery plan (USFWS 2011) and would not appreciably diminish the conservation value of, or adversely modify, critical habitat (FWS 2016, p. 702). The conservation measures put in place by BLM's 2016 RMPs, including

management direction for the LUAs and commitments to support barred owl research and management, are expected to result in a net increase in northern spotted owl conservation compared to the status quo. Therefore, we find that excluding the Harvest Land Base acres from the critical habitat designation, as proposed in this document, would not reduce the overall conservation of the northern spotted owl and its habitat provided that the conservation measures in the RMPs are implemented as planned. We thus find that these exclusions would not result in extinction of the species.

BLM will continue to rely on the effectiveness monitoring established under the NWFP for the northern spotted owl and late-successional and old growth ecosystems. Monitoring will assess status and trends in northern spotted owl populations and habitat to evaluate whether the implementation of the RMPs is reversing the downward trend of populations and maintaining and restoring habitat necessary to support viable owl populations (BLM 2016a).

In conclusion, the revised BLM RMPs provide for the conservation of the essential PBFs throughout the reserve LUAs and mete out the impacts to northern spotted owl habitat in the Harvest Land Base over time while the habitat conditions in the reserve LUAs improve through ingrowth. Based on our analysis in the biological opinion on the RMPs (FWS 2016, pp. 700–703) and the BLM's conclusions in its records of decision adopting the RMPs, the conservation strategies in the RMPs are likely to be effective. These conservation measures will continue to be in effect regardless of whether the Harvest Land Base areas are designated as critical habitat for the northern spotted owl.

As described above, these Harvest Land Base areas provide a relatively low level of short-term conservation value. Retaining them as designated critical habitat, which suggests that they have a conservation value similar or equal to that of the LSR lands, may send a confusing message to the public and local land managers. Also, all Federal actions in these Harvest Land Base areas that may affect currently designated critical habitat would require section 7 consultation. These consultations provide no incremental conservation benefit over what is already provided for in the RMPs and thus would not be an efficient use of limited consultation and administrative resources. The benefits of including Harvest Land Base areas within critical habitat for the northern spotted owl are, therefore, limited relative to the conservation value provided by the RMPs. Additionally, actions within the Harvest Land Base that may affect suitable northern spotted owl habitat will still be subject to section 7 consultation to insure that actions in those areas are not likely to jeopardize the continued existence of the species. Given these provisions and assurances, in conjunction with all of the other considerations discussed above, we conclude that the benefits of including these Harvest Land Base areas in critical habitat are relatively negligible.

On the other hand, some appreciable benefit could be realized by excluding Harvest Land Base areas from critical habitat. Executive Order 12866 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Excluding Harvest Land Base lands from the northern spotted owl critical habitat designation reduces the burden of additional section 7 consultation for these lands that serve primarily to meet BLM's timber sale volume objectives. Therefore, excluding these Harvest Land Base lands from the critical habitat designation would provide some incremental benefit by clarifying the primary role of these lands in relation to northern spotted owl conservation, and by eliminating any unnecessary regulatory oversight. These benefits of exclusion outweigh the relatively minimal benefit of retaining these lands as critical habitat.

We note that there is ongoing litigation challenging BLM's management of O&C lands under the 2016 RMPs. One district court has concluded the 2016 RMPs (including their consideration of the Act) do not conflict with the O&C Act, see *Pac. Rivers* v. *U.S. Bureau of Land Mgmnt.,* 6:16–cv–01598–JR, 2019 WL 1232835 (D. Or. Mar.15, 2019), aff'd sub nom. *Rivers* v. *Bureau of Land Mgmt.,* 815 Fed. App'x 107 (9th Cir. 2020). In a separate proceeding, the U.S. District Court for the District of Columbia (D.D.C.), in a consolidated set of cases, found that the RMPs violate the O&C Act because BLM excluded portions of O&C timberland from sustained yield harvest (*i.e.,* the BLM allocated some timberlands to reserves instead of the Harvest Land Base); *see, e.g., American Forest Resource Council et al.* v. *Hammond,* 422 F. Supp. 3d 184 (D.D.C. 2019). The parties have briefed the court on the appropriate remedy, but the court has not yet issued an order.

We considered this information in developing this proposed rule. This proposed rule is based on the 2016 RMPs as they are, and not as they may be modified in the future. While the litigation outcomes of the cases challenging the BLM's management of O&C lands are not certain and we will not speculate on the ultimate outcomes of the litigation, we acknowledge the potential for future reductions in the BLM's reserves and changes in the Harvest Land Base. As discussed above, in the consolidated D.D.C. cases, the court has already found that the BLM violated the O&C Act by excluding portions of O&C timberlands from sustained yield timber harvest. Consequently, the Harvest Land Base might change as a result of this litigation by remedy order of the court either with, or without, land use planning undertaken by BLM.

National Forest System Lands—We evaluated whether exclusions from the critical habitat designation under section 4(b)(2) of the Act should be considered within the relatively small amount of O&C lands managed as National Forest System lands by USFS. Our preliminary analysis of potential areas to consider for exclusion revealed small areas of lower quality interspersed with higher quality habitat scattered across and imbedded within critical habitat subunits. Therefore, in coordination with USFS, we did not identify any National Forest System lands where we believed the benefits of exclusion outweighed the benefits of inclusion at the critical habitat unit mapping scale. In other words, our preliminary view is that formally excluding these lower quality areas from critical habitat would require significant mapping and analytical effort, and that it is unclear what economic or other administrative benefit might be derived from this process.

To date, we have found all proposed timber harvest under the NWFP on National Forest System lands in critical habitat to: (1) Be compatible with northern spotted owl conservation, and (2) not destroy or adversely modify critical habitat. Therefore, we believe the ongoing section 7 consultation processes with USFS under its current land management plans continue to be the best way to evaluate effects of USFS actions on critical habitat function. We will continue to work closely with USFS to address the conservation needs of the northern spotted owl as the agency updates its various forest plans. We invite comments specifically addressing National Forest System lands and the reasons why we should or should not exclude habitat on these

lands as ''critical habitat'' under section 4(b)(2) of the Act. Comments should address the related benefits of including or excluding specific areas; whether the benefits of exclusion outweigh those of inclusion; and whether the exclusion will not result in the extinction of the species. Additionally, comments should address any probable economic, national security, or other relevant impacts of the designation on areas recommended for consideration for exclusion.

State Lands

We also evaluated whether additional exclusions from the critical habitat designation under section 4(b)(2) of the Act should be considered on State lands. In our December 4, 2012, critical habitat designation (77 FR 71876), we excluded State lands in Washington and California that were covered by HCPs and other conservation plans. In Oregon, State agencies are currently working on HCPs that will address State forest lands in western Oregon, including the Elliott State Forest (managed by the Oregon Department of State Lands) and other State forest lands in western Oregon (managed by the Oregon Department of Forestry).

HCPs necessary in support of incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, as a result of their commitments in the HCPs, incidental take permittees agree to provide more conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

When we undertake a discretionary section 4(b)(2) exclusion analysis, we consider areas covered by an approved HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

(1) The permittee is properly implementing the HCP.

(2) The species for which critical habitat is designated is a covered species in the HCP.

(3) The HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

The proposed State forest HCPs and any section 10(a)(1)(B) permits will not be completed prior to the publication of this document; thus, they do not yet fulfill the above criteria. As a result, we are not proposing additional State lands for exclusion from the critical habitat designation for the northern spotted owl. We may revisit consideration of section 4(b)(2) exclusions on State lands if and when the HCPs have been adopted and we have issued section 10(a)(1)(B) permits.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has identified this proposed rule as a significant rule.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this revised designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and consistent with recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat

protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. It follows that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, this revised critical habitat designation will not have a significant economic impact on a substantial number of small entities. Additionally, in this document, we are proposing to remove areas from the northern spotted owl's critical habitat designation, thus reducing regulatory impacts for affected Federal agencies.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, this proposed revised critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis for the December 4, 2012, revised critical habitat designation for the northern spotted owl (77 FR 71876), we did not find that the critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The proposed revised designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly affected by a designation decision because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would such a decision shift the costs of the large entitlement programs listed above onto State governments. Again, the proposed decision here would remove areas from designation.

(2) We do not believe that this rule would significantly or uniquely affect small governments because we are proposing only exclusions from the northern spotted owl's critical habitat designation; we are not proposing to designate additional lands as critical habitat for the species. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of revising designated critical habitat for the northern spotted owl in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for this proposed revision of the designation of critical habitat for the northern spotted owl, and it concludes that, if adopted, this revised designation of critical habitat does not pose significant takings implications for lands within or affected by the designation. Again, the proposed decision here would remove areas from designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects.

A federalism summary impact statement is not required. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. As noted above, the proposed decision here would remove areas from designation.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Further, in this document, we are proposing only exclusions from the northern spotted owl's critical habitat designation; we are not proposing to designate additional lands as critical habitat for the species.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revising designated critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the December 4, 2012, final rule (77 FR 71876) identifies the elements of physical or biological features essential to the conservation of the species, and we are not proposing any changes to those elements in this document. The areas we are proposing for exclusion from the designated critical habitat are described in this document and the maps and coordinates or plot points or both of the subject areas are included in the administrative record and are available at *http://www.fws.gov/oregonfwo* and at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

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

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit (see *Catron Cty. Bd. of Comm'rs, New Mexico* v. *U.S. Fish & Wildlife Serv.,* 75 F.3d 1429 (10th Cir. 1996), we do not need to prepare environmental analyses pursuant to NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit in *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems and that Indian land occurs within the areas designated as critical habitat for the northern spotted owl. We will continue to work with Tribal entities during the development of a final rule for the revised designation of critical habitat for the northern spotted owl.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

This action is authorized under 16 U.S.C. 1531–1544.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–15414 Filed 7–19–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210510–0103]

RIN 0648–BI08

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries Management; Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 21, 2021, NMFS published the proposed rule for Draft Amendment 13 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) to modify management measures applicable to the incidental and directed bluefin fisheries. In the proposed rule, NMFS announced a 60-day comment period ending on July 20, 2021. During a public webinar, the Blue Water Fishermen's Association requested that NMFS extend the comment period to provide additional opportunities for the public and other interested parties to consider and comment on the proposed measures and related analyses. NMFS is extending the comment period for this action until September 20, 2021. NMFS will consider comments received on the proposed rule in determining whether

and how to implement final management measures.

DATES: The comment period for the proposed rule published May 21, 2021, at 86 FR 27686, is extended. Comments should be received on or before September 20, 2021.

ADDRESSES: You may submit comments on the proposed rule, as published on May 21, 2021 (86 FR 27686), identified by ''NOAA–NMFS–2019–0042,'' by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket/NOAA-NMFS-2019-0042*, click the ''Comment'' icon, complete the required fields, and enter or attach your comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may also be submitted via *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.''

Copies of the supporting documents—including the draft environmental impact statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), the Three-Year Review of the IBQ Program, and the 2006 Consolidated HMS FMP and amendments are available from the HMS website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Tom Warren (*Thomas.Warren@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Tom Warren—(978) 281–9260 (*Thomas.Warren@noaa.gov*) or Karyl Brewster-Geisz—(301) 427–8503 (*Karyl.Brewster-Geisz@noaa.gov*).

SUPPLEMENTARY INFORMATION: The Atlantic bluefin tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A brief summary of the background of this proposed rule is provided below. Additional information regarding bluefin tuna management can be found in the proposed rule (86 FR 27686; May 21, 2021), the DEIS accompanying the proposed rule, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at: *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.*

On May 21, 2021 (86 FR 27686), NMFS published Draft Amendment 13 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), proposing to modify management measures applicable to the incidental and directed bluefin fisheries. As described in the proposed rule, the measures would make several changes to the Individual Bluefin Quota (IBQ) Program in the pelagic longline fishery for Atlantic HMS. Proposed changes included the distribution of IBQ shares only to active vessels, implementation of a cap on IBQ shares that may be held by an entity, and implementation of a cost recovery program. The proposed measures would also make changes to directed bluefin fisheries by discontinuing the Purse Seine category and reallocating that bluefin quota to other directed quota categories; capping Harpoon category daily bluefin landings; modifying the recreational trophy bluefin areas and subquotas; modifying regulations regarding electronic monitoring of the pelagic longline fishery as well as green-stick use; and modifying the regulation regarding permit category changes.

Blue Water Fishermen's Association requested the comment period be extended at the July 8, 2021, public webinar. In their request they noted that the HMS Advisory Panel had insufficient time to review the DEIS between its release on May 21, 2021, and the Spring HMS Advisory Panel meeting on May 25 through 27, 2021. They were also concerned that NMFS' presentation to the HMS Advisory Panel did not include all of the alternatives analyzed in the DEIS and that there was insufficient time during the meeting to fully discuss the proposed measures, the alternatives, and their impacts. After considering the request and in light of similar comments the Spring HMS Advisory Panel meeting, NMFS has determined that it is reasonable to extend the comment period to enable the HMS Advisory Panel to further discuss Amendment 13 at its Fall 2021 meeting in September and to allow additional opportunities for public comment. Therefore, NMFS is extending the comment period until September 20, 2021. This revised comment period allows time for HMS Advisory Panel members, the regulated community, and the general public to further consider the rulemaking documents, and the analyses, data, and conclusions relevant to the proposed management measures in them, and to provide comments to NMFS. NMFS will consider these comments in determining which final management measures to implement.

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

Dated: July 13, 2021.

Samuel D. Rauch, III,

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

[FR Doc. 2021–15374 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 136
Tuesday, July 20, 2021

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.

UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Tuesday, July 27, 2021, 10:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held by teleconference. Please contact the Agency Contact listed below for conference details.

FOR FURTHER INFORMATION CONTACT: Nina-Belle Mbayu, (202) 233–8808, *nbmbayu@usadf.gov.*

Authority: Public Law 96–533 (22 U.S.C.§ 290h).

Dated: July 14, 2021.

Nina-Belle Mbayu,

Acting General Counsel.

[FR Doc. 2021–15315 Filed 7–19–21; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by August 19, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Forest Service

Title: Qualified Product List for Wild Land Fire Chemicals.

OMB Control Number: 0596–0182.

Summary of Collection: The Forest Service and cooperating wildland firefighting agencies need adequate types and quantities of qualified fire chemical products available to accomplish fire management activities as safely and effectively as possible. To accomplish this objective, the Agency evaluates and pre-approves commercial wildland firefighting chemicals. The Agency is required to submit the formulations to the U.S. Fish and Wildlife Service and National Oceanic Atmospheric Administration Fisheries during the evaluation process. All products must meet the requirements of specifications identified and maintained by the Wildland Fire Chemical Systems (WFCS) staff at the National Technology & Development Program (Missoula). After a product evaluation has been completed successfully, the product is added to the Qualified Products List (QPL) for the appropriate product type. All Federal procurements of wildland fire chemicals are made from these lists.

Need and Use of the Information: The collection of this information for each product submission is necessary due to the length of time needed to test the product (16 to 18 months) and the need to ensure that products do not pose a hazard for laboratory personnel during the evaluation prior to purchase and use. This information collection and the product evaluation must be conducted on an ongoing basis to ensure the Agency can solicit and award contracts in a timely manner to provide firefighters with safe and effective wildland fire chemical products.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 41.

Title: Generic Information Collection and Clearance of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0596–0226.

Summary of Collection: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure Forest Service (hereafter ''the Agency'') programs are effective and meet our customers' needs, the Agency seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

Need and Use of the Information: This information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Agency's commitment to improve service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder

perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit Institutions and State, Local or Tribal Government.

Number of Respondents: 3,500,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 875,000.

Dated: July 15, 2021.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–15375 Filed 7–19–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 15, 2021.

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

Comments regarding this information collection received by August 19, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Animal and Plant Health Inspection Service

Title: Conditions for Payment of Avian Influenza Indemnity Claims.

OMB Control Number: 0579–0440.

Summary of Collection: The Animal Health Protection Act of 2002 (7 U.S.C. 8301 *et seq.*) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease. U.S. animal health policy calls for elimination of the avian influenza virus (both highly pathogenic and low pathogenicity strains) when found through depopulation (*i.e.,* euthanasia and disposal) of affected poultry. The Animal and Plant Health Inspection Service (APHIS) works with State and local animal health officials to euthanize poultry, clean and disinfect premises and equipment, and test for elimination of the virus to ensure that farms can be safely restocked.

Need and Use of the Information: APHIS Veterinary Services assists State and local animal health officials and poultry producers with creating and applying biosecurity and response plans, developing and enforcing flock plans and compliance agreements, preparing and processing appraisal and indemnity claims and worksheets, developing restocking and testing agreements, and submitting reports.

Description of Respondents: State and local animal health officials and poultry producers.

Number of Respondents: 18,950.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 48,714.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–15359 Filed 7–19–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Forest Service Pilot and Aircraft Record Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on the renewal with revisions of a currently approved information collection, *Forest Service Pilot and Aircraft Record Forms.*

DATES: Comments must be received in writing on or before September 20, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: paul.linse@usda.gov.*
- *Telephone:* 202–557–1545.
- *Mail:* Paul Linse, Assistant Director Aviation, Fire and Aviation Management, USDA Forest Service, 1400 Independence Avenue SW, Mailstop 1107, Washington, DC 20250–1107.
- *Facsimile:* 208–387–5735.
- *Hand Delivery/Courier:* Paul Linse, Assistant Director Aviation, USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue SW, Mailstop 1107, Washington, DC 20250–1107.

The public may inspect comments received at USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue SW, Washington, DC 20250, during normal business hours. Visitors are encouraged to call ahead to 202–205–1483 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Paul Linse, Assistant Director Aviation, Fire and Aviation Management, 202–205–1483. Individuals who use

telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Service Pilot and Aircraft Record Forms.

OMB Number: 0596–0015.

Expiration Date of Approval: February 28, 2022.

Type of Request: Renewal with revisions of a currently approved information collection.

Abstract: The Forest Service contracts with approximately 400 vendors a year for commercial aviation services utilized in resource protection and project management. In recent years, the total annual use of contract aircraft and pilots has exceeded 80,000 hours. In order to maintain an acceptable level of safety, preparedness, and cost-effectiveness in aviation operations, Forest Service contracts include rigorous qualifications for pilots and specific condition, equipment, and performance requirements for aircraft as aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires. To ensure pilots and aircraft used for aviation operations meet specific Forest Service qualifications and requirements for aviation operations, prospective contract pilots complete one of the following Forest Service forms:

- FS–5700–20—Airplane Pilot Qualifications and Approval Record
- FS–5700–20a—Helicopter Pilot Qualifications and Approval Record

Agency Aircraft Inspectors use the following forms when inspecting aircraft for contract compliance:

- FS–5700–21—Airplane Data Record
- FS–5700–21a—Helicopter Data Record

Based upon approval(s) documented on the form(s), each contractor pilot and aircraft receive an approval card. Forest Service personnel verify possession of properly approved cards before using contracted pilots and aircraft.

Information collected on pilot forms includes:

- Name.
- Address.
- Certification numbers.
- Employment history.
- Medical Certification.
- Airplane/helicopter certifications and specifications.
- Accident/violation history.

Without the collected information, Forest Service Pilot and Aircraft Inspectors and Forest Service Contracting Officers cannot determine whether contracted pilots and aircraft meet detailed qualification, equipment, and condition requirements essential to safe and effective accomplishment of Forest Service-specified flying missions. Without a reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees would be exposed to hazardous conditions. Data collected documents approval of contract pilots and aircraft for specific Forest Service aviation special missions. Information will be collected and reviewed by Pilot and Aircraft Inspectors to determine whether aircraft and/or pilot(s) meet all agency requirements in accordance with Forest Service Handbook (FSH) 5709.16, chapter 10, sections 15 and 16. Forest Service pilot and aircraft inspectors maintain collected information in Forest Service regional and national offices. The Forest Service, at times, shares the information with the Department of the Interior, Office of Aviation Services, as each organization accepts contract inspections conducted by the other.

Estimate of Annual Burden: 60 minutes.

Type of Respondents: Vendors/Contractors.

Estimated Annual Number of Respondents: 2,100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,100 hours.

Comment Is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and proper performance of Agency functions, including whether the information will have practical or scientific utility; (2) accuracy of the Agency's estimate of the burden of the collection of information, including validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Jaelith Rivera,

Acting Deputy Chief, State & Private Forestry.

[FR Doc. 2021–15347 Filed 7–19–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Timber Sale Contract Operations and Administration

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revisions of a currently approved information collection, *Timber Sale Contract Operations and Administration.*

DATES: Comments must be received in writing on or before September 20, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Forms may be reviewed and comments submitted at *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2912.* Comments concerning this notice may also be addressed to:

Email: SM.FS.TSAdminForms@usda.gov.

Mail: Director, Forest Management, 1400 Independence Avenue SW, Mail Stop 1103, Washington, DC 20250–0003.

Facsimile: 202–205–1045.

Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be

emailed to *SM.FSAdminForms@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Maass, Forest Management Staff, at 970–295–5961. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Timber Sale Contract Operations and Administration.

OMB Number: 0596–0225.

Expiration Date of Approval: September 30, 2021.

Type of Request: Extension with revisions of a currently approved information collection.

Abstract: Forest Service contracts for the sale of timber and other forest products are bilateral contracts in which both contracting parties are bound to fulfill obligations reciprocally. By their nature, bilateral contracts require both parties to routinely share information and enter into agreements pertaining to operations and performance. Some information collected under Forest Service contracts is required by laws, regulations, and/or timber sale policies. Each contract specifies information the contractor will be required to provide, including the timing and frequency of the information collection.

The type and amount of information collected varies depending on the size, complexity, and length of each contract, and external factors such as weather and market conditions. The information collected includes plans, requests, agreements, and notices necessary for operations under the terms of the contracts. Forest Service officers collect the information from contractors who may be individuals, private sector businesses, or other government entities. The information is submitted in a variety of formats including Forest Service forms, Government Standard and/or Common Forms, forms developed by individual contractors, charts, maps, email messages, facsimiles, and letters. Also, to assist small contractors and lessen their burden, individual Contracting Officers may provide optional forms for some of the information collected.

Depending on the purpose of the specific information collection, the information may be submitted by electronic mail, facsimile, conventional mail, or hand delivery. The information is needed by the Agency for a variety of uses associated with the operations and administration of contracts for the sale of timber and other forest products, in order to: (1) Plan and schedule contract administration workloads, (2) plan and schedule the delivery of government furnished materials needed by contractors, (3) assure the safety of the public in the vicinity of contract work, (4) identify contractor resources that may be used in emergency fire-fighting situations, (5) determine contractor eligibility for additional contract time, (6) determine contractor eligibility for re-determining contract rates, (7) monitor compliance with domestic processing requirements, (8) monitor compliance with Small Business Administration requirements, (9) process agreements and modifications, (10) inspect and accept work and (11) properly process payment bonds.

Forms Associated With This Information Collection

- FS–2400–0076 *Pre-Award Waiver, Release, and Limitation of Liability Agreement:* This form was developed for limited use when the apparent high bidder of a sale that is the subject of litigation requests to have the sale awarded prior to the litigation being resolved.

The following forms are available for optional use by timber sale purchasers and contractors: FS–2400–0077 *General Plan of Operation.* This form may be used to meet the requirements for a general Plan of Operations which outlines the Purchaser's planned periods of operation and methods for meeting contractual requirements by the contract termination date.

- FS–2400–0078 *Annual Operating Schedule.* This form may be used to meet the requirement to provide a written annual Operating Schedule outlining anticipated major activities before commencing operations.
- FS–2400–0079 *Specified Road Schedule of Proposed Progress.* May be used for sales that have specified road construction or reconstruction to fulfill the requirements to annually prepare a supplement to the Plan of Operations for road construction activities.

The following forms are for mandatory use when purchaser requests changes to the terms of the contract:

- FS–2400–0009 *Agreement to Modify Timber Sale or Integrated Resource Timber Contract.* This form is required to be used when a contract is modified under the terms of the contract.
- FS–2400–0010 *Agreement Extend and Modify Timber Sale or Integrated Resource Timber Contract.* This form is required to be used when a contract is extended or modified under the terms of the contract.
- FS–2400–0011 *Waiver of Time Limit:* Required for use when additional time is needed for a Purchaser to complete non-timber removal work after the contract terminates.
- FS–2400–0012 *Third Party Agreement:* Required for use when a Purchaser requests that another party take over operational responsibility for timber sale contract.
- FS–2400–0016 *Cooperative Agreement:* Required for use when a Purchaser requests Forest Service to assume the Purchaser's obligation to perform work under the contract.

The following forms are for mandatory use when purchaser requests the use of a Payment Bond or Blanket Payment Bond on the contract:

- FS–6500–12 *Payment Bond (for Timber Sales and Integrated Resource Timber Contracts).* This form is used to guarantee payment by way of an acceptable surety bond for an individual timber sale or Integrated Resource Timber contract.
- FS–6500–12a *Blanket Payment Bond.* This form is used to guarantee payment by way of an acceptable surety bond for more than one timber sale.

Type of Respondents: Timber sale purchasers and integrated resource timber contracts contractors.

Estimated Annual Number of Contracts: 3,400.

Estimated Annual Number of Respondents: 1,370.

Estimated Annual Responses: 128,100.

Estimated Annual Number of Responses per Respondent: 93.5.

Estimated Total Annual Burden on Respondents: 40,700 hours.

Estimate of Average Burden per Response: 0.32 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the

submission request toward Office of Management and Budget approval.

Dated: July 15, 2021.

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–15390 Filed 7–19–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Egg, Chicken, and Turkey Surveys. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by September 20, 2021 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0004, by any of the following methods:

- *Email: omb officer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202)720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202)690–2388 or at *omb officer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: March 31, 2022.

Type of Request: Intent to seek approval to revise and extend an information collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. The frequencies of the surveys being conducted include weekly, monthly, and annually. This information is used by producers, processors, feed dealers, and others in marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy. The current expiration date for this docket is March 31, 2022. NASS intends to request that the surveys be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated between 8 and 35 minutes per respondent per survey. Additional burden is allowed for the inclusion of publicity materials and instructions on how to respond to the surveys via the internet.

Respondents: Farmers, ranchers, farm managers, and farm contractors.

Estimated Number of Respondents: 2,800.

Estimated Total Annual Burden on Respondents: 4,100 hours. This will include burden for both the initial mailing and phone follow-up to non-respondents, as well as publicity and instruction materials mailed out with questionnaires.

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 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, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 9, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021–15320 Filed 7–19–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2021]

Foreign-Trade Zone (FTZ) 106—Oklahoma City, Oklahoma; Authorization of Production Activity; Miraclon Corporation (Flexographic/Aluminum Printing Plates and Direct Imaging/Thermo Imaging Layer Film), Weatherford, Oklahoma

On March 17, 2021, Miraclon Corporation submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 106F, in Weatherford, Oklahoma.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 17772, April 6, 2021). On July 15, 2021, the applicant was notified of the FTZ Board's decision

that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: July 15, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–15410 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2114]

Reorganization of Foreign-Trade Zone 76 Under Alternative Site Framework, Bridgeport, Connecticut

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Bridgeport Port Authority, grantee of Foreign-Trade Zone 76, submitted an application to the Board (FTZ Docket B–24–2021, docketed March 19, 2021) for authority to reorganize under the ASF with a service area of Fairfield and Litchfield Counties as well as a portion of New Haven County, Connecticut, in and adjacent to the Bridgeport Customs and Border Protection port of entry, FTZ 76's existing Site 5 would be categorized as a magnet site, and existing Subzone 76A would become a subzone under the ASF;

Whereas, notice inviting public comment was given in the **Federal Register** (86 FR 15887, 3/25/2021) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 76 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Site 5 if not activated within five years from the month of approval, and to an ASF sunset provision for subzone/usage-driven sites that would terminate authority for each existing site of Subzone 76A if no foreign-status merchandise is admitted to the site for a *bona fide* customs purpose within three years from the month of approval.

Dated: July 15, 2021.

Christian B. Marsh,

Acting Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2021–15411 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2021]

Foreign-Trade Zone (FTZ) 123—Denver, Colorado, Authorization of Production Activity, Lockheed Martin Corporation, Lockheed Martin Space (Satellites and Other Spacecraft), Littleton, Colorado

On March 17, 2021, Lockheed Martin Corporation, Lockheed Martin Space submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 123G, in Littleton, Colorado.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 15642, March 24, 2021). On July 15, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: July 15, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–15417 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–818]

Ripe Olives From Spain: Final Results of Countervailing Duty Administrative Review; 2017–2018; Correction

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

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published notice in the **Federal Register** of July 2, 2021 in which Commerce determined that Angel Camacho Alimentacion S.L. (Camacho), producer and/or exporter of ripe olives from Spain, received countervailable subsidies during the period of review, November 28, 2017, through December 31, 2018. This notice failed to list the cross-owned affiliates of Camacho.

FOR FURTHER INFORMATION CONTACT: Dusten Hom at (202) 482–5075 or Mary Kolberg at (202) 482–1785; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 2, 2021, in FR Doc 2021–14142, on page 35266, in the third column, correct the *Final Results* as follows: [1]

Final Results of Review

We determine the following net countervailable subsidy rates for the period of November 28, 2017, through December 31, 2018:

Exporter/producer	Subsidy rate
Agro Sevilla Aceitunas S.COOP Andalusia	7.01
Angel Camacho Alimentacion S.L.[2]	[3] 5.23
Alimentary Group DCoop S.Coop. And	22.36

Background

On July 2, 2021, Commerce published in the **Federal Register** the final results

[1] *See Ripe Olives from Spain: Final Results of Countervailing Duty Administrative Review; 2017–2018,* 86 FR 35266 (July 2, 2021) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] Camacho's cross-owned companies are: Grupo Angel Camacho Alimentacíon; Cuarterola S.L.; and Cucanoche S.L. These cross-owned companies are identified in the *Preliminary Results. See Ripe*

Continued

of the administrative review of the countervailing duty order on ripe olives from Spain covering the period November 28, 2017 through December 31, 2018.[4] We failed to include Camacho's cross-owned affiliates in the notice. We are correcting the *Final Results* to clarify that the countervailable subsidy rate for Camacho also applies to its cross-owned affiliates: Grupo Angel Camacho Alimentacíon, Cuarterola S.L., and Cucanoche S.L.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 14, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021–15416 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–DS–P

Olives From Spain: Preliminary Results of Countervailing Duty Administrative Review; 2017–2018, 85 FR 84294 (December 28, 2020), and accompanying Preliminary Decision Memorandum at ''Attribution of Subsidies''; *see also Final Results* IDM at ''Attribution of Subsidies.''

[3] This rate applies to merchandise produced and/or exported by Camacho or its cross-owned companies: Grupo Angel Camacho Alimentacíon, Cuarterola S.L., and Cucanoche S.L.

[4] *See Final Results.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–082, C–570–083]

Certain Steel Wheels From the People's Republic of China: Notice of Covered Merchandise Referral

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

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP EAPA investigation concerning the antidumping duty (AD) and countervailing duty (CVD) orders on certain steel wheels from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of these orders and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders, commonly referred to as the Enforce and Protect Act of 2015 or EAPA.[1] Effective August 22, 2016, section 421 of EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of AD and CVD orders. Section 517(b)(4)(A) of the Act provides a procedure whereby if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, then it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an AD order issued under section 736 of the Act or a CVD order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline by which Commerce must issue its determination.

On June 9, 2021, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7509,[2] which concerns the AD and CVD orders on certain steel wheels from China.[3] CBP explained that Accuride Corporation (Accuride) and Maxion Wheels Akron LLC (Maxion) alleged that Vanguard National Trailer Corporation (Vanguard) imported steel wheels produced by Chinese manufacturer Zhejiang Jingu Company Limited (Jingu) that were transshipped through Jingu's affiliate in Thailand, Asia Wheel Co. Ltd. (Asia Wheel), and entered into the United States as a product of Thailand to evade the *Orders.* CBP's Office of Trade initiated an EAPA investigation based on the evidence in the allegation submitted by Accuride and Maxion that reasonably suggested that Vanguard entered steel wheels into the customs territory of the United States by means of evasion.[4]

CBP further informed Commerce on August 18, 2020, that the Trade Remedy Law Enforcement Directorate of CBP's Office of Trade initiated an EAPA investigation based on the reasonableness of the evidence in Accuride and Maxion's allegation that Vanguard imported merchandise covered by the *Orders* into the customs territory of the United States by means of evasion.[5] In response, Vanguard and Asia Wheel stated that the steel wheels at issue were not subject to the *Orders,* because they were produced in Thailand using rims that did not originate in China.[6] Accordingly, CBP has requested that Commerce issue a determination as to whether steel wheels produced in Thailand by Asia Wheel from Thai-origin steel wheel rims and Chinese-origin steel wheel discs, are covered merchandise.

We note that this merchandise is already the subject of a scope ruling request previously submitted to Commerce by Asia Wheel,[7] and is currently under consideration in ongoing scope inquiries of the *Orders.*[8]

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above. As the covered merchandise referral requests a determination on

[1] Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders, Public Law 114–125, 130 Stat. 122, 155 (February 24, 2016).

[2] *See* CBP's Letter, ''Covered Merchandise Referral Request for EAPA Investigation 7509, Imported by Vanguard National Trailer Corporation: Antidumping and countervailing duty Orders on Certain Steel Wheels 22.5 and 24.5 Inches in Diameter from the People's Republic of China,'' dated June 9, 2021 (CBP's EAPA 75009 Letter). Commerce intends to make available this document and any supporting documents on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) with this notice.

[3] *See Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 FR 24098 (May 24, 2019) (*Orders*).

[4] *See* CBP's EAPA 75009 Letter at 2.

[5] *Id.* at 1–2.

[6] *Id.* at 2.

[7] *See* Asia Wheel's Letter, ''Certain Steel Wheels from the People's Republic of China: Request for Scope Ruling for Asia Wheel's Steel Truck Wheels,'' dated February 11, 2021.

[8] *See* Letter from Commerce ''Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People's Republic of China (A–570–082, C–570–083): Initiation of Asia Wheel Scope Inquiry,'' dated May 12, 2021.

merchandise identified in a request for a scope ruling previously submitted to Commerce and currently under consideration, we will address the covered merchandise referral and Asia Wheel's scope ruling request in the ongoing scope inquires of the *Orders.* Based on our determinations in the ongoing scope inquiries of the *Orders,* we intend to notify CBP as to whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act.

Commerce intends to provide interested parties with the opportunity to participate in this EAPA referral as part of the ongoing scope inquiries, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for these segments of the proceedings of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. C

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this covered merchandise referral. Interested parties that wish to participate in these scope inquiries, and receive notice of the final determinations, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in these scope inquiries must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Further, Commerce may consider conducting a separate anti-circumvention inquiry regarding the merchandise described in CBP's covered merchandise referral, if parties submit the necessary information addressing the criteria for an anti-circumvention inquiry, in accordance with section 781 of the Act. Interested parties are requested to file such comments and information onto the record of the ongoing scope inquiries within 30 days of the publication of this notice in the **Federal Register**.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce intends to develop its practice and procedures in this area as it gains more experience.

Scope of the Orders

The products covered by the *Orders* are certain on-the-road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 22.5 inches and 24.5 inches are generally for Class 6, 7, and 8 commercial vehicles (as classified by the Federal Highway Administration Gross Vehicle Weight Rating system), including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses, and are the current standard wheel diameters for such applications. The standard widths of certain on-the-road steel wheels are 7.5 inches, 8.25 inches, and 9.0 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope. While 22.5 inches and 24.5 inches are standard wheel sizes used by Class 6, 7, and 8 commercial vehicles, the scope covers sizes that may be adopted in the future for Class 6, 7, and 8 commercial vehicles.

The scope includes certain on-the-road steel wheels with either a ''hub-piloted'' or ''stud-piloted'' mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately. The scope includes certain on-the-road steel wheels, discs, and rims, of carbon and/or alloy steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. All on-the-road wheels sold in the United States are subject to the requirements of the National Highway Traffic Safety Administration and bear markings, such as the ''DOT'' symbol, indicating compliance with applicable motor vehicle standards. See 49 CFR571.120. The scope includes certain on-the-road steel wheels imported with or without the required markings. Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached are included. However, if the certain on-the-road steel wheel is imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached, the certain on-the-road steel wheel is covered by the scope, but the tire and/or valve stem is not covered by the scope.

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

Excluded from the scope are:

(1) Steel wheels for tube-type tires that require a removable side ring;
(2) aluminum wheels;
(3) wheels where steel represents less than fifty percent of the product by weight; and
(4) steel wheels that do not meet National Highway Traffic Safety Administration requirements, other than the rim marking requirements found in 49 CFR 571.120S5.2.

Imports of the subject merchandise are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8708.70.4530, 8708.70.4560, 8708.70.6030, 8708.70.6060, 8716.90.5045, and 8716.90.5059. Merchandise meeting the scope description may also enter under the following HTSUS subheadings: 4011.20.1015, 4011.20.5020, and 8708.99.4850. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[9] An electronically filed document must be received successfully in its entirety by the time and date it is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.[10] Each submission must be placed on the record of each of the scope inquiries, *i.e.,* for the AD order (A–570–082) and the CVD order (C–570–083).

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in these scope inquiries and be added to the public service list must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties to EAPA investigation 7509 publicly identified

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

by CBP in the covered merchandise referral referenced above (Accuride, Maxion, and Vanguard) [11] are not required to submit a letter of appearance, and will be added to the public service list for these scope inquires by Commerce.

Commerce placed an APO on the existing records of the scope inquiries on May 12, 2021,[12] and established the APO service lists for use in these segments. Commerce intends to place the covered merchandise referral letter on the records of these scope inquiries in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to these segments of the AD and CVD proceedings, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: July 14, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–15415 Filed 7–19–21; 8:45 am]

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[11] *See* CBP's EAPA 75009 Letter at 4.

[12] *See* the Administrative Protective Orders, dated May 12, 2021.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 25th Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) published the preliminary results of the 25th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China) on March 25, 2021. Commerce determines that mandatory respondent, Shijiazhuang Goodman Trading Co., Ltd. (Goodman) failed to establish its eligibility for a separate rate and is part of the China-wide entity. We also find that the review request made by The Roots Farm Inc. (Roots Farm) was not valid and, accordingly, we have rescinded the review with respect to the other mandatory respondent, Zhengzhou Harmoni Spice Co., Ltd. (Harmoni).

DATES: Applicable July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published the preliminary results of the 25th administrative review of fresh garlic from China.[1] We preliminarily found that the mandatory respondent Goodman was part of the China-wide entity. We rescinded the review with respect to five companies for which their sole requests for review had been timely withdrawn.[2] Furthermore, we preliminarily determined that the review request submitted by Roots Farm was invalid and preliminarily rescinded the review with respect to Harmoni. Additionally, we found that two companies, Shandong Happy Foods Co., Ltd. and Jining Alpha Food Co., Ltd., qualified for separate rate status.

On April 26, 2021, the Fresh Garlic Producers Association (FGPA) and its individual members [3] submitted comments on the *Preliminary Results.*[4] No other party submitted comments. The deadline for the final results is July 23, 2021.

Scope of the Order

The products subject to the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Partial Rescission of Administrative Review

Commerce has determined that the review request from Roots Farm was invalid *ab initio,* and is rescinding the administrative review with respect to mandatory respondent, Harmoni.

Analysis of Comments Received

The FGPA was the only party to file comments on the *Preliminary Results.* The FGPA noted that the preliminary rate applied to Shandong Happy Foods Co., Ltd and Jining Alpha Food Co., Ltd should be $4.37 per kilogram (kg) rather than the rate of $4.34 per kg stated in the *Preliminary Results.* Commerce stated in the *Preliminary Results* that the margin assigned to the separate rate recipients would be the ''rate for the separate rate companies in the previous administrative review of this order.'' [5] The separate rate in the previous administrative review was $4.37 per kg.[6] Therefore, we have made the

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 25th Antidumping Duty Administrative Review; 2018–2019,* 86 FR 15903 (March 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] The companies are: (1) China Jiangsu International Economic Technical Cooperation Corporation; (2) Hebei Holy Flame International; (3) Jinxiang Qingtian Garlic Industries; (4) Qingdao Ritai Food Co., Ltd.; and (5) Yingxin (Wuqiang) International Trade.

[3] The individual members of the FGPA are: Christopher Ranch L.L.C.; The Garlic Company; and Valley Garlic.

[4] *See* FGPA's Letter, ''25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Letter in Lieu of Case Brief,'' dated April 26, 2021.

[5] *See Preliminary Results* PDM at 9.

[6] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review;*

change proposed by FGPA for these final results. *See* Final Results of Administrative Review section.

Determination of Separate Rates for Non-Selected Companies

In the *Preliminary Results,* in accordance with section 777A(c)(2)(B) of Tariff Act of 1930, as amended (the Act), Commerce employed a limited examination methodology, as we determined that it would not be practicable to examine individually all companies for which a review request was made.[7] There were two exporters of subject merchandise from China that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These two exporters are listed in the Final Results of Administrative Review section of this notice.

Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations.

In this administrative review, Goodman, the only individually reviewed respondent, did not receive a weighted-average dumping margin. Therefore, for these final results, Commerce has determined to assign the separate-rate from the prior review,[8] which was Goodman's calculated rate, to the non-selected separate-rate companies.

Final Results of Administrative Review

Commerce determines that the following weighted-average dumping margins exist for the administrative review covering the period November 1, 2018, through October 31, 2019:

Exporter	Weighted-average margin (dollars per kg)
Shandong Happy Foods Co., Ltd	4.37
Jining Alpha Food Co., Ltd	4.37
China-Wide Rate[9]	4.71

Assessment Rates

Pursuant to section 751(a)(2)(A) of 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 direct CBP to assess rates based on the per-unit (*i.e.,* per kg) amount on each entry of the subject merchandise during the POR. Commerce also intends to issue assessment instructions no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to Commerce's assessment practice in non-market economy cases, for merchandise entered under Goodman's case number (*i.e.,* at its individually-examined exporter's cash deposit rate), Commerce intends to instruct CBP to liquidate such entries at the China-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by sections 751(a)(2) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review; (2) for previously investigated or reviewed Chinese and non-Chinese 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 Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 4.71 U.S. dollars per kg; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only 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. 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

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–15413 Filed 7–19–21; 8:45 am]

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2017–2018, 85 FR 71049, 71050–51 (November 6, 2020) (*Garlic from China 2017–2018*).

[7] *See* Memorandum, ''2018–19 Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Selection of Respondents for Individual Examination,'' dated February 20, 2020.

[8] *See Garlic from China 2017–2018.*

[9] The companies that are part of the China-wide entity in this review include Shijiazhuang Goodman Trading Co., Ltd.; Qingdao Maycarrier Import & Export Co., Ltd.; and Weifang Hongqiao International Logistics Co., Ltd.

[10] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–897]

Utility Scale Wind Towers From India: Postponement of Final Determination of Sales at Less Than Fair Value Investigation

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

SUMMARY: The Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of utility scale wind towers (wind towers) from India until October 6, 2021, and is extending the provisional measures from a four-month period to a period of not more than six months.

DATES: Applicable July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2020, Commerce initiated an LTFV investigation of imports of wind towers from India.[1] The period of investigation is July 1, 2019, through June 30, 2020. On May 24, 2021, Commerce published the *Preliminary Determination.*[2]

Postponement of Final Determination

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide 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 the exporters or producers 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 petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

On July 7, 2021, Vestas Wind Technology India Private Limited (Vestas India), the mandatory respondent in this investigation, requested that Commerce postpone the deadline for the final determination until no later than 135 days from the publication of the *Preliminary Determination,* and extend the application of the provisional measures from a four-month period to a period of not more than six months.[3] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The *Preliminary Determination* was affirmative; (2) the request was made by an exporter/producer who accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of the publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than October 6, 2021.[4]

Notice to Interested Parties

This notice is issued and published pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: July 14, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–15412 Filed 7–19–21; 8:45 am]

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[1] *See Utility Scale Wind Towers from India, Malaysia, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 73023 (November 16, 2020).

[2] *See Utility Scale Wind Towers from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 27829 (May 24, 2021) (*Preliminary Determination*).

[3] *See* Vestas India's Letter, ''Request to Extend the Deadline for the Final Determination,'' dated July 7, 2021.

[4] Because Commerce previously aligned the deadline for the final determination of the companion countervailing duty (CVD) investigation of wind towers from India with this deadline for this investigation, the deadline for issuing the final determination in the CVD investigation is also October 6, 2021. *See Utility Scale Wind Towers from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 86 FR 15897 (March 25, 2021).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB128]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Naval Base Point Loma Fuel Pier Inboard Pile Removal 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 the United States Navy (Navy) for authorization to take marine mammals incidental to the Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 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 August 19, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Potlock@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, 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 *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: Kelsey Potlock, 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 would 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 February 3, 2021, NMFS received a request from the United States Navy (Navy) for an IHA to take marine mammals' incidental to pile removal activities at Naval Base Point Loma in San Diego Bay, California. We submitted questions to the Navy on the application on March 12, 2021. We received responses on March 23, 2021; April 5, 2021; May 5, 2021; and May 12, 2021. Meetings between NMFS, the Navy, and their contractors were held on May 12, 2021 and May 24, 2021. A final revised version was received by NMFS on May 24, 2021. The application was deemed adequate and complete on May 17, 2021. The Navy's request is for the take of a small number of six species of marine mammals by Level B harassment only. Neither the Navy nor NMFS expects serious injury or mortality to result from these activities. Therefore, an IHA is appropriate.

Naval Base Point Loma provides berthing and support services for Navy submarines and other fleet assets. The existing fuel pier previously served as a fuel depot for loading and unloading fuel. Naval Base Point Loma is the only active Navy fueling facility in southern California. The current project is to remove piles that were part of the old pier that was replaced over the past few years. This proposed IHA includes up to 84 days of in-water pile removal activities.

NMFS has previously issued incidental take authorizations to the Navy for similar activities over the past 8 years at Naval Base Point Loma in San Diego Bay, including IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539, July 24, 2013; Year 1 Project), October 8, 2014 through October 7, 2015 (79 FR 65378, November 4, 2014; Year 2 Project), October 8, 2015 through October 7, 2016 (80 FR 62032, October 15, 2015; Year 3 Project), October 8, 2016 through October 7, 2017 (81 FR 66628, September 28, 2016; Year 4 Project), October 8, 2017 through October 7, 2018 (82 FR 45811, October 2, 2017; Year 5 Project), September 15, 2020 through September 14, 2021 (85 FR 33129, June 1, 2020; Floating Dry Dock Project), and October 1, 2021 through September 30, 2022 (86 FR 7993, February 3, 2021; Pier 6 Replacement Project). The Navy has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of past IHAs. Monitoring reports from these activities are available on NMFS website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Description of Proposed Activities

Overview

The purpose of the proposed project is to remove old piles from the Fuel Pier at Naval Base Point Loma to allow for continued Naval Fleet readiness activities. Specifically, in-water construction work includes the removal of 409 piles by a variety of techniques (*i.e.,* one to two pile clippers, an underwater chainsaw, a diamond wire saw, or a vibratory hammer, possibly with assistance from a diver). Concurrent pile removal may occur for some piles through the use of two pile clippers only. The piles include an estimated 12 13-inch diameter polycarbonate fender piles, 56 14-inch diameter concrete fender piles, and 341 16-inch diameter concrete structural piles.

Dredging activities would occur both during and after pile removal and within the one-year period of the IHA. However, take of marine mammals is not expected to result from the NBPL dredging activities, the Navy did not request take incidental to dredging activities, and they are not discussed further.

The pile removal activities can result in the take of marine mammals from the sounds produced in the water, which could result in behavioral harassment or auditory injury to marine mammals within the estimated isopleths.

Dates and Duration

The work described in this proposed IHA is scheduled to begin January 15,

2022 and be valid for one year after the start date (end January 14, 2023). Under the terms of a previously developed Memorandum of Understanding (MOU) between the Navy and the U.S. Fish and Wildlife Service (USFWS), the Navy would only be performing in-water activities during a 196-day period from September 16 to March 31 to not interfere with the California least tern (*Sterna antillarum browni*) nesting season.

Pile removal is planned to occur during daylight hours only over 84 days within the previously described 196 day period. Per the Navy's application, daylight hours constitute no earlier than 45 minutes after sunrise or later than 45 minutes before sunset.

Specific Geographic Region

The activities would occur near the mouth of the San Diego Bay (Figure 1). San Diego Bay is a narrow, crescent-shaped natural embayment oriented northwest-southeast with an approximate length of 24 kilometers (km) (15 miles (mi)) and a total area of roughly 4 km² (11,000 acres; Port of San Diego, 2007). The width of the Bay ranges from 0.3 to 5.8 km (0.2 to 3.6 mi), and depths range from 23 m (74 ft) MLLW near the tip of Ballast Point to less than 1.2 m (4 ft) at the southern end (Merkel and Associates, Inc., 2009). Approximately half of the Bay is less than 4.5 meters (m) (15 feet (ft)) deep and much of it is less than 15 m (50 ft) deep (Merkel and Associates, Inc., 2009). The northern and central portions of the Bay have been shaped by historical dredging and filling to support large ship navigation and shoreline development. The United States Army Corps of Engineers dredges the main navigation channel in the Bay to maintain a depth of 14 m (47 ft) MLLW and is responsible for providing safe transit for private, commercial, and military vessels within the bay (NOAA, 2010). Outside of the navigation channel, the bay floor consists of platforms at depths that vary slightly (Merkel and Associates, Inc., 2009). Within the Central Bay, typical depths range from 10.7–11.6 m (35–38 ft) MLLW to support large ship turning and anchorage, and small vessel marinas are typically dredged to depths of 4.6 m (15 ft) MLLW (Merkel and Associates, Inc., 2009).

Figure 1. Map of the Regional Location of Naval Base Point Loma in San Diego Bay, California

Benthic substrate in San Diego Bay is largely sand (Naval Facilities Engineering Command, Southwest and Port of San Diego Bay, 2013) as tidal currents tend to keep the finer silt and clay fractions in suspension, except in harbors and elsewhere in the lee of structures where water movement is diminished. Much of the shoreline consists of riprap and manmade structures. The project site is shallow subtidal and has an eelgrass bed located less than 1-acre in size (Merkel and Associates, Inc., 2018). Over-water structures, such as the existing Marine

Group Boat Works, LLC (MGBW; see 85 FR 33129, June 1, 2020) piles and dock structures, provide substrates for the growth of algae and invertebrates off the bottom and support abundant fish populations. Eelgrass present within the project site is important habitat for invertebrates, fishes, and birds (Naval Facilities Engineering Command, Southwest and Port of San Diego Bay, 2013).

San Diego Bay is heavily used by commercial, recreational, and military vessels, with an average of 82,413 vessel movements (in or out of the Bay) per year (approximately 225 vessel transits per day), a majority of which are presumed to occur during daylight hours. This number of transits does not include recreational boaters that use San Diego Bay, estimated to number 200,000 annually (San Diego Harbor Safety Committee, 2009).

Underwater data collect by the Navy have determined an averaged median ambient noise level to be approximately 129.6 decibel pressure of 1 microPascal (dB re 1 μPa) for north San Diego Bay (NAVFAC SW, 2020). Their findings demonstrated ambient sound levels to be higher than the 120 dB re 1 μPa sound threshold for Level B harassment from non-impulsive sources. This is based on sound levels collected during the five past IHA applications submitted to NMFS (Navy 2013b, 2014, 2015, 2016, and 2017a) that determined sound levels ranged between 126 and 137 dB re 1 μPa (L_{50}; Naval Facilities Engineering Command, Southwest, 2018).

Section 2.2 of the application provides extensive additional details about the project area.

Detailed Description of Specific Activity

The purpose of this project is to deconstruct the old Fuel Pier to allow for the full use of the newly developed Fuel Pier. The Navy would remove 409 old piles using single or concurrent pile clippers, a diamond wire saw, an underwater chainsaw, and/or a vibratory hammer. While each removal method is assessed independently, multiple tools may be needed to remove each pile. However, with the exception for the possible concurrent use of two pile clippers, removals would be conducted independently as to minimize disturbance zones.

The hydraulic pile clippers (24-inch) would be placed over each pile and lowered to the mudline where they use a horizontal motion to cut the pile. While pile clippers may be used on any of the pile types (13-inch polycarbonate, 14-inch concrete, 16-inch concrete), any concurrent use of pile clippers (2 pile clippers) would only occur for the 14-inch and 16-inch concrete piles. Underwater divers may be needed for pile clipper use.

The use of a single diamond wire saw, underwater chainsaw, or vibratory hammer may be used for the 14-inch and 16-inch concrete piles. The diamond wire saw rig and vibratory hammer would be placed around the pile. The saw would cut through the pile using a worker-operated level bar. The vibratory hammer would loosen the pile from the surrounding sediment, allowing it to be pulled out vertically from the ground. Lastly, a diver-operated underwater chainsaw would be used to cut through the piles. Once the piles are clipped or cut, an on-site crane would be used to vertically remove piles. Removed piles would be placed on a barge for transport to a processing yard.

The Navy's contractor will choose the most appropriate method for each pile, as discussed in the submitted project application. Pile clippers (24-inch) would be used first, either by single use for one pile or concurrent use on two piles. If the pile clippers cannot be used successfully, the underwater chainsaw would be employed to cut concrete piles. If both of these methods are both unsuccessful, the diamond wire saw would be utilized. Lastly, the vibratory hammer would be implemented to loosen any relatively intact piles to allow for vertical removal by crane. However, the Navy has noted in their application that the contractor performing the work will choose the appropriate method of pile removal.

All proposed mitigation, monitoring, and reporting measures are described in detail later in this document (see Proposed Mitigation, Monitoring, and Reporting Measures).

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*).

There are six marine mammal species that are potentially expected to be present during all or a portion of the in-water work associated with this project in San Diego Bay, including the California sea lion (*Zalophus californianus*), the Northern elephant seal (*Mirounga angustirostris*), the harbor seal (*Phoca vitulina*), the bottlenose dolphin (*Tursiops truncatus*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the common dolphin (*Delphinus delphis*). The Committee on Taxonomy recently determined both the long-beaked and short-beaked common dolphin belong in the same species and we adopt this taxonomy, but the SARs still describe the two as separate stocks and that stock information is presented in Table 1. California sea lions are typically present year-round and are very common in the project area, but may have variable sightings based off Navy marine mammal surveys of northern San Diego Bay. Bottlenose dolphins and harbor seals are also common and likely to be present year-round, but with more variable occurrence in San Diego Bay in comparison to California sea lions. Common dolphins are known to occur in nearshore waters outside San Diego Bay, but are only rarely observed near or in the Bay. The remaining species are known to occur in nearshore waters outside San Diego Bay, but are generally only rarely observed near or in the bay. However, recent observations indicate that these species may occur in the project area and therefore could potentially be subject to incidental harassment from the aforementioned activities.

Table 1 lists all marine mammal species with expected potential for occurrence in the vicinity of Naval Base Point Loma during the project timeframe and summarizes key information, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. 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; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). 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. For taxonomy, we followed the Society for Marine

Mammalogy's Committee on Taxonomy (2020).

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 2019 Pacific SARs (Carretta *et al.,* 2020a) and draft 2020 U.S. Pacific SARs (Carretta *et al.,* 2020b). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 Pacific SARs and draft 2020 Pacific SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES AND STOCKS THAT TEMPORALLY AND SPATIALLY CO-OCCUR WITH THE PROJECT TO A 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 Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California coastal	-, -, N	453 (0.06, 3436, 2011)	2.7	≥2.0
Short-beaked common dolphin.	*Delphinus delphis*	California/Oregon/Washington	-, -, N	969,861 (0.17, 839,325, 2014)	8393	≥40
Long-beaked common dolphin.	*Delphinus capensis*	California	-, -, N	101,305 (0.49, 68,432, 2014)	657	≥35.4
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California/Oregon/Washington	-, -, N	26,814 (0.28, 21,195, 2014)	191	7.5
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)	14011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	-, -, N	179,000 (N/A, 81,368, 2010)	4882	8.8

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

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) 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 six species (with seven managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. While Risso's dolphins and gray whales have been sighted around California coastal waters in the past, these species' general spatial occurrence is such that take is not expected to occur as they typically occur more offshore, and they are not discussed further beyond the explanation provided here.

Specifically, gray whales may be observed in San Diego Bay sporadically during their January southbound migratory periods (Naval Facilities Engineering Command, Southwest and Port of San Diego Bay, 2013), and have previously been included in take authorizations for past projects and IHAs relating to Naval Base Point Loma (refer back to the Year 1–5 IHAs cited above). However, in the most recent Monitoring Report from October 8, 2017 to January 25, 2018 (Year 5 IHA; NAVFAC SW, 2018) at Naval Base Point Loma, no sightings occurred for gray whales. Only two gray whales were spotted in the October 8, 2016 to April 30, 2017 (Year 4 IHA; NAVFAC SW, 2017) Monitoring Report by the Navy.

Risso's dolphins have not been seen in San Diego Bay but are known to be common in southern California coastal waters (Campbell *et al.,* 2010). While take of Risso's dolphins have been authorized in three of the past IHAs for Naval Base Point Loma (see Year 3 IHA at 80 FR 62032, October 15, 2015; Year 4 IHA at 81 FR 66628, September 28, 2016; and Year 5 IHA at 82 FR 45811, October 2, 2017 for examples), no Risso's dolphins were sighted during any of those projects.

Furthermore, due to the relatively shallow depth near the project site the more sheltered and inland location of this project site within San Diego Bay, and the inclusion of the buffered shutdown zone within the Navy's monitoring and mitigation plan, NMFS expects that a very low probability of take exists for these two species. Because of these reasons, no take has been requested nor proposed to be authorized for gray whales or Risso's dolphins during this proposed IHA.

Furthermore, other species that occur in the Southern California Bight may have the potential for isolated occurrence within San Diego Bay or just offshore. In particular, a short-finned pilot whale (*Globicephala macrorhynchus*) was observed off Ballast Point, and a Steller sea lion (*Eumetopias jubatus monteriensis*) was seen in the project area during the Year 2 project at Naval Base Point Loma (79 FR 65378, November 4, 2014). However, these species are not typically observed near the project area and, we do not believe it likely that they will occur during this proposed action. Given the unlikelihood of their exposure to the sounds generated from the project, these species are not considered further.

Bottlenose Dolphin

As seen in the Navy's marine mammal surveys of San Diego Bay, cited above,

coastal bottlenose dolphins have occurred within San Diego Bay sporadically and in variable numbers and locations. The California coastal stock of bottlenose dolphin is distinct from the offshore population and is resident in the immediate (within 1 km of shore) coastal waters, occurring primarily between Point Conception, California, and San Quintin, Mexico. Occasionally, during warm-water incursions such as during the 1982–1983 El Niño events, their range extends as far north as San Francisco Bay (Carretta *et al.,* 2017). They are commonly found in groups of 2 to 15 individuals and in larger groups offshore.

Coastal bottlenose dolphins have occurred sporadically and in highly variable numbers and locations in San Diego Bay. Navy surveys showed that bottlenose dolphins were most commonly sighted in April, and there were more dolphins observed during El Niño years.

California coastal bottlenose dolphins show little site fidelity and likely move within their home range in response to patchy concentrations of nearshore prey (Defran *et al.,* 1999; Bearzi *et al.,* 2009). After finding concentrations of prey, animals may then forage within a more limited spatial extent to take advantage of this local accumulation until such time that prey abundance is reduced, likely then shifting location once again and possibly covering larger distances. Navy surveys frequently result in no observations of bottlenose dolphins, and sightings have ranged from 0–8 groups observed (0–40 individuals).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are endemic to temperate waters of the North Pacific Ocean, and are common both on the high seas and along the continental margins (Carretta *et al.,* 2014). Off the U.S. west coast, Pacific white-sided dolphins occur primarily in shelf and slope waters. Sighting patterns from aerial and shipboard surveys conducted in California, Oregon and Washington suggest seasonal north-south movements, with animals found primarily off California during the colder water months and shifting northward into Oregon and Washington as water temperatures increase in late spring and summer (Carretta *et al.,* 2014).

Pacific white-sided dolphins are uncommon in San Diego Bay, but observations of this species increased during El Niño years. Monitoring during the Year 2 IHA documented seven sightings of Pacific white-sided dolphins, comprising 27 individuals, with a mean group size of 3.85 individuals per sighting and an average of 0.28 individuals sighted per day of monitoring.

Common Dolphins (Short-Beaked and Long-Beaked)

Short-beaked common dolphins are the most abundant cetacean off California and are widely distributed between the coast and at least 300 nautical miles (nmi; 555.6 km) offshore. In contrast, long-beaked common dolphins generally occur within 50 nmi of shore. Both stocks of common dolphin appear to shift their distributions seasonally and annually in response to oceanographic conditions and prey availability (Carretta *et al.,* 2016). Long-beaked common dolphins appear to prefer shallower, warmer waters as compared to the short-beaked common dolphin (Perrin 2009). Both tend to be more abundant in coastal waters during warm-water months (Bearzi, 2005).

The occurrence of common dolphins inside San Diego Bay is uncommon (NAVFAC SW and POSD, 2013). However, common dolphins were observed within the bay on three occasions (twelve, five, and two individuals) on two separate days during monitoring conducted during the Indicator Pile Program in Fall 2014 (78 FR 44539, July 24, 2013). Within San Diego Bay, these two stocks' share overlapping distributions, although they are likely long-beaked (as described by the stranding of this species from San Diego Bay to the U.S.-Mexico border (Danil and St. Leger, 2011)). Furthermore, it is unlikely that observers would be able to differentiate the specific species in the field.

California Sea Lion

The California sea lion is by far the most commonly-sighted pinniped species in the vicinity of Naval Base Point Loma and northern San Diego Bay. California sea lions regularly occur on rocks, buoys and other structures, and especially on bait barges, although numbers vary greatly.

Different age classes of California sea lions are found in the San Diego region throughout the year (Lowry *et al.,* 1992), although Navy surveys show that the local population comprises adult females and sub-adult males and females, with adult males being uncommon. The Navy has conducted marine mammal surveys throughout the north San Diego Bay project area (Merkel and Associates, 2008; Johnson, 2010, 2011; Lerma, 2012, 2014). Sightings include all animals observed and their locations. The majority of observations are of animals hauled out.

There are a few man-made areas near the proposed project site where California sea lions are known to haul out. The Navy has noted that the most proximal location is two sets of Navy-owned docks that are 140 m (459 ft) to the southwest and 180 m (591 ft) to the north. However, these docks are used constantly for other Navy activities and California sea lions are not expected to remain present for long periods of time. The Everingham Brother Bait Barges, located approximately 400 to 500 m (1,312 to 1,640 ft) southeast of the proposed project area, also serves as a known haul out site. No natural haul outs are known near the project site.

Per NMFS's 2019 Pacific SAR, it is estimated that the carrying capacity for California sea lions is around 275,298 animals in 2014 (Laake *et al.,* 2018; Carretta *et al.,* 2020a). As indicated by the current draft 2020 Pacific SAR, this estimate has not changed (Carretta *et al.,* 2020b).

Harbor Seal

Harbor seals are considered abundant throughout most of their range from Baja California to the eastern Aleutian Islands. Peak numbers of harbor seals haul-out on land during late May to early June, which coincides with the peak of their molt. Harbor seals do not make extensive pelagic migrations, but do travel hundreds of km on occasion to find food or suitable breeding areas (Carretta *et al.,* 2016). Based on likely foraging strategies, Grigg *et al.,* (2009) reported seasonal shifts in harbor seal movements based on prey availability. In relationship to the entire California stock, harbor seals do not have a significant mainland California distribution south of Point Mugu.

Harbor seals are relatively uncommon within San Diego Bay. Sightings in the Navy transect surveys of northern San Diego Bay through March 2012 were limited to the south side of Ballast Point (TDI, 2012; Jenkins, 2012). However, Navy marine mammal monitoring for another project conducted intermittently at Pier 122 (located approximately 6,150 m (20,177.17 ft) northeast from the location of this proposed project) from 2010–2014 documented from zero to 4 harbor seals within the proposed project area at various times, with the greatest number of sightings during April and May (Jenkins, 2012; Bowman, 2014). Subsequently, monitoring conducted by the Navy during Year 1 of the fuel pier project documented increased numbers of harbor seals in the project area (Lerma, 2014). Approximately three-

quarters of these observations were of animals hauled out along the Naval Base Point Loma shoreline. An individual harbor seal was also frequently sighted near Naval Mine and Anti-Submarine Warfare Command (NMAWC), located approximately 3,700 m (12,139.11 ft) north of the project site, during 2014 (McConchie, 2014).

Northern Elephant Seal

The population is estimated to have grown at 3.8 percent annually since 1988 (Lowry *et al.,* 2014). Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands. Populations of northern elephant seals in the U.S. and Mexico have recovered after being reduced to near extinction by hunting, undergoing a severe population bottleneck and loss of genetic diversity with the population reduced to only an estimated 10–30 individuals.

Northern elephant seals occur in the southern California bight, and have the potential to occur in San Diego Bay (NAVFAC SW and POSD 2013), but the only recent documentation of occurrence was of a single distressed juvenile observed on the beach south and inshore of the Fuel Pier during the second year IHA. Given the continuing, long-term increase in the population of northern elephant seals (Lowry *et al.,* 2014), there is an increasing possibility of occurrence in 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 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL REARING GROUPS (NMFS, 2018)

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

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

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 (three cetaceans and three pinnipeds (one otariid (California sea lion) and two phocid (harbor seal and Northern elephant seal) species have the reasonable potential to co-occur with the proposed construction activities (Table 1). Of the cetacean species that may be present at Naval Base Point Loma during this proposed project, none are classified as low-frequency cetaceans, three are classified as mid-frequency cetaceans (Pacific white-sided dolphins, bottlenose dolphins, and common dolphins), and none are classified as high-frequency cetaceans.

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, Monitoring, and Reporting Measures 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 pile removal, the use of underwater chainsaws, pile clippers (individual and concurrently), and diamond wire saws. The effects of underwater noise from the Navy's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area. However, Level A harassment is not expected nor would be authorized for this project.

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 (ANSI, 1995). 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 this project would include vibratory pile removal as well as diamond wire saw, underwater chainsaws, and single-use or concurrent-use of pile clippers. 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, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, chainsaws, pile clippers, 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).

Vibratory hammers would be used in this project. Vibratory hammers install or remove 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).

Pile clippers, diamond wire saws, and underwater chainsaws are hydraulically operated equipment. A pile clipper is a large, heavy elongated horizontal guillotine-like structure that is mechanically lowered over a pile down to the mudline or substrate where hydraulic force is used to push a sharp blade to cut a pile. The underwater chainsaws are operated by SCUBA divers. The diamond wire saw may need to be operated by a SCUBA diver as well. Sounds generated by this demolition equipment are non-impulsive and continuous (NAVAC SW, 2020).

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

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile removal and the various demolition equipment is the primary means by which marine mammals may be harassed from the Navy'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). Generally, exposure to pile removal and other construction 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 removal and demolition 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 likelihood or 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 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, and 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 (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 (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, 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 (*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). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). 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).

During pile removal activities there would likely be pauses in the activities producing sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment

Exposure to noise from pile 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.,* 2004; 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.

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). 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, when available, may be used to better inform assessment of whether foraging disruptions are likely to have fitness consequences.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving) at the Kodiak Ferry Dock (ABR, 2016; see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR, 2016), 1,281 Steller sea lions were observed within the Level B harassment disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment

take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales (*Orcinus orca*) and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat, we expect similar behavioral responses of marine mammals to the Navy's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

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 would 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 (*Eubalaena glacialis*). These and other studies lead to a reasonable expectation that some marine mammals would 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. The San Diego area contains active military and commercial shipping, cruise ship and ferry operations, as well as numerous recreational and other commercial vessel and background sound levels in the area are already elevated as described in Dahl and Dall'Osta (2019).

Potential Effects of Diamond Wire Saw, Underwater Chainsaw, and Single or Concurrent Use of Pile Clipper Sounds

Diamond wire saws, underwater chainsaws, and pile clippers may be used to assist with removal of piles. The sounds produced by these activities are of similar frequencies to the sounds produced by vessels (NAVFAC SW, 2020), and are anticipated to diminish to background noise levels (or be masked by background noise levels) in the Bay relatively close to the project site. Therefore, the effects of this equipment are likely to be similar to those discussed above in the Behavioral Harassment section.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile 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 elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in

relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. 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.

Potential Effects on Marine Mammal Habitat

The Navy's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. 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 removal or pile cutting, elevated levels of underwater noise would ensonify San Diego Bay where both fishes and mammals 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. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are removed. 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). The sediments of the project site are sandy and would settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile removal areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

The area likely impacted by the project is relatively small compared to the available habitat (*e.g.,* the impacted area is in the Bay mouth only) of San Diego Bay and does not include any Biologically Important Areas or other habitat of known importance. The area is highly influenced by anthropogenic activities. The total seafloor area affected by pile removal is a very small area compared to the vast foraging area available to marine mammals in the San Diego Bay. At best, the impact area provides marginal foraging habitat for marine mammals and fish. Furthermore, pile removal at the project site would not obstruct movements or migration of marine mammals.

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 removal stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity due to temporary species displacement.

In-Water Construction 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 and Mann, 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, multi-year 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).

Because of the rarity of use and research, the effects of pile clippers, diamond wire saws, underwater chainsaws, and water jetting are not fully known; but given their similarity to ship noises we do not expect unique effects from these activities.

The most likely impact to fish from pile removal activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid

return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in San Diego Bay are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the short daily duration of sound associated with individual pile removal events and the relatively small areas being affected, pile removal activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. 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. 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 would 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 TTS for individual marine mammals resulting from exposure to the sounds produced from the underwater acoustic sources (*i.e.,* vibratory hammer, single use or concurrent use of pile clippers, underwater chainsaw, diamond wire saw). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* PSO monitoring and shutdown zone) discussed in detail below in the Proposed Mitigation, Monitoring, and Reporting Measures 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 would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would 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 (root mean square (rms)) for continuous (*e.g.,* vibratory hammer) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact hammers (pile-driving)) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's pile removal activities includes the use of stationary, non-impulsive, and continuous noise sources (vibratory hammer, diamond wire saw, underwater chainsaw, single use or concurrent use of pile clippers), and therefore the 120 dB re 1 μPa (rms) is applicable. However, as discussed above, the Navy measurements support an ambient noise estimate of 129.6 dB re 1 μPa (rms) in the project area. Accordingly, we have adjusted the standard Level B harassment threshold of 120 dB to 129.6 dB, as it likely provides a more realistic and accurate basis for predicting Level B harassment in the San Diego Bay area.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's pile removal activities includes the use of non-impulsive (vibratory pile removal and other cutting and removal methods) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018a Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset acoustic thresholds [1] (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.

[1] 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 1 μPa2s. 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 would be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that would feed into identifying the area ensonified above the acoustic thresholds, which include source levels, durations, 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 removal, diamond wire saw, single use or concurrent use of pile clippers, and underwater chainsaws).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth or be withdrawn more easily. The actual durations of each method vary depending on the type and size of the pile.

In order to calculate the distance to the Level B harassment sound threshold for piles of various sizes being used in this project, the Navy used acoustic monitoring data from other locations and projects to develop source levels for the various pile types, sizes, and methods of removal. Data for the removal methods (*i.e.,* a diamond wire saw, individual use or concurrent use of pile clippers, and an underwater chainsaw) comes from data gathered at other nearby or related Navy projects as reported in their San Diego Noise Compendium (NAVFAC SW, 2020). The only exception to this would be the sound source data for the vibratory hammer, which was sourced from the City of Seattle Pier 62 project (Greenbusch Group, 2018). The source levels for the pile clippers, single and simultaneous use, and underwater chainsaw for this project utilized the mean maximum RMS SPL rather than the median sound levels we typically use as this would provide a more conservative measure. The diamond wire saw utilized the noise profile measurements associated with the removal of 66-inch and 84-inch caissons in the Navy Compendium (NAVFAC SW, 2020).). The Navy has noted, and we agree, that these values are likely much lower in reality as this proposed project would remove 16-inch concrete piles instead of the much larger varients modeled in the Compendium. However, no recorded data currently exists for the wire saws cutting concrete; therefore, we used the mean of the source level data from the Navy Compendium. The vibratory hammer used the highest average weighted RMS sound level per the Seattle Pier 62 project acoustic monitoring report (Greenbusch Group, 2018).

During pile removal activities, there may be times when two pile extraction methods (*i.e.,* pile clippers) are used simultaneously. The likelihood of such an occurrence is anticipated to be infrequent, would depend on the specific methods chosen by the contractor, and would be for short durations on that day. In-water pile removal occurs intermittently, and it is common for removal to start and stop multiple times as each pile is adjusted and its progress is measured. Moreover, the Navy has multiple options for pile removal depending on the pile type and condition, sediment, and how stuck the pile is, etc. When two continuous noise sources, such as pile clippers, have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. When two or more pile removal methods (pile clippers) are used simultaneously, and the sound field of one source encompasses the sound field of another source, the sources are considered additive and combined using the following rules (see Table 4). For addition of two simultaneous methods, the difference between the two sound source levels (SSLs) is calculated, and if that difference is between 0 and 1 dB, 3 dB are added to the higher SSL; if difference is between 2 or 3 dB, 2 dB are added to the highest SSL; if the difference is between 4 to 9 dB, 1 dB is added to the highest SSL; and with differences of 10 or more dB, there is no addition (NMFS, 2018b; WSDOT, 2018).

TABLE 4—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE REMOVAL

Difference in SSL	Level A harassment isopleths	Level B harassment isopleths
0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.

TABLE 4—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE REMOVAL—Continued

Difference in SSL	Level A harassment isopleths	Level B harassment isopleths
10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Source: Modified from USDOT, 1995; WSDOT, 2018; and NMFS, 2018b.
Note: dB = decibel; SSL = sound source Level

Level A Harassment Zones

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 the localized pile removal activities discussed above, the 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.

The Navy provided estimates to NMFS for the duration of sound exposure for each pile removal activity. The durations used in this proposed project for each pile removal method were noted as ''conservative estimates that are greater than durations observed in the San Diego Noise Compendium'' by the Navy. In discussions with NMFS, the Navy has explained that the average durations found in the IHA application and Compendium were based around data collected in the from the old Fuel Pier demolition projects (NAVFAC SW 2014, 2015a, 2016, 2017a, 2017b, 2018a, and 2018b). These values were adjusted to account for either the maximum amount of time the activity could occur (*i.e.,* pile clippers), a duration that is greater than the maximum (*i.e.,* underwater chainsaw and vibratory hammer), or an adjusted duration based on the removal of a smaller pile (*i.e.,* diamond wire saw) in order to provide somewhat more conservative measurements using real-world data. These values were likely considered more realistic for past projects and could safely be assumed as conservative for this proposed project as the Navy will be cutting smaller sized piles. The Navy also performed an ''ultra-conservative'' hypothetical review by modeling a 1-hour duration for each pile being removed. Using a rate of five piles removed per day, the resulting Level A harassment isopleths were still smaller than the 20 m shutdown zone the Navy plans to implement. Further information on durations can be found in the Compendium (NAVFAC SW, 2020).

All inputs used in the User Spreadsheet are reported below in Table 5.

TABLE 5—PROJECT SOUND SOURCE LEVELS AND USER SPREADSHEET INPUTS

Activity [3]	Type of source	Source level (dB RMS) [1]	Duration of sound production (hours) [2]	Transmission loss coefficient
Vibratory pile driving	Stationary source, non-impulsive, continuous	152	0.1667	15
13-inch polycarbonate pile removal	Stationary source, non-impulsive, continuous	154	0.42	11.7
16-inch concrete pile removal	Stationary source, non-impulsive, continuous	147	0.42	15
16-inch concrete pile clipping with +3dB adjustment for two simultaneous pile clippers.	Stationary source, non-impulsive, continuous	150	0.42	15
16-inch concrete pile removal using hydraulic chainsaw (underwater chainsaw).	Stationary source, non-impulsive, continuous	150	0.83	15
Wire saw for caisson cutting	Stationary source, non-impulsive, continuous	156	1.7	15

[1] All of these sound source data for use in the Level A and B harassment threshold modeling were calculated from acoustic data found in the 2020 San Diego Noise Compendium (NAVFAC SW, 2020); the only exception is the vibratory hammer source level which was sourced from the City of Seattle Pier 62 Project (Greenbusch Group, 2018).
[2] The User Spreadsheet inputs assumed 5 piles would be removed within a single 24-hour period using data from the Navy's Compendium (NAVFAC SW, 2020).
[3] All activities utilized a weighting factor adjustment (kHz) of 2.5.

For this project, we modeled sound propagation using the practical spreading value of 15 for transmission loss for all pile removal methods, except for the removal of the 13-inch polycarbonate piles. For this, 11.7 was used as the transmission loss coefficient as this value was a calculated measure from recorded data that was fit with a logarithmic trendline during the clipping of a 13-inch round concrete pile using small pile clippers in February 2017 at the old Fuel Pier (NAVFAC SW, 2020). The above input scenarios lead to PTS isopleth distances (Level A harassment thresholds) of less than 1 meter for all methods and piles (Table 6).

TABLE 6—MODELED AND EXPECTED LEVEL A AND B HARASSMENT ISOPLETHS (USING TWO METHODS) FOR THE PILE TYPE AND REMOVAL METHOD (METERS)

Pile information	Removal method	(A) Projected distances to level A harassment isopleth [3]			(B) Projected distances to level B harassment isopleth [5]	
		MF	PW	OW	Practical spreading loss model	Real-time data
13-inch polycarbonate pile	One pile clipper	0.0	0.0	0.0	[5] 423	350
14-inch, 16-inch concrete piles.	One pile clipper	0.0	0.0	0.0	145	[5] 250
14-inch, 16-inch concrete pile [1].	Two pile clippers	0.0	0.0	0.0	229	[5] 250
14-inch, 16-inch concrete pile.	Underwater chainsaw	0.0	0.1	0.0	[5] 229	45
14-inch, 16-inch concrete pile.	Diamond wire saw	0.1	0.7	0.0	[5] 575	350
14-inch, 16-inch concrete pile.	Vibratory hammer	0.1	0.9	0.1	[5] 311	([4])

MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.

[1] The Navy added an adjustment of +3 dB to the noise of a single pile clipper (147 dB RMS re 1μPa) and increased to 150 dB RMS re 1μPa where two clippers are used simultaneously (Kinsler et al., 2000). This adjustment is consistent with NMFS guidance for simultaneous sound sources.

[2] All sound sources were taken from the Compendium of Underwater and Airborne Sound Data during Pile Installation and In-Water Demolition Activities in San Diego Bay, California (San Diego Noise Compendium; NAVFAC SW, 2020), with exception of the vibratory hammer which was sourced from the City of Seattle Pier 62 Project (Greenbusch Group, 2018).

[3] Because of the small sizes of the Level A harassment isopleths (as determined by NMFS's User Spreadsheet Tool) and the mitigation methods implemented during this project, neither NMFS nor the Navy expects Level A harassment (and, therefore, take) to occur.

[4] No information available.

[5] Designate the most conservative isopleths NMFS will use for the subsequent Level B take analyses and Level B harassment impact zones.

Level B Harassment Zones

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:

$$TL = B * \text{Log10}(R1/R2),$$

where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy's proposed activity in the absence of specific modeling. We used the Navy's realistic, site-specific averaged median ambient noise measurement of 129.6 dB RMS re 1 μPa for the Level B harassment threshold in San Diego Bay (NAVFAC SW, 2020). It should be noted that based on the bathymetry and geography of San Diego Bay, sound would not reach the full distance of the Level B harassment isopleths in all directions.

To determine the most appropriate and conservative Level B harassment isopleths, we compared two methods and selected the isopleth between each method that was largest, thus providing the greatest coverage for the Level B harassment zone. Level B harassment isopleths were considered appropriate based on the distance where the source level reached the 129.6 dB ambient value. The two methods compared the empirical data provided in the Navy's Compendium for work at Naval Base Point Loma (NAVFAC SW, 2020) with the Practical Spreading Loss model using a transmission loss coefficient of 15, as described above. Results of each method are shown in Table 6 and described below.

For the Compendium method, the average and maximum sound levels (in dB re 1 μPa) measured at the source (10 m) and then at various far-field distances typically showed a monotonic decline in average and maximum sound pressure levels asas distance increased. The Navy chose to use the average values for two main reasons: (1) Consistency with using the average median (L50) ambient values; and (2) average source values were used for the same activities in the Pier 6 project nearby (86 FR 7993, February 3, 2021). However, some level of variability in the recorded sound pressure levels was present where noise levels would drop to ambient levels and then increase to higher levels at greater distances. An example of this would be measurements for the 84-inch caisson removal by a single wire saw. At source (10 m), the average and maximum source levels exceeded the ambient noise levels for both measurements at the source (136.1 and 141.4 dB re 1 μPa; 140.9 and 146.5 dB re 1 μPa, respectively). At far-field distances (>20 m), the averages show variability with a gradual decline and then a subsequent increase, *i.e.,* 140.8 dB re 1 μPa at 20 m and 134.8 at 40 m, then 137.1 dB re 1 μPa at 60 m. The distance where sound was measured ends at 283 m from the source with an average level of 130.3 dB re 1 μPa and a maximum level of 137.0 dB re 1 μPa, both in exceedance of the ambient level. These instances could be attributed to the presence of vessel traffic at distance from the acoustic recorder, causing some interference or competing background noise to the pure sound measurements of the wire saw or to random variation from other acoustic effects related to the specific location of the hydrophone. In any event, the distance at which the sound declined below ambient was not always entirely clear and the Navy was unable to develop a consistent criterion to determine the likely distance at which sound decreased below ambient or to account for factors like the topography or hydrophone location. Therefore we describe the analysis of the Navy

Compendium's field data for each pile removal method individually below.

For the 13-inch polycarbonate piles with pile clippers the Navy believes that at between 300 and 400 m (984 to 1,312 ft), a majority of the background noise measured is directly related to traffic transiting to/from the Everingham Brothers Bait Company (EBBCO) bait barges which are to the southwest of the project area. Boat traffic for that specific route ranges from small boats to large recreational/commercial fishing vessels and traffic is nearly constant throughout the day. Because of that, the Navy believes values between those distances would likely be artificially high relative to the transmission loss associated with the project-related activities. Furthermore, with the turning basin (see Figure 2), the slope rises up from a max depth of 20.12 m (66 ft) to 11.58 m (38 ft) between 200 to 400 m (656.17 to 1,312.34 ft). As is evidenced by the Navy's acoustical model for south-central San Diego Bay (see the Naval Base Point Loma Pier 6 project at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-naval-base-san-diego-pier-6-replacement-project-san-diego*), changes in bathymetry (*i.e.,* channel walls) act as noise attenuators. Therefore, the Navy estimated the Level B harassment isopleth for this source at 350 m, smaller than the Practical Spreading Loss model prediction of 423 m. Given the uncertainty discussed above, we used the 423 m distance for the Level B harassment isopleth.

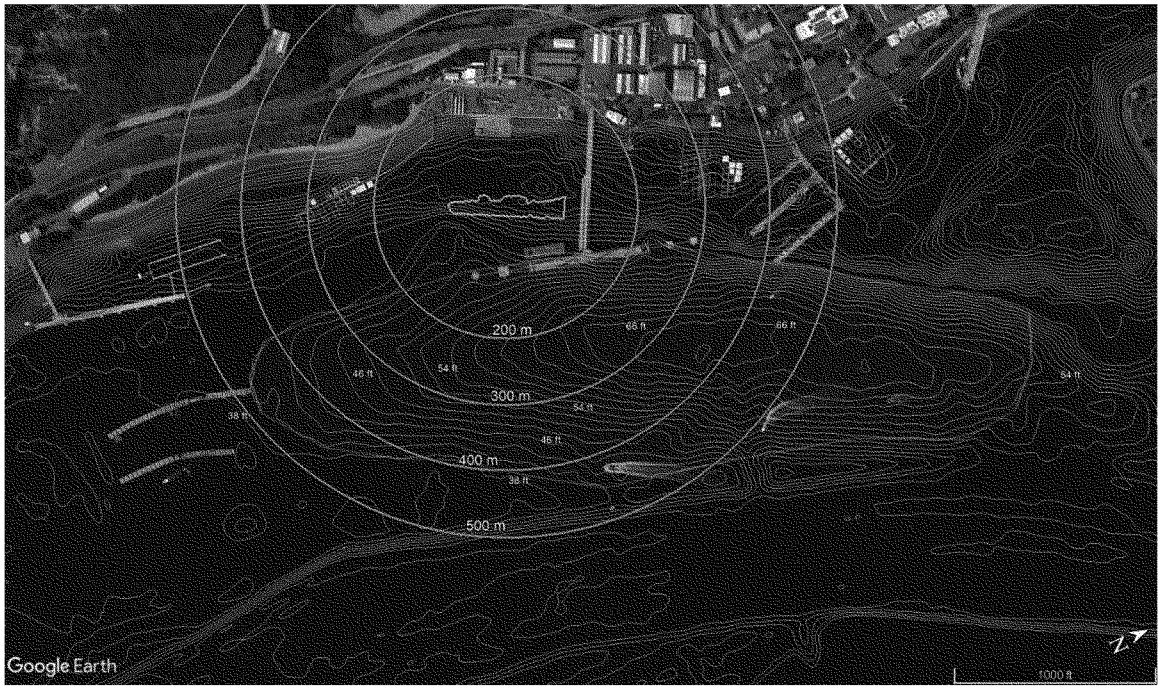

Figure 2. Map of the Turning Basin near Naval Base Point Loma in San Diego Bay, California

For the one pile clipper on concrete pile source, the Navy again believes the Compendium data were influenced by boat activity and topography of the channel. In this particular case, Table 39 of the Compendium shows that the average dB level at 215 m was 129.0 dB RMS. However, the two measurements at 309 m were split, one higher and one lower than the value at 215 m. The Navy decided that ''Understanding that acoustics is not an ''exact science,'' we evaluated the data and chose a distance (250 m) that fit the data (average noise levels dropped below 129.6 dB at between 215 and 309 m).'' As this 250 m distance exceeded the practical spreading loss model distance of 145 m, we chose the 250 m distance for the Level B harassment isopleth.

For the two pile clipper on concrete pile source the Navy decided that ''Because the project footprint is parallel to the shoreline, we created a monitoring zone that used a source level of 150 dB, but at two points at the extreme north and south of the project footprint (see Fig 6–3 in the IHA application) because we felt that this would generate a more conservative'' zone that led to an estimate of the Level B harassment isopleth of 250 m. As this 250 m distance exceeded the practical spreading loss model distance of 229 m, we chose the 250 m distance for the Level B harassment isopleth.

For the underwater chainsaw the Navy noted the ''transmission loss (27logR) was steep when compared to other equipment, but the source value was in line with the pile clippers. Because of the very steep TL value, we looked at the perceived far-field data points for the clipper activities and chose a distance that was in-between the drop off to ambient for the chainsaw (from 26 to 45 m) and the clippers (250 m).'' The Navy estimated the Level B harassment isopleth for this source at 45 m, smaller than the Practical Spreading Loss model prediction of 229 m. Given the uncertainty discussed above, we used the 229 m distance for the Level B harassment isopleth.

For the diamond wire saw the Navy again believes the Compendium data were influenced by boat activity and topography of the channel. The available data are from caissons which consist of 1.5 inch thick hardened steel

shells filled with concrete, and with wooden piles in the center of the concrete. For lack of information on wire saws, the Navy evaluated the likely far-field values for the potential zones based on the 84-inch caissons (Table 34 in the Compendium), which had more data at multiple distances. The Navy ''felt that this was a valid approach based on the similarity of the average noise data at 40 m (132.5 dB for 66-inch caisson, 134.8 for the 84-inch caisson). Per Table 34, using the average dB values at distance, the data shows a drop below 129.6 dB RMS at 200 m, but a rise again at 283 m. If you plot the regression curve based on the average 84-inch data, we cross the ambient threshold at app[roximately] 350 m . . . Because the data at far-field distances was variable, we chose a monitoring zone (350 m) that was based on the available real-time data. . . . Our assumption is that, if a wire saw were to be used on the concrete piles, the noise levels would be lower than either the 66- or 84-inch caisson.'' The Navy estimated the Level B harassment isopleth for this source at 350 m, smaller than the Practical Spreading Loss model prediction of 575 m. Given the uncertainty discussed above, we used the 575 m distance for the Level B harassment isopleth.

Marine Mammal Occurrence, Take Calculation, and Take Estimation

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

We examined two approaches towards estimating the Level B take for the requested six marine mammal species within the project area at Naval Base Point Loma. The first approach was using our standard approach of using species density multiplied by isopleth size. The second approach utilized daily sightings from monitoring reports produced from past Navy projects at Naval Base Point Loma (NAVFAC SW, 2015a; NACFAC SW, 2017; NAVFAC SW, 2018).

Density estimates for any specific area assumes that the species' in question are evenly distributed across the entire site, which is rarely the case. Using the first approach for this project, we examined the use of densities, using an overall density for San Diego Bay, within a much smaller and definitive area (specifically Naval Base Point Loma). This approach, in combination with the predicted Level B harassment isopleths, yielded take estimates that were determined to not be conservative enough in nature for these proposed activities and activity source levels as compared to the results of the in situ measurements included in the Navy's Compendium (NAVFAC SW, 2020) and as discussed above. Furthermore, the take estimates produced from this method did not appropriately account for group size of all marine mammal species as the density estimate was for a much larger area (consisting of a primarily offshore environment) and assumed a much larger spread of marine mammals. Therefore, this approach was not utilized and will not be discussed further.

The second approach utilized average daily sightings from the Year 1–5 monitoring reports from IHAs that were previously issued (NAVFAC SW, 2015a; NACFAC SW, 2017; NAVFAC SW, 2018). This information was provided by the Navy in Table 7.

TABLE 7—MONITORING RESULTS FROM THE NAVY'S YEARS 1–5 PROJECTS AT NAVAL BASE POINT LOMA IN SAN DIEGO, CALIFORNIA

Species	Year 1 project (10 days; potential El Nino year)			Year 2 project (100 days; El Nino year)			Year 3 project (59 days)			Year 4 project (152 days)			Year 5 project (49 days)		
	Total	Average/day	Average group size	Total	Average/day	Average group size	Total	Average/day	Average group size	Total	Average/day	Average group size	Total	Average/day	Average group size
California sea lions	2,229	229.9	2.2	7,507	75.1	1.4	483	8.2	1.3	2,263	*14.9	1.7	618	12.6	1.3
Harbor seal	25	2.5	1.1	248	2.5	1.0	25	0.4	1.0	88	*0.6	1.1	28	0.6	1.0
Bottlenose dolphins	83	8.3	2.4	695	7.0	2.8	25	0.4	1.9	67	*0.4	2.7	13	0.3	2.2
Common dolphins	19	19	6.3	850	*8.5	[2] 42.5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Pacific white-sided dolphins	n/a	n/a	n/a	27	*0.3	3.9	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Northern elephant seals	n/a	n/a	n/a	([1])	([1])	([1])	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

* These estimates were chosen for the second method in which to estimate take of marine mammals for this proposed action.
[1] Same individuals was observed hauled out on a beach twice.
[2] This includes four sightings of groups of 100+ animals outside of San Diego Bay. When these observations are eliminated, the average group size is 6.75 animals observed inside of San Diego Bay.

The Year 1 and 2 monitoring reports demonstrated marine mammal estimates during a potential and known El Niño year, respectively. Because of this, these values were likely not representative of the typical conditions around Naval Base Point Loma and were not preferred.

California sea lions, harbor seals, and bottlenose dolphins were recorded during all other years. Within these, Year 4 was considered the most conservative as these activities consisted of the longest duration (152 days) with the highest number of sightings for these species. So for these species we used the Year 4 average daily values.

Pacific white-sided dolphins were only recorded during Year 2. While these estimates are likely not fully representative of the typical distributions of Pacific white-sided dolphins around San Diego Bay, they will serve as the basis for our conservative take estimates for this species. Common dolphins were observed in Years 1 and 2; however, the length of the project period in Year 2 (100 days) was considered more representative than the Year 1 project (10 days). Therefore, the values from the Year 2 estimates were used for common dolphins. A single Northern elephant seal was only recorded to have hauled out on a beach twice during all Year 1–5 work. Due to this, no average daily estimates were present for analysis; however, some discretionary take is proposed to be authorized in the event Northern elephant seals are present during this proposed action.

For all species (excluding Northern elephant seals), these daily sightings were extrapolated over the number of days of pile removal activities (84).

This second approach yielded larger and more conservative Level B take estimates, but more realistic for particular species occurrence and group size given the data was previously collected at the location of this proposed project for similar or the same species during past projects. Here we describe how the information provided

above is brought together to produce a quantitative take estimate.

By following this daily occurrence-based approach using past sightings at Naval Base Point Loma, we would expect that 15 California sea lions, 1 harbor seal, 9 common dolphins, 1 Pacific white-sided dolphin, and 1 bottlenose dolphin would be sighted per day. Multiplication of the above daily occurrences times the number of pile removal days planned (84) results in the proposed Level B harassment take of 1,260 California sea lions, 84 harbor seals, 756 common dolphins, 84 Pacific white-sided dolphins, and 84 bottlenose dolphins (see Table 8 for final estimates).

The Navy has noted that northern elephant seals are very rarely seen in this area, with the only true record being of a hauled out and distressed juvenile during the Year 2 IHA (NAVFAC SW, 2015a). As a precaution that a greater number of northern elephant seal may occur around Naval Base Point Loma, we propose to authorize seven Level B takes.

TABLE 8—ESTIMATED TAKE USING THE PAST SIGHTING APPROACH FOR EACH SPECIES AND STOCK DURING THE PROPOSED PROJECT

Common name	Scientific name	Stock	Estimated sightings per day	Total Level B take requested [2]	Data source	Percent of stock
California sea lion	*Zalophus californianus*	U.S. Stock	15	1,260	NAVFAC SW (2017, 2018).	0.49.
Harbor seal	*Phoca vitulina*	California Stock	1	84	NAVFAC SW (2017, 2018).	0.27.
Northern elephant seal	*Mirounga angustirostris.*	California Breeding Stock.		[1] 7	NAVFAC SW (2015a)	0.00.
Common dolphins (Short-beaked, long-beaked).	*Delphinus sp.* [3]	California/Oregon/ Washington Stock; California Stock.	9	756 (between both species).	NAVFAC SW (2015a)	0.08 per SBCD stock; 0.31 per LBCD stock.
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	California/Oregon/ Washington—Northern and Southern Stocks.	1	84	NAVFAC SW (2015a)	0.31.
Bottlenose dolphin	*Tursiops truncatus*	California Coastal Stock.	1	84	NAVFAC SW (2017, 2018).	18.54.

[1] Only recently documented near the project occurrence with one distressed individual hauled out on a beach inshore to the south during the second year of the previous Fuel Pier IHA (NAVFAC SW, 2015a). A conservative estimate of 2 was assumed with a +5 take buffer added.
[2] These numbers were derived by multiplying the rounded average daily sightings by 84 days and then summed for the total requested Level B harassment take.
[3] See discussion in the section on Common Dolphins (Short-beaked and Long-beaked) regarding the Society for Marine Mammalogy's Committee on Taxonomy decision (Committee on Taxonomy, 2020).

By using the sighting-based approach, take values are not affected by the chosen isopleth sizes from Table 6.

Given the very small Level A harassment isopleths for all species, no take by Level A harassment is anticipated or proposed for this authorization.

Proposed Mitigation, Monitoring, and Reporting Measures

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 would 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.

The following mitigation measures are proposed in the IHA:

- All pile removal activities will occur individually, with the exception for the removal of the 14-inch and 16-inch concrete piles, which may be removed simultaneously by use of the pile clippers;
- A 20 m (66-ft) shutdown zone will be implemented around all pile removal activities (Table 9). If a marine mammal enters the shutdown zones, pile removal activities must be delayed or halted;
- Two Protected Species Observers (PSOs) will be employed and establish monitoring locations. The Holder must establish monitoring locations as described in the Monitoring Plan. For all pile removal activities, a minimum of one PSO must be assigned to each active pile removal location to monitor the shutdown zones. PSO(s) must be able to monitor the entire shutdown zone and the entire Level B harassment zone, or out to at least 400 m of the radial distance of the larger Level B harassment zones towards the Navigation Channel. In the event of concurrent pile removal (*i.e.,* via two pile clippers) at two different locations that cannot be appropriately monitored by one PSO, the pier or location where the lead PSO is stationed being blocked by a refueling vessel or other obstruction, multiple PSOs may be necessary to monitor the necessary

shutdown and Level B harassment zones;

• If pile removal activities have been halted or delayed due to the presence of a species in the shutdown zone, activities may commence only after the animal has been visually sighted to have voluntarily exited the shutdown zone, or after 15 minutes have passed without a re-detection of the animal;

• If the take reaches the authorized limit for an authorized species, or if a marine mammal species that is not authorized for this proposed project enters the Level B harassment zone, pile removal will cease until consultation with NMFS can occur. If in-water pile removal activities are occurring when a non-authorized species enters the Level B harassment zone, activities must shutdown;

• The placement of the PSOs during all pile removal activities will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile removal must be delayed until the lead PSO is confident that marine mammals within the shutdown could be detected;

• PSOs must record all observations of marine mammals as described in the Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

• The marine mammal monitoring reports must contain the informational elements described in the Monitoring Plan;

• A draft marine mammal monitoring report, and PSO datasheets and/or raw sighting data, must be submitted to NMFS within 90 calendar days after the completion of pile driving activities. If no comments are received from NMFS within 30 calendar days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 calendar days after receipt of comments; and

• 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) (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov*), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible.

TABLE 9—SHUTDOWN AND HARASSMENT ZONES

[Meters]

Pile information	Removal method	Harassment zone	Shutdown zone [1]
13-inch polycarbonate pile	One pile clipper	423	20
14-inch, 16-inch concrete piles	One pile clipper	250	
14-inch, 16-inch concrete pile	Two pile clippers	250	
14-inch, 16-inch concrete pile	Underwater chainsaw	229	
14-inch, 16-inch concrete pile	Diamond wire saw	575	
14-inch, 16-inch concrete pile	Vibratory hammer	311	

[1] The shutdown zone is the same for all mid-frequency cetaceans, phocid pinnipeds, and otariid pinnipeds.

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 would 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 submitted Monitoring Plan and the Proposed Mitigation, Monitoring, and Reporting Measures section of the IHA. 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;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• Other PSOs may substitute education (degree in biological science or related field) or training for experience;

• Where a team of two or more PSOs are required, one PSO would be designated as the ''Command'', or lead PSO, and would coordinate all monitoring efforts. The lead PSO must have prior experience performing the duties of an observer;

• In the event of concurrent pile removal activities, two lead PSOs may be designated and would coordinate and communicate all monitoring efforts if a single observer cannot observe the two concurrent activities. Each position would act independently and both would maintain the ability to call for a shutdown. Each lead PSOs would communicate to the other of a potential sighting of a marine protected species traveling from one location to the other within the appropriate shutdown and Level B zones during concurrent pile removal activities.

• The Navy must submit PSO Curriculum Vitae (CV) 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.

Up to two PSOs would be employed. PSO locations would 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 have been discussed above. An additional monitoring location is described as follows:

(1) An additional monitoring location on the Fuel Pier trestle or on a captained vessel may be utilized for pre-activity monitoring if the monitoring zone is beyond the visual range of the lead PSO's position. This vessel would start south of the Project area (where potential marine mammal occurrence is lowest) before the pile removal activity has begun and move north.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity and distance from the buffered shutdown zone and Level B harassment isopleth, and shall document any behavioral reactions in concert with distance from piles being removed.

Hydroacoustic Monitoring and Reporting

The Navy has indicated in their application that they may perform hydroacoustic monitoring on any removal method and sound source that was not previously recorded and included in the *Compendium of Underwater and Airborne Sound Data during Pile Installation and In-Water Demolition Activities in San Diego Bay, California* (NAVFAC SW, 2020). However, as data from the Compendium (for pile clippers, wire saw, and underwater chainsaw) and the City of Seattle Pier 62 project (for the vibratory hammer; Greenbusch Group, 2018) are recent, it is unlikely hydroacoustic monitoring will occur during this project.

Reporting

A draft marine mammal monitoring and acoustic measurement report would be submitted to NMFS within 90 calendar days after the completion of these activities, or 60 days prior to a requested date or issuance of any future IHAs for projects at the same location, whichever comes first. The report would 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 removed and by what method (*i.e.,* vibratory and if other removal methods were used);

• 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 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 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; and

• Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

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

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), the lead PSO would report to the Navy POC. The Navy POC shall then report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy 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;
- Description of marine mammals observation in the 24-hours preceding the incident;
- If available, photographs or video footage of the animal(s); and
- 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).

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals. No mortality is anticipated given the nature of the activity.

Pile removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment only from underwater sounds generated from pile cutting and removal activities. Takes could occur if individuals are present in the ensonified zones when these activities are underway. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation, Monitoring, and Reporting Measures section).

Take would occur within a limited, confined area (mouth of San Diego Bay) of each stock's range. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile removal at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR, 2016; see 80 FR 60636, October 7, 2015)) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile removal would occur across six months, any harassment would be temporary. There are no areas or times of known biological importance for any of the affected species.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

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 Level A harassment is anticipated or authorized;
- No biologically important areas have been identified with the project area;
- The Navy is required to implement mitigation measures to minimize impacts, such as PSO observation and a shutdown zone of 20 m (66 ft);
- For all species, San Diego Bay is a very small and peripheral part of their range; and
- Monitoring reports from similar work in San Diego Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity would 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. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundances for all 6 species (refer back to Table 8). For most requested species, the proposed take of individuals is less than 1% of the abundance of the affected stock (with exception for common bottlenose dolphins at 18.54%). This is likely a conservative estimate because it assumes all take are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the Proposed Mitigation, Monitoring, and Reporting Measures section) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally 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 an IHA to the Navy to begin the Naval Base Point Loma Fuel Pier Inboard Pile Removal Project in San Diego, California on January 15, 2022, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Once started, the IHA would be valid for one year (end January 14, 2023). 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 Naval Base Point Loma Fuel Pier Inboard Pile Removal 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-time, 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 Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed 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 would remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 15, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–15378 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB255]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a three-day in-person and virtual (hybrid) meeting of its Standing, Reef Fish, Socioeconomic, and Ecosystem Scientific and Statistical Committees (SSC).

DATES: The meeting will take place Monday, August 9 to Wednesday, August 11, 2021, from 8:30 a.m. to 5 p.m., EDT daily.

ADDRESSES: The in-person meeting will take place at the Gulf Council office. If you are unable to travel, you may attend via webinar. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, August 9, 2021; 8:30 a.m.–5 p.m., EDT

The meeting will begin with Introductions and Adoption of Agenda, Approval of Verbatim Minutes and Meeting Summary from the May 3–4, 2021 webinar meeting, Election of Chair and Vice Chair and review of Scope of Work. The Committees will select an SSC Representative for the August 23–26, 2021 Gulf Council Meeting and review and discuss the SSC's Best Practices and Voting Procedures.

The Committees will review and hold a discussion on the Finalized Great Red Snapper Count (GRSC) Project Report, including presentations, background material on the finalized report and independent consultant reports. The Committees will review and discuss the updated Red Grouper Interim Analysis and Research Track and Operational Assessment Process Guidance Document, including a presentations, report, and background material.

The Committees will review Discuss the Research Track and Operational Assessment Process Guidance Document, followed by a Determination of Topical Working Groups for SEDAR 75: Gulf of Mexico Gray Snapper Operational Assessment. The Committees will then review and discuss the Scope of Work for Red

Grouper Operational Assessment and the Scope of Work for the Vermilion Snapper Operational Assessment.

Tuesday, August 10, 2021; 8:30 a.m.–5 p.m., EDT

The Committees will determine the Approach to Assess the Gulf of Mexico Tilefish Complex, and then review the Interim Analysis Schedule and the Revised SEDAR Stock Assessment Schedule. The Committees will then review the Draft Southeast Regional Framework for Establishing the Best Scientific Information Available, including presentations; and, hold a discussion for National Standard 1 (NS1) Technical Guidance Subgroup 3 Tech Memo: *Managing with Acceptable Catch Limits (ACLs) for data-limited stocks in federal fishery management plans—Review and recommendations for implementing 50 CFR 600.310(h)(2) flexibilities for data limited stocks, including background.*

Following, the Committees will review King Mackerel Historical Harvest and Catch Limits, King Mackerel Historical Commercial Harvest Differences, and Greater Amberjack Historical Harvest and Catch Limits.

Wednesday, August 11, 2021; 8:30 a.m.–5 p.m., EDT

The Committees will review Updated Greater Amberjack Projections, discuss and receive a presentation on the Pilot Project on Allocation, and review Draft Options for Generic Essential Fish Habitat Amendment 5.

The Committees will also review the Standardized Bycatch Reduction Methodology, and hold a discussion of Topic Leaders for Agenda Items. The Committees will then receive public comment, and then discuss any Other Business items.

—Meeting Adjourns

The meeting will be also be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: July 15, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–15363 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB250]

Endangered Species; File No. 25602

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536 (Responsible Party: Ronald Smolowitz), has applied in due form for a permit to take leatherback sea turtles (*Dermochelys coriacea*) and unidentified sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 19, 2021.

ADDRESSES: The application 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. 25602 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25602 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to determine the impacts of impulsive sounds on the behavior of leatherback sea turtles within Massachusetts waters and adjacent Federal waters. Researchers would (1) remotely deploy suction cup camera tags on 30 leatherbacks annually, (2) observe and film them from an aircraft, vessel, and underwater by polecam, (3) remotely scan them in-water for passive integrated transponder (PIT) tags, and (4) expose them to an underwater sound source. Up to 60 leatherbacks annually could be harassed during unsuccessful tag deployments or incidental sound exposure. Another 60 leatherbacks annually would be observed during aerial and vessel surveys, photographed, and remotely PIT tag scanned. Researchers also request to harass up to 30 unidentified sea turtles annually for incidental sound exposures. The permit would be valid for five years.

Dated: July 13, 2021.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–15353 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB217]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of Massachusetts, Rhode Island, Connecticut, and New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Vineyard Wind, LLC (Vineyard Wind) to incidentally harass marine mammals incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York.

DATES: This Renewal IHA is valid from July 15, 2021 through June 20, 2022.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), 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 Marine Mammal Protection Act (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 proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal. Specifically, on a case-by-case basis, NMFS may issue a one-time 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 Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal IHA would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) 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);

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- 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;

(3) 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.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal IHA. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On May 06, 2020, NMFS issued an IHA to Vineyard Wind to take marine mammals incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York (85 FR 26940), effective from June 01, 2020 through May 31, 2021. This IHA was re-issued on July 14, 2020 with the only change being a change in effective dates from June 21, 2020 through June 20, 2021 (85 FR 42357). On March 25, 2021, NMFS received an application for the Renewal IHA of the re-issued IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed

Renewal IHA was published on June 8, 2021 (86 FR 30442).

Description of the Specified Activities and Anticipated Impacts

Vineyard Wind plans to conduct marine site characterization surveys, specifically high-resolution geophysical (HRG) surveys, in support of offshore wind development projects in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (#OCS–A 0501 and #OCS–A 0522) (Lease Areas) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Areas and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's planned marine site characterization surveys has the potential to result in incidental take of 14 marine mammal species in the form of Level B behavioral harassment. Vineyard Wind requested a renewal of the initial IHA that was re-issued by NMFS in July 2020 on the basis that the activities as described in the Specified Activities section of the initial IHA would not be completed by the time the IHA expires and a Renewal IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA.

In their 2020 IHA application, Vineyard Wind estimated that it would take a year to complete the marine site characterization surveys. This schedule was based on 24-hour operations and included potential down time due to inclement weather. With up to eight survey vessels operating concurrently, a maximum of 736 vessel days were anticipated. Each vessel would maintain a speed of approximately 3.5 knots (kn; 6.5 kilometers (km)/hour) while transiting survey lines and each vessel would cover approximately 100 km per day. However, during the 2020–2021 survey season, Vineyard Wind completed only 184 vessel days of the 736 vessel days estimated to complete the work and only surveyed approximately 25 percent of the planned survey routes. Vineyard Wind predicts that a maximum of 552 vessel days, with up to 8 survey vessels operating concurrently, over 181 days will be required to survey the remaining routes, estimated to be approximately 55,200 km. This Renewal IHA authorizes harassment of marine mammals for this remaining survey distance using survey methods identical to those described in the initial IHA application; therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All active acoustic sources and mitigation and monitoring measures remain as described in the **Federal Register** notices of the proposed IHA (85 FR 7952, February 12, 2020) and issued IHA (85 FR 26940, May 06, 2020). The amount of take requested for the Renewal IHA reflects the amount of remaining work in consideration of marine mammal monitoring data from the 2020 survey season resulting in equal or less take than that authorized in the initial IHA. The surveys would be a subset of, but otherwise identical to, those analyzed for the initial IHA.

Detailed Description of the Activity

A detailed description of the survey activities for which take is authorized here may be found in the **Federal Register** notices of the proposed IHA (85 FR 7952, February 12, 2020), issued IHA (85 FR 26940, May 06, 2020), and reissued IHA (85 FR 42357, July 14, 2020) for the initial authorization. Vineyard Wind was not able to complete the survey activities analyzed in the initial IHA by the date the IHA expired (June 20, 2021). As such, the surveys Vineyard Wind will conduct under this Renewal IHA will be a continuation of the surveys as described in the initial IHA. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Because part of the work has already been completed, the duration of the surveys conducted under the Renewal IHA will occur over less time than that described for the initial IHA (181 days versus 365 days); however, Vineyard Wind will continue to operate 24 hours per day to complete the work. This Renewal IHA is effective from July 15, 2021 through June 20, 2022.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020) and the proposed Renewal IHA (85 FR 30435, June 08, 2021). Upon receipt of Vineyard Wind's renewal request, NMFS reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature.

The draft 2020 Stock Assessment Report (SAR, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) states that estimated abundance has increased for the Western North Atlantic stock of common dolphins, from 172,825 (CV=0.21) to 172,974 (CV=0.21), and decreased for the following marine mammal stocks since the issuance of the initial IHA: The Gulf of Maine stock of humpback whales (from 1,396 (CV=0) to 1,393 (CV=0.15)), the Western North Atlantic stock of fin whales (from 7,418 (CV=0.25) to 6,802 (CV=0.24)), and the Canadian East coast stock of minke whales (from 24,202 (CV=0.3) to 21,968 (CV=0.31)). Abundance and density estimates for the Western North Atlantic stock of North Atlantic right whales have also been updated, and state that right whale abundance has decreased from 428 to 368 (95% CI 356–378) individuals (Pace 2021) and that densities have slightly increased in the Project Area from 0.105 whales per 100 square kilometers (km^2) to 0.169 whales per 100 km^2 (Roberts *et al.* 2020; note that the updated density estimate was not included in the Proposed Renewal). In addition, Oleson *et al.* (2020) provides evidence that was not available at time of the initial IHA that part of Vineyard Wind's Project Area coincides directly with year-round core foraging habitat North Atlantic right whales. NMFS discussed the importance of portions of the Project Area as core habitat for North Atlantic right whales in the proposed and final notices of the initial IHA, but did not include this discussion, or reference to the visual and acoustic detections of North Atlantic right whales indicating a nearly year-round presence discussed by Oleson *et al.* (2020) in the Proposed Renewal.

An additional update related to species for which take is authorized here that was not included in the proposed Renewal IHA, is the change in status of the Gulf of Maine humpback whale stock from non-strategic to strategic reported in the draft SAR. This change was made because the detected mortality is estimated to be only 19 percent of all mortalities, and the total estimated human-caused annual mortality and serious injury is 51.5 animals compared to the Potential Biological Removal (PBR) estimate of 22 animals.

NMFS has determined that neither the updated abundance and density information presented above nor any

other new information, including the information regarding year-round North Atlantic right whale core foraging habitat and the designation of the Gulf of Maine humpback whale stock as strategic, affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, Technical Reports (*e.g.,* Oleson *et al.* 2020, Pace 2021), information on relevant Unusual Mortality Events, other scientific literature (*e.g.,* Roberts *et al.* 2020), and the public comments. NMFS does not expect that the generally short-term, intermittent, and transitory HRG survey activities would impact the reproduction or survival of any of the species and stocks that have the potential to be affected by this authorization. Therefore, NMFS has determined that neither the information mentioned above nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). The acoustic source types, as well as source levels applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, and type of take (*i.e.,* Level B harassment only) remain unchanged from the initial IHA.

In the initial authorization for the marine site characterization survey activities, the potential for take was estimated using the following parameters: (1) Maximum number of survey days that could occur over a 12-month period; (2) maximum distance each vessel could travel per 24-hour period in each of the identified survey areas; (3) maximum ensonified area (zone of influence (ZOI)); and (4) mean annual densities for species in the area of specified activity. The calculated radial distances to the Level B harassment threshold (160 decibel (dB) root mean square (rms)) from a survey vessel are included in Table 1.

TABLE 1—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLDS

HRG survey equipment		Level B harassment horizontal impact distance (m)
Shallow subbottom profilers	EdgeTech Chirp 216	4
Deep seismic profilers	Applied Acoustics AA251 Boomer	178
Deep seismic profilers	GeoMarine Geo Spark 2000 (400 tip)	195

The equation for estimating take for all species remains the same as the initial IHA:

Estimated Take = D × ZOI × # of days

Where: D = species density (per km^2) and ZOI = maximum daily ensonified area

As described in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020), Vineyard Wind calculated a conservative ZOI by applying the maximum radial distance for any category and type of HRG survey equipment considered in its assessment to the mobile source ZOI calculation. Vineyard Wind estimates that survey vessels will achieve a maximum daily track line distance of 100 km per day during proposed surveys. This distance accounts for the vessel traveling at roughly 3.5 kn (6.5 km/hour) and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 195 m (Table 1) and the maximum estimated daily track line distance of 100 km, which are the same as were used in the initial IHA, Vineyard Wind estimated that an area of 39.12 km^2 will be ensonified to the Level B harassment threshold per day during Vineyard Wind's survey activities. This is a conservative estimate as it assumes the HRG sources that result in the greatest isopleth distances to the Level B harassment threshold will be operated at all times during all vessel days.

This methodology of calculating take in the initial IHA applies to this issued Renewal IHA for all species, with the only difference being the fewer amount of vessel days (*i.e.,* 552 versus 736). The result is that the amount of take is reduced proportionally to the reduction in the number of days of work remaining. Vineyard Wind has requested a deviation from the proportionally reduced calculated take for Risso's dolphins as described below. Other than in the additional instances described below, NMFS agrees with Vineyard Wind's request for take and we have authorized the same amount of take as described in their request.

In their application for a Renewal IHA, Vineyard Wind requested that the number of Level B harassment takes (per the equation above) for Risso's dolphins be equal to their average group size estimate (6 individuals), given a proportional reduction in take based on the reduction in the number of days of work remaining would result in a take estimate that is smaller than the average group size estimate. As described in Vineyard Wind's preliminary monitoring report, they did not observe any Risso's dolphins during the survey work thus far completed. Therefore, we have authorized the same amount of take as proposed in the initial IHA, which is based on an average group size of 6 Risso's dolphins (Table 2).

In the **Federal Register** notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020) NMFS limited takes by Level B harassment authorized for North Atlantic right whales to 10 individuals, which was reduced from an initially calculated take of 31 whales. There were several reasons justifying this reduction.

Vineyard Wind established and monitored a shutdown zone at least 2.5 times (500-meters (m)) greater than the predicted Level B harassment threshold distance (195 m). Take had also been conservatively calculated based on the largest source, which will not be operating at all times, and take is therefore likely over-estimated to some degree. Furthermore, the potential for incidental take during daylight hours is very low given that two Protected Species Observers (PSOs) are required for monitoring (over the 500-m shutdown zone for North Atlantic right whales, compared with the 195-m estimated Level B harassment zone). Additionally, sightings of right whales had been uncommon during previous marine site characterization surveys conducted near Vineyard Wind's Project Area. For example, no North Atlantic right whales were sighted during Bay State Wind surveys in adjacent and overlapping survey areas over 376 vessel days between May 11, 2018 and March 14, 2019. Vineyard Wind also had no North Atlantic right whales sighted in their marine mammal monitoring report that included Lease Areas OCS–A 0501 and OCS–A 0522 from May 31, 2019 through January 7, 2020. Therefore, the aforementioned factors led NMFS to conclude that the unadjusted modeled exposure estimate was likely a significant overestimate of actual potential exposure. Accordingly, in the initial IHA NMFS made a reasonable adjustment to conservatively account for these expected mitigating effects from the required mitigation measures on actual taking of right whales.

During the 2020–2021 surveys, Vineyard Wind reported four sightings of North Atlantic right whales (seven individuals) in their preliminary monitoring report. While all of these individuals were observed on a single day (December 20, 2020) and outside both the estimated 195-m Level B harassment Zone and the 500 m Exclusion Zone (EZ) for North Atlantic right whales (closest approaches were > 900 m), they represent an increased amount of sightings observed during marine site characterization surveys, though the information suggests that there were no takes.

Roberts et al. (2020) provided updated monthly densities of North Atlantic right whales in the area of proposed activities since the time of the initial IHA. These updated data for North Atlantic right whale densities incorporate additional sighting data and include increased spatial resolution. We reviewed the updated model documentation and recalculated the North Atlantic right whale density estimates following the same methods outlined in the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). The new model results state that the mean annual North Atlantic right whale densities have slightly increased in the activity area from 0.105 whales per 100 square kilometers (km^2) to 0.169 whales per 100 km^2. Despite the increase in sightings and densities of North Atlantic right whales in the survey area, we believe that an updated unadjusted modeled exposure estimate of 36 individuals based on these slightly increased densities would still represent a significant overestimate of the actual potential exposure, and therefore authorize the same amount of take (10 individuals) for this Renewal IHA as was authorized in the initial IHA, which accounts for the expected mitigating effects from the required mitigation measures on the actual taking of right whales.

As documented in Vineyard Wind's preliminary monitoring report, there were a number of sightings of delphinids both within the estimated 195 m Level B Harassment Zone and the 100 m EZ that were characterized by the PSOs as 'voluntary approaches.' A ''voluntary approach'' is defined as a purposeful approach toward the vessel by the delphinid(s) with a speed and vector that indicates that the delphinid(s) is approaching the vessels and remains near the vessel or towed equipment (BOEM 2014). Vineyard Wind PSOs reported 270 sightings of approximately 3,332 individual common dolphins within the estimated 195 m Level B harassment zone (note that these observations did not all occur during actual use of the source for which this zone is estimated, and that the actual zone at the time of observation would have been smaller). Given that Vineyard Wind observed more common dolphins than expected, we authorize the same amount of take (2,036 individuals) as authorized in the initial IHA, as opposed to decreasing it commensurate to the reduced amount of activity remaining. Thus, take numbers authorized in this Renewal IHA (Table 2) represent prorated estimates for all species except North Atlantic right whales, Risso's dolphins, and common dolphins whose authorized take estimates remain the same as authorized in the initial IHA.

On August 20, 2020 Vineyard Wind PSOs observed two white-beaked dolphins within the 195 m Level B harassment zone for the sparker during the first year of Vineyard Wind's survey activities. White-beaked dolphins were considered unlikely to be encountered in the survey area and, therefore, take was not considered reasonably likely to occur and was not authorized in the initial IHA. This species has historically been found in waters outside of the survey area, from southern New England to southern Greenland and Davis Straits (Leatherwood *et al.* 1976, CETAP 1982, Hayes *et al.* 2019), across the Atlantic to the Barents Sea and south to at least Portugal (Reeves *et al.* 1999). In waters off the northeastern U.S. coast, white-beaked dolphin sightings are typically concentrated in the western Gulf of Maine and around Cape Cod (CETAP 1982, Hayes *et al.* 2019). The dolphins observed during the 2020–2021 surveys were first sighted as unidentified dolphins due to the decreased visibility under sea state 3 conditions, creating challenges in identification. Given the dolphins were of genera *Delphinus, Lagenorhynchus,* or *Tursiops,* and in accordance with IHA condition 4(f)(vii), the PSO used their best professional judgment in determining that the animals were exempted from the shutdown requirement. After less than a minute of bow riding the dolphins began swimming away and at the end of the sighting the PSO was able to make a positive ID. The PSO determined the animal was leaving the zone and therefore no mitigation was required. The PSO determined that there was no behavioral change or signs of distress and thus Vineyard Wind did not report the sighting as a potentially unauthorized Level B harassment take. Despite this single observation of white beaked dolphins, encounters with the species in the survey area remain unlikely. For example, no sightings of white beaked dolphins have been reported in monitoring reports from other IHAs issued in the same region in recent years. Therefore, NMFS has determined that the initial determination that take of the species is not reasonably likely to occur and, therefore, that take authorization for the species is not warranted. We have clarified with Vineyard Wind the need to communicate any sightings of rare species to NMFS as soon as possible.

TABLE 2—INITIAL IHA TAKE AUTHORIZED AND RENEWAL IHA TAKE AUTHORIZED

Species	Level B harassment		Percent population [1]
	Take authorized initial IHA	Take authorized renewal IHA	
Fin whale	67	51	1.1
Humpback whale	46	34	2.1
Minke whale	41	31	1.5
North Atlantic right whale	10	10	2.7
Sei whale	4	3	0.4
Atlantic white sided dolphin	1,011	758	2.0
Bottlenose dolphin (WNA Offshore)	815	611	1.0
Long-finned pilot whales	142	107	0.6
Risso's dolphin	6	6	0.08
Common dolphin	2,036	2,036	2.3
Sperm whale	4	3	0.06
Harbor porpoise	1,045	784	1.7
Gray seal	4,044	3,033	11.17
Harbor seal	4,044	3,033	4.0

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2 in the notice of the final IHA for the initial authorization (85 FR 26940, May 06, 2020). In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the 2021 NOAA Technical Memorandum NMFS–NE–269 Revisions and Further Evaluations of the Right Whale Abundance Model: Improvements for Hypothesis Testing (Pace, 2021). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray and harbor seals are derived from NMFS SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 26940, May 06, 2020), and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). All mitigation, monitoring and reporting measures in the initial IHA are carried over to this Renewal IHA and summarized here:

• *EZ:* Marine mammal EZs will be established around the HRG survey equipment and monitored by PSO during HRG surveys as follows: A 500-m EZ is required for North Atlantic right whales and a 100-m EZ is required for all other marine mammals (with the exception of certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus,* and *Tursiops*) under certain circumstances, such as individuals voluntary approaching the vessel). If a marine mammal is detected approaching or entering the EZs during the planned survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200-m Buffer Zone; however, this Buffer Zone is not applicable when the EZ is greater than 100 m. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone and within the Level B harassment zone. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

• *PSO:* A minimum of two NMFS-approved PSOs must be on duty and conducting visual observations at all times on all active survey vessels when HRG equipment is operating, including both daytime and nighttime operations. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. However, Vineyard Wind has committed to 24-hr use of PSOs. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above.

• *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, Vineyard Wind would implement a 30-minute pre-clearance period. Ramp-up of the survey equipment would not begin until the relevant zones (500-m EZ for North Atlantic right whales and 200-m Buffer Zone for all other species) have been cleared by the PSOs. If any marine mammals are detected within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

• *Ramp-up:* A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

• *Shutdown of HRG Equipment:* If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids as described above. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ,

or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

• *Vessel strike avoidance measures:* Separation distances for large whales (500 m North Atlantic Right Whales, 100 m other large whales; 50 m other cetaceans and pinnipeds), restricted vessel speeds including a requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA or DMA while underway, and operational maneuvers.

• *Seasonal Operating Requirements:* Vineyard Wind will conduct survey activities in the Cape Cod Bay Mid-Atlantic U.S. Seasonal Management Area (SMA) and Off Race Point SMA only during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of the North Atlantic right whale north and northeast of Cape Cod (fall, winter, and spring). Vineyard Wind will also limit to three the number survey vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and offshore export cable corridor (OECC) areas north of the lease areas up to, but not including, coastal and bay waters. Another seasonal restriction area south of Nantucket will be in effect from December to February in the area delineated by the DMA that was effective from January 31, 2020 through February 15, 2020. In addition, Vineyard Wind would operate either a single vessel, two vessels concurrently or, for short periods, no more than three survey vessels concurrently in the areas described above during the December-February and March-June timeframes when right whale densities are greatest. The seasonal restrictions described above will help to reduce both the number and intensity of North Atlantic right whale takes.

• *Reporting:* Vineyard Wind will submit a final technical report within 90 days following completion of the surveys. In the event that Vineyard Wind personnel discover an injured or dead marine mammal, Vineyard Wind shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Vineyard Wind shall report the incident to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to Vineyard Wind was published in the **Federal Register** on June 8, 2021 (86 FR 30435). That notice either described, or referenced descriptions of, Vineyard Wind's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received comments from: (1) A group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, Inland Ocean Coalition, Nassau Hiking & Outdoor Club, Connecticut Audubon Society, and Cetacean Society international; and (2) Oceana.

The comments and our responses are summarized below.

Comment 1: The ENGOs and Oceana both recommended that NMFS expand upon the statement in the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021) that ''the mean annual North Atlantic right whale densities have slightly increased in the activity area'' since the initial IHA was published. They suggest that our qualitative summation of increased North Atlantic right whale densities in the project area likely underestimates the true importance of the area as a year-round core foraging habitat to North Atlantic right whales (Leiter *et al.* 2017; Oleson *et al.* 2020) and that this needs to be more fully explored, considered, and analyzed before an IHA is renewed. The ENGOs stressed that NMFS should be transparent in our decision-making regardless of levels of take and that we must publish the results of the updated analysis. They also stressed that NMFS must ensure undisturbed access to foraging habitat to adequately protect North Atlantic right whales since North Atlantic right whales employs a ''high-drag'' foraging strategy that enables them to selectively target high-density prey patches, but is energetically expensive.

Response: When assessing the appropriateness of a Renewal IHA NMFS must confirm, among other things, that no new information has been received that would alter the prior analysis. In the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021), NMFS discussed new information related to North Atlantic right whales including updated density estimates obtained from updated model outputs reported by Roberts *et al.* (2020). These habitat-informed density models offer the most comprehensive evaluation of North Atlantic right whale density along the east coast to date and consider both the spatial and temporal importance of the project area to right whales. These updated density estimates, which incorporated additional sighting data and included increased spatial resolution in the project area, suggest that the North Atlantic right whale densities in the project region slightly increased from 0.105 whales per 100 km^2 to 0.169 whales per 100 km^2. While the increase in density was described, NMFS acknowledges that the actual updated density estimate was omitted from the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021) and therefore we have included this information along with the updated unadjusted modeled exposure estimate of 36 individuals in this **Federal Register** notice of the Renewal IHA.

In the proposed and final notices of the initial IHA, we discuss the importance of portions of the Project Area as core habitat for North Atlantic right whales. For example, data indicates that right whales occur at elevated densities in the Project Area south and southwest of Martha's Vineyard in the spring (March–May) and south of Nantucket during winter (December–February) (Roberts *et al.* 2018, Leiter *et al.* 2017, Kraus *et al.* 2016). In addition, consistent aggregations of right whales feeding and possibly mating within or close to these specific areas is such that they have been considered right whale ''hotspots'' (Leiter *et al.* 2017, Kraus *et al.* 2016). Oleson *et al.* (2020), which was referenced by the commenters but was not available at the time of the initial authorization of this IHA, provides additional evidence that part of the Project Area coincides directly with year-round core foraging habitat south of Martha's Vineyard and Nantucket islands where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence. We have included this information in this **Federal Register** notice of the issued Renewal IHA. Despite these areas being important year-round foraging habitat for right

whales, NMFS notes that prey for North Atlantic right whales are mobile and broadly distributed throughout the project area; therefore, North Atlantic right whales are expected to be able to resume foraging once they have moved away from any areas with disturbing levels of underwater noise. There is ample foraging habitat adjacent to the Project Area that is not ensonified by HRG sources. For example, in the fall of 2019 and 2020, North Atlantic right whales were particularly attracted to Nantucket Shoals, located to the east of the Project Area. Furthermore, the spatial acoustic footprint of the survey is very small relative to the spatial extent of the available foraging habitat.

NMFS concluded that there is no new information, including from the reports referenced by the commenters, suggesting that our analysis or findings should change for the Renewal IHA from those reached in the initial IHA. This includes consideration of our take estimate of 10 North Atlantic right whales despite slightly increased densities of right whales in the Project Area and the importance of portions of the Project area as year-round foraging habitat for right whales. Based on findings reported in Vineyard Wind's preliminary monitoring report and the expected mitigating effects from the required mitigation measures on the actual taking of right whales, we have concluded that the updated exposure estimate based on the updated density estimate represents a significant overestimate of the actual potential exposure, and therefore authorize the same amount of take (10 individuals) as proposed in the initial IHA and the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021). These mitigation measures include the use of two PSO observers at times when HRG equipment is in use, shutdown measures and vessel strike avoidance measures when North Atlantic right whales are sighted within the 500-m EZ (which is at least 2.5 times greater than the predicted Level B harassment threshold distance (195 m)), and seasonal restrictions that limit or prohibit survey activities during times and areas when North Atlantic right whales are found in higher densities. NMFS believes that these measures will minimize the impact that the proposed activities will have on this species, particularly in areas of importance such as year-round foraging habitats, to North Atlantic right whales.

Comment 2: The ENGOs recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take and that NMFS must ensure all available data are used to ensure that any potential shifts in North Atlantic right whale habitat usage are reflected in estimations of marine mammal density and take. The ENGOs asserted in general that the density models used by NMFS do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore result in an underestimate of take.

Response: Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic Ocean (Roberts *et al.* 2016); more information, including the model results and supplementary information for each of those models, is available at *seamap.env.duke.edu/models/Duke-EC/.* These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of 8 physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates.

Of particular note, Roberts *et al.* (2020) further updated density model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into 5 discrete regions. This most recent update—model version nine for North Atlantic right whales—was undertaken with the following objectives (Roberts *et al.* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions including aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et al.* 2016), spanning 2011–2015 and 2017–2018 and recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both.
- To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future;
- To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York; and
- Increase the resolution of the model beyond 10 km, if possible.

All of these objectives were met in developing the most recent update to the North Atlantic right whale density model.

As noted above, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information. However, NMFS acknowledges that there will always be additional data that is not reflected in the models and that may inform our analyses, whether because the data were not made available to the model authors or because the data is more recent than the latest model version for a specific taxon.

The ENGOs pointed to additional data that can be obtained from sightings databases, passive acoustic monitoring efforts, aerial surveys, and autonomous vehicles. The ENGO's pointed specifically to monthly standardized marine mammal aerial surveys flown in the Massachusetts and Rhode Island and Massachusetts Wind Energy Areas by the New England Aquarium from October 2018 through August 2019 and March 2020 through July 2021. The 2018–2019 New England Aquarium study showed that North Atlantic right whale distribution changed seasonally, with several sightings of North Atlantic right whales in Lease Area OSC–A 0522 in the winter, one sighting in Lease Area OSC–A 0501 in the spring, and no other

sightings in Vineyard Wind's lease areas during other portions of the year. Information on the results from the 2020–2021 aerial survey is currently unavailable. The commenters also referenced a study funded by the Bureau of Offshore Energy Management (BOEM) using an autonomous vehicle for real-time acoustical monitoring of marine mammals from December 2019 through March 2020 and again from December 2020 through February 2021 on Cox Ledge, located approximately 35 miles east of Montauk Point, New York between Block Island and Martha's Vineyard. Note that only a small portion of BOEM's acoustic study area overlapped with Vineyard Wind's Project Area. Between December 21, 2020 and March 30, 2020 (91 days) North Atlantic right whales were acoustically detected on 13 days and possibly detected on an additional 3 days. No North Atlantic right whales were detected in BOEM's study area between March 25, 2021 and July 01, 2021 (98 days). The data from these recent studies does not indicate that NMFS should alter any of the required mitigation and monitoring requirements, particularly as NMFS considers impacts from these types of survey operations to be near *de minimis* and that Vineyard Wind is already required to adhere to time and area seasonal restrictions. It would be difficult to draw any qualitative conclusions from these study results given that most of the observations and detections occurred in only small portions of Vineyard Wind's Project Area.

NMFS will review any other recommended data sources that become available to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in U.S. Atlantic waters. At this time, there are no additional new sources of density information that affects our analyses or determinations.

While the ENGO's referenced additional data, no specific recommendations were made with regard to use of this information in informing the take estimates. Rather, the commenters suggested that NMFS should ''collate and integrate these and more recent data sets to more accurately reflect marine mammal presence for future IHAs and other work.'' NMFS would welcome in the future constructive suggestions as to how these objectives might be more effectively accomplished. NMFS used the best scientific information available at the time the analyses for the proposed and final IHAs were conducted, and has considered all available data, including sources referenced by the commenters, in reaching its determinations in support of issuance of the Renewal IHA requested by Vineyard Wind.

Comment 3: Oceana asserted that NMFS' must use the best available science for assessing North Atlantic right whale abundance estimates. They state that North Atlantic right whales have experienced significant declines in the last decade and that NMFS should use the most recent population estimate to support the IHA which is being considered for renewal, which they state is the Pettis *et al.* (2020) estimate of 356 North Atlantic right whales. They commented that this estimate is nearly 14 percent lower than the estimate NMFS used in the analysis to support the proposed Renewal IHA.

Response: NMFS agrees that the best available and most recent science should be used for assessing North Atlantic right whale abundance estimates in the Renewal IHA, but disagrees that the Pettis *et al.* (2020) study represents the most recent and best available estimate for North Atlantic right whale abundance. Rather the revised abundance estimate published by Pace (2021) which was used in the proposed Renewal IHA provide the most recent and best available estimate, which suggest improvements to the model currently used to estimate North Atlantic right whale abundance. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. The results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. The estimate reported by Pace (2021) and used in the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021) and in this Renewal IHA is 368 (95% CI 356–378) whales. Of note, the estimate proposed by Pettis *et al.* (2020) of 356 right whales is only three percent, not 14 percent, lower than this newly available estimate, which NMFS has determined is the most appropriate estimate to use.

Comment 4: The ENGOs asserted that the seasonal restrictions described in the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021) are not protective enough. They recommended additional seasonal restriction on site assessment and characterization activities in the Project Areas with the potential to harass North Atlantic right whales between November 1, 2021 and April 30, 2022 off the coasts of New York and Connecticut, and from December 1, 2021 through April 30, 2022 off the coasts of Rhode Island and Massachusetts. The ENGOs also requested clarification regarding whether there would be a complete restriction on survey activities within seasonal restricted areas or that simply a reduction in survey vessels will be required.

Response: NMFS is concerned about the status of the North Atlantic right whale population given that an unusual mortality event (UME) has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. While the ensonified areas contemplated for any single survey vessel are comparatively small and the anticipated resulting effects of exposure relatively lower-level, the potential impacts of multiple survey vessels (up to 8 according to Vineyard Wind) operating simultaneously in areas of higher right whale density are not well-documented and warrant caution.

NMFS reviewed the best available right whale density and abundance data for the planned survey area (Roberts *et al.* 2020, Pace *et al.* 2021). We determined that right whale abundance is significantly higher in the period starting in late winter and extending to late spring in specific sections of the survey area. As described in the initial IHA, based on this information NMFS determined that seasonal restrictions as described in the final IHA and proposed Renewal IHA are both warranted and practicable and thus defined seasonal restriction areas that Vineyard Wind must follow when conducting marine site characterization survey activities.

These restrictions include the requirement that survey activities may only occur in the Cape Cod Bay Seasonal Management Area (SMA) and off of the Race Point SMA during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of right whales north and northeast of Cape Cod (fall, winter, and spring). While there will not be a complete restriction on survey activities, Vineyard Wind will limit to three the number of survey

vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and OECC areas north of the lease areas up to, but not including, coastal and bay waters. An additional seasonal restriction area was defined in the initial IHA south of Nantucket and will be in effect from December to February in the area delineated by the Dynamic Management Area (DMA or Slow Zone) that was effective from January 31, 2020 through February 15, 2020. DMAs have been established during this time frame in this area for the last several years. DMAs are temporary protection zones that are triggered when three or more whales are sighted within 2–3 miles of each other outside of active SMAs. The size of a DMA is larger if more whales are present.

The ENGOs recommended that additional restrictions be put into place, but they do not provide any evidence or support for the additional restrictions they recommend other than mentioning that North Atlantic right whales are expected to be present in the Project Area year-round. While we acknowledge that the North Atlantic right whale densities temporally fluctuate off the coasts of New York and Connecticut and off the coasts of Rhode Island and Massachusetts and that North Atlantic right whales could be in the Project Area throughout the year, we have determined the seasonal restrictions described in the initial IHA and included in the Renewal IHA, paired with the other required mitigation and monitoring measures, are sufficiently protective. This is supported by findings from Vineyard Wind's preliminary monitoring report, which demonstrated that only four sightings of seven North Atlantic right whales were observed in the initial year of survey activities, all of which were observed on a single day (December 20, 2020). We have determined that additional seasonal restrictions are not warranted since NMFS considers impacts from these types of survey operations to be near *de minimis.* Further, the commenters have not demonstrated that additional seasonal restrictions would result in a net benefit given the cost and impracticability of implementing such measures.

Vineyard Wind is required to operate no more than three survey vessels concurrently in the areas described above during the December-February and March-June timeframes when right whale densities are greatest (*i.e.,* a reduction in the number of vessels is required rather than a complete restriction of survey activities). The seasonal restrictions described above will help to reduce both the number and intensity of right whale takes. Regarding practicability, the timing of Vineyard Wind's surveys is driven by a complex suite of factors including availability of vessels and equipment (which are used for other surveys and by other companies), other permitting timelines, and the timing of certain restrictions associated with fisheries gear, among other things. Vineyard Wind revised their initial survey plan such to accommodate these measures and satisfy their permitting and operational obligations. Therefore, NMFS determined that this required mitigation measure is sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 5: The ENGOs stated that the agency's assumptions regarding mitigation effectiveness are unfounded and cannot be used to justify any reduction in the number of takes authorized as was done for North Atlantic right whales. The ENGOs do not believe that Vineyard Wind can successfully mitigate Level B harassment simply through the implementation of the IHA mitigation measures currently required. The reasons cited include: (1) The agency's reliance on a 160 dB threshold for behavioral harassment that commenters assert is not supported by the best available scientific information; (2) the reliance on the assumption that marine mammals will avoid sound despite studies that have found avoidance behavior is not generalizable among species and contexts; and (3) until the effectiveness of mitigation measures are determined, it is premature to include any related assumptions to reduce the numbers of marine mammal takes.

Response: The three comments provided by the ENGOs are addressed individually below.

(1) NMFS acknowledges that the potential for behavioral response to an anthropogenic source is highly variable and context-specific and acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms. Alternatively, NMFS acknowledges the potential that not all animals exposed to received levels above 160 dB rms will respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). The commenters cited several studies (Nowacek *et al.* 2004, Kastelein *et al.* 2012 and 2015, Gomez *et al.* 2016, Tyack & Thomas 2019) that showed there were behavioral responses to sources below the 160 dB threshold, but also acknowledge the importance of context in these responses. For example, Nowacek *et al.* (2004) reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μPa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as strong, and contained similar frequencies, to those of the alert signal. The authors state that a possible explanation for why whales responded to the alert signal and did not respond to vessel noise is that the whales may have been habituated to vessel noise, while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2013) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.* (2015, cited in the letter) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes, while acknowledging that the 160 dB rms step-function approach is a simplistic approach. The commenters suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower received levels (RL). However, we do recognize the potential for Level B harassment at exposures to RLs below 160 dB rms, in addition to the potential that animals exposed to RLs above 160 dB rms will not respond in ways constituting behavioral harassment (*e.g.,*

Malme *et al.* 1983, 1984, 1985, 1988; McCauley *et al.* 1998, 2000a, 2000b; Barkaszi *et al.* 2012; Stone 2015; Gailey *et al.* 2016; Barkaszi and Kelly 2018). These comments appear to evidence a misconception regarding the concept of the 160-dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we emphasize the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.* 2007; Ellison *et al.* 2012; Bain and Williams 2006). Even experts have not previously been able to suggest specific new criteria due to these difficulties (*e.g.,* Southall *et al.* 2007; Gomez *et al.* 2016). Further, we note that the sounds sources and the equipment used in the specified activities are outside (higher than) of the most sensitive range of mysticete hearing.

There is currently no agreement on these complex issues, and NMFS followed the practice at the time of submission and review of this analysis in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities. We note that the seminal review presented by Southall *et al.* (2007) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of guidance for assessing the effects of anthropogenic sound on marine mammal behavior, such as a dose-response curve presented by Tyack and Thomas (2017) and referenced by the commenters. However, undertaking a process to derive defensible exposure-response relationships is complex (*e.g.,* NMFS previously attempted such an approach, but is currently re-evaluating the approach based on input collected during peer review of NMFS (2016)). A recent systematic review by Gomez *et al.* (2016) referenced by the commenters was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral response to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here, and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. However, there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds, but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

(2) The commenters disagreed with NMFS' assumption that marine mammals avoid sound sources. The ENGOs claimed that studies have not found avoidance behavior to be generalizable among species and contexts. Importantly, the commenters mistakenly seem to believe that the NMFS' does not consider avoidance as a take, and that the concept of avoidance is used as a mechanism to reduce overall take—this is not the case. Avoidance of loud sounds is a well-documented behavioral response, and NMFS often accordingly accounts for this avoidance by reducing the number of injurious exposures, which would occur in very close proximity to the source and necessitate a longer duration of exposure. However, when Level A harassment takes are reduced in this manner, they are changed to Level B harassment takes, in recognition of the fact that this avoidance or other behavioral responses occurring as a result of these exposures are still take. NMFS does not reduce the overall amount of take as a result of avoidance or rely in any way on assumptions related to avoidance.

(3) The comments stated that it is premature to include any related assumptions to reduce the numbers of marine mammal takes until the effectiveness of mitigation measures are determined. Vineyard Wind's Preliminary Monitoring Report demonstrates that the number of takes did not exceed those authorized based on the mitigation measures implemented in the initial IHA and which are carried over in the Renewal IHA during Vineyard Wind's survey activities. During the reported marine mammal observations, no behavior was observed that would be considered consistent with a behavioral response to harassment (*i.e.,* rapid swimming away from the sound source or vessel; repeated fin slaps or breaches; notable changes in behavior as a result of vessel approach), and no animals demonstrated signs of harm.

While we acknowledge the commenters' concerns regarding unfounded assumptions concerning the effectiveness of mitigation requirements in reducing actual take of North Atlantic right whales, it is also important to also acknowledge the circumstances of a particular action. In most cases, the maximum estimated Level B harassment zone associated with commonly-used acoustic sources is approximately 195 m, whereas the typically-required shutdown zone for North Atlantic right whales is 500 m. Vineyard Wind reported only four sightings of North Atlantic right whales (seven individuals) in the initial year of survey activities, all of which were observed on a single day (December 20, 2020) and outside both the estimated 195-m Level B harassment zone and the 500-m EZ for North Atlantic right whales (closest approaches were >900 m). It is also important to note that these observations did not all occur during actual use of the source for which this zone is estimated, and that the actual zone at the time of observation could have been smaller. Therefore, for North Atlantic right whales, NMFS expects that required mitigation measures in the Renewal IHA will indeed be effective in reducing actual take below the estimated amount, which typically does

not account for the beneficial effects of mitigation.

Comment 6: Oceana suggested that NMFS should fully consider both the use of the area and the effects of both acute and chronic stressors on the health and fitness of North Atlantic right whales. Oceana asserts that chronic stressors are an emerging concern for North Atlantic right whale conservation and recovery and a recent peer-reviewed study suggests that a range of stresses on North Atlantic right whales have stunted growth rates (Stewart *et al.* 2021). Oceana noted that disruptive site characterization activities may do more than startle or spook North Atlantic right whales in this area and may cause chronic stress to the whales or cause the whales to seek other feeding areas at great energetic cost, decreasing their fitness, body condition and ability to successfully feed, socialize and mate.

Response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for North Atlantic right whale conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, etc. impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities would create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, such as time-area limitations and extended distance shutdowns for certain species that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS's negligible impact analyses.

Comment 7: Oceana asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and North Atlantic right whales in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. They noted that this was specifically important given the large number of offshore wind-related activities being considered in the northeast region.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, both this Renewal IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Vineyard Wind was the applicant for the Renewal IHA, and we are responding to the specified activity as described in that application and request for renewal (and making the necessary findings on that basis). Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis.

NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Ørsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island.

Separately, cumulative effects were analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA, which determined that NMFS' action of issuing the IHA or Renewal IHA is not likely to adversely affect listed marine mammals or their critical habitat.

Comment 8: The ENGOs stated that the recent designation of Gulf of Maine humpback whales as a strategic stock should be explicitly considered by NMFS as part of the Renewal IHA.

Response: NMFS acknowledges that the status of the Gulf of Maine humpback whale stock changed from non-strategic to strategic in the 2020 U.S. Atlantic and Gulf of Mexico Draft Marine Mammal Stock Assessment Report (available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) and that we omitted this status change in the Description of Marine Mammals in the **Federal Register** notice of the proposed Renewal IHA (85 FR 30435, June 08, 2021). We have revised the **Federal Register** notice of the authorized Renewal IHA to include this change.

NMFS does not expect that the generally short-term, intermittent, and transitory HRG activities and the minor amount of take of humpback whales by Level B harassment (up to 2.1 percent of the population) would have meaningful impacts on the reproduction or survival on any individual humpback whale and, therefore, no impacts at the stock level are expected. Moreover, the population of interest is the West Indies Distinct Population Segment (DPS) of which the Gulf of Maine stock is just one feeding population. Therefore, this information regarding the strategic listing of the Gulf of Maine humpback whale stock does

not change our initial analysis and determination.

Comment 9: The ENGO's noted that harbor porpoises are particularly sensitive to noise, and, therefore, impacts to this species must be minimized and mitigated to the full extent practicable during offshore wind siting and development activities.

Response: Harbor porpoises are classified as high-frequency cetaceans (NMFS 2018) and are the hearing group with the lowest PTS onset thresholds, with maximum susceptibility to frequencies between 20 and 40 kHz (susceptibility decreases with outside this frequency range). However, the largest modeled distance to the Level A harassment threshold for HF cetaceans was 60 m. Furthermore, this is a conservative assessment given that the model used to determine PTS isopleths treats all devices as impulsive and results in significant overestimates for non-impulsive devices, since PTS onset thresholds are lower for impulsive sources compare to non-impulsive sources. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100 m exclusion zone (EZ) for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG sources. In addition, harbor porpoises are known to be behaviorally sensitive species, in that they respond to comparatively lower received levels and are known to avoid vessels and other sound sources and, therefore, harbor porpoises would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, NMFS has determined that take of harbor porpoises or any other animal by Level A harassment is unlikely to occur and has not authorized any such takes. Any takes by Level B harassment are anticipated to be limited to brief startling reactions and/or temporary avoidance of the Project Area. Further, appropriate mitigation measures have been included to ensure the least practicable adverse impact on harbor porpoises and other marine mammal species. No harbor porpoises were observed by Vineyard Wind in their initial year of survey activities according to their preliminary monitoring report, further supporting the potential for harassment to be discountable.

Comment 10: The ENGOs recommended that NMFS should prohibit the commencement of geophysical surveys at night to maximize the probability that marine mammals are detected and confirmed clear of the EZs. The commenters asserted that initiation of work should occur with ramp-up, only during daylight hours.

Response: NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <60 m). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses, as described in greater detail herein. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. Note that NMFS considers impacts from this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. NMFS is also requiring Vineyard Wind to deploy two PSOs during nighttime hours who must have access to night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology). Given these factors, NMFS does not believe that there is a need for more restrictive mitigation requirements.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys in the future. This would result in significantly increased costs incurred by the applicant. Thus the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 11: Oceana recommended that when HRG surveys are safe to resume after a shutdown event, the surveys should be required to use a soft start, ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (85 FR 7952, February 02, 2020), the initial IHA (85 FR 26940, May 05, 2020), the proposed Renewal IHA (85 FR 30435, June 08, 2021) and this final Renewal IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually.

Comment 12: Based on the assertion that the 160 dB threshold for behavioral harassment is not supported by best available scientific information and grossly underestimates Level B take, the ENGOs recommended that NMFS establish an EZ of 1,000 m around each vessel conducting activities with noise levels that they assert could result in injury or harassment to North Atlantic right whales, and a minimum EZ of 500 m for all other large whale species and strategic stocks of small cetaceans. Oceana also recommended that zones for North Atlantic right whales extend at least 1,000 m, but did not provide reasoning for this zone size. The ENGOs further note that they consider source levels greater than 180 dB re 1 μPa (SPL) at 1-meter at frequencies between 7 Hz and 35 kHz to be potentially harmful to low-frequency cetaceans.

Response: NMFS disagrees with this recommendation and the assertion that the 160 dB threshold for behavioral harassment is not supported by best

available scientific information and grossly underestimates take by Level B harassment (see Comment 5 for a discussion regarding why NMFS uses the 160 dB threshold). It is unclear to NMFS how the commenters determined that source levels greater than 180 dB re 1 μPa (SPL) are potentially harmful to low-frequency cetaceans. NMFS historically applied a received level (not source level) root mean square (rms) threshold of 180 dB SPL as the potential for marine mammals to incur PTS (*i.e.,* Level A (injury) harassment); however, in 2016, NMFS published it *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* which updated the 180 dB SPL Level A harassment threshold. Since that time, NMFS has been applying dual threshold criteria based on both peak and a weighted (to account for marine mammal hearing) cumulative sound exposure level. NMFS released a revised version of the Technical Guidance in 2018. We encourage the ENGOs to review the Technical Guidance available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance* to inform future reviews of any proposed IHA on which they may wish to comment. As described in the Estimated Take section, NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative SEL for low frequency specialists, and a right whale would need to approach within 2 meters of the source to potentially incur PTS from the largest source.

Regarding the shutdown zone recommendation, we note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest 160-dB Level B harassment isopleth distance (195 m) by a substantial margin. Given that calculated Level B harassment isopleths are likely conservative, and NMFS considers impacts from HRG survey activities to be near *de minimis,* a 100-m shutdown for other marine mammal species (including large whales and strategic stocks of small cetaceans) is sufficiently protective to effect the least practicable adverse impact on those species and stocks. Further, as discussed in Comment 10, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <60 m).

Comment 13: Oceana recommended that a shutdown of HRG equipment be required should a North Atlantic right whale or other protected species enter an EZ, unless necessary for human safety. They further recommended that if and when such an exemption occurs the project must immediately notify NMFS with reasons and explanation for exemption and a summary of the frequency of these exceptions must be publicly available to ensure that these are the exception rather than the norm for the project.

Response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (85 FR 7952, February 02, 2020), the initial IHA (85 FR 26940, May 05, 2020), the proposed Renewal IHA (85 FR 30435, June 08, 2021) and which are included in this final Renewal IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant EZs while geophysical survey equipment is operational. There is no exemption for human safety and it is unclear what exemption the commenter is referring to. In regards to reporting, Vineyard Wind must notify NMFS if a North Atlantic right whale is observed at any time by any project vessels during surveys or during vessel transit. Additionally, Vineyard Wind is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. As documented in Vineyard Wind's preliminary monitoring report for the surveys completed under the initial IHA authorization (available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*), except for instances of voluntary approaches by delphinids, there were no instances where marine mammals were observed within the required shutdown zone and shutdown procedures were not implemented. If a right whale is detected within the EZ before a shutdown is implemented, the right whale and its distance from the sound source, including whether it is within the Level B or Level A harassment zones, would be reported in Vineyard Wind's final monitoring report and made publically available on our website. Vineyard Wind is required to immediately notify NMFS of any sightings of North Atlantic right whales and report upon survey activity information so that comment is not applicable to this Renewal IHA.

Comment 14: The ENGOs and Oceana recommended that a combination of visual monitoring by PSOs and PAM should be used at all times that survey work is underway in order to monitor exclusion zones and maximize the detection of protected species and stocks. The ENGOs also mentioned that while the previously issued IHA indicated that Vineyard Wind will voluntarily employ PAM to support monitoring at night, there is no reference to PAM in the ''Monitoring Measures'' section of that document, nor the proposed Renewal IHA and requested that this measure be clarified by NMFS.

Response: The foremost concern expressed by the ENGOs and Oceana in making the recommendation to require use of PAM is with regard to North Atlantic right whales. However, the commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes. It is generally well-accepted fact that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μPa (micropascal) at 1 m (NRC 2003, Hildebrand 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.* 2012, McKenna *et al.* 2012, Rolland *et al.* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked

whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys such as the one planned by Vineyard Wind. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact for Vineyard Wind's HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 195 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. However, we note that Vineyard Wind has stated their intention to voluntarily implement PAM during night operations as an added precautionary measure even though this is not a NMFS requirement.

Comment 15: The ENGOs recommended that the passive acoustic monitors for this and future wind development projects should be part of a migratory corridor-wide network of passive acoustic monitors organized by NOAA and BOEM in collaboration with state governments as well as private, academic, and non-profit partners. They also recommended that NMFS should also advance a robust and effective near real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species that will be more responsive to the ongoing dynamic species distributional shifts resulting from climate change, as well as provide more flexibility to developers during offshore wind energy development.

Response: NMFS is generally supportive of these concepts. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. In 2020, NMFS convened a workshop to address objectives related to monitoring North Atlantic right whales. The NMFS publication by Oleson *et al.* (2020) titled ''Technical Memorandum NMFS–OPR–64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'', and available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations,* summarizes information from the workshop and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

In regards to the current Renewal IHA, NMFS cannot require Vineyard Wind to be a part of such monitoring networks until such a network of monitoring devices is formalized. However, NMFS will consider implementing such measures in the future should such a network be developed.

Comment 16: The ENGOs recommended that Vineyard Wind must employ a minimum of four PSOs following a two-on/two-off rotation, each responsible for scanning no more than 180° of the horizon during both daylight and nighttime hours, while Oceana recommended that all vessels associated with the proposed Vineyard Wind marine site characterization should be required to carry and use PSOs at all times when underway. Both commenters also recommended that infrared equipment should be during daylight hours to maximize the probability of detection of marine mammals. The ENGOs requested that NMFS clarify what visual monitoring measures are required and/or will be employed by Vineyard Wind to monitor the exclusion, buffer, and monitoring zones during daylight hours, poor visibility conditions, and at night.

Response: NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 195-m harassment zone) will be successful in detecting marine mammals that are available for detection at the surface. Despite this, Vineyard Wind has committed to a minimum of two NMFS-approved PSOs on duty and conducting visual observations on all survey vessels at all times when HRG survey equipment is in use *(i.e.,* daylight and nighttime operations). NMFS has analyzed the potential for incidental take resulting from Vineyard Wind's activity and have determined that based on the nature of the activities, and in consideration of the mitigation measures included in the initial IHA and the Renewal IHA, the potential for incidental take when HRG activities are not operational is so low as to be discountable.

The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. Nevertheless, as night vision technology has continued to improve, NMFS has adapted its practice, and two PSOs are required to be on duty at night on source vessels. NMFS included a requirement in the final IHA and the Renewal IHA that night-vision

equipment (*i.e.,* night-vision goggles with thermal clip-ons and infrared/thermal imaging technology) must be available for use. Survey operators are not required to provide PSOs with infrared devices during the day but observers are not prohibited from employing them. Given that use of infrared devices for detecting marine mammals during the day has been shown to be helpful under certain conditions, NMFS will consider requiring them to be made accessible for daytime PSOs. NMFS is also requiring that all PSOs be equipped with reticulated binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or EZs using range finders based on conditions and visibility to support the sighting and monitoring of marine species. The visual monitoring measures required in the Renewal IHA are identical to those required in the initial IHA and were explained in detail in the associated notices (85 FR 7952, February 02, 2020; 85 FR 26940, May 05, 2020). We have determined that the PSO requirements in the IHA are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 17: The ENGOs and Oceana both expressed concerns that the proposed Renewal IHA sets no requirement to minimize the impacts of underwater noise through the use of best available technology and other methods to minimize sound levels from geophysical surveys. The ENGOs recommended that NMFS should require Vineyard Wind to select sub-bottom profiling systems for survey activities, and operate those systems at power settings that achieve the lowest practicable source level for the objective. Oceana recommended that to be consistent with the requirement to achieve ''the least practicable impact on such species or stock and its habitat,'' the IHA must include conditions for the survey activities that will first avoid adverse effects on North Atlantic right whales in and around the survey site and then minimize and mitigate the effects that cannot be avoided. They state that this should include a full assessment of which activities, technologies and strategies are truly necessary to provide information to inform development of Vineyard Wind and which are not critical. If, for example, a lower impact technique or technology will provide necessary information about the site without adverse effects, Oceana recommended that technique or technology should be permitted while other tools with more frequent, intense or long-lasting effects should be prohibited. In general, the ENGOs and Oceana asserted that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stock and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on North Atlantic right whales in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the Renewal IHA meets this requirement to effect the least practicable adverse impact. Oceana does not make any specific recommendations of measures to add to the Renewal IHA other than assessing which technologies and strategies are truly necessary to provide information to inform development of Vineyard Wind. While the ENGOs recommend the use of sub-bottom profiling systems, the Vineyard Wind energy developers selected the equipment necessary during HRG surveys to achieve their objectives (which includes shallow sub-bottom profilers). As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of use of the specified activity (*i.e.,* the equipment described here), made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives or the appropriate techniques or technologies for an operator's survey objectives.

Comment 18: The ENGOs and Oceana both generally recommended that NMFS require all vessels of all sizes associated with the proposed survey activities to speeds less than 10 kn at all times with no exemptions due to the risk of ship strikes to North Atlantic right whales and other large whales. The ENGOs requested clarification regarding whether the requirement that project-related vessels of any size limit speeds to 10 kn or less within active SMAs or DMAs was still applicable to the Renewal IHA as this measure was included in the issued IHA but not restated in the Proposed Renewal IHA. The ENGOs also asserted that NMFS must acknowledge that vessel strikes can result in take by Level A harassment, and that NMFS must explicitly analyze the potential for such take resulting from vessel collisions in its take analysis for Vineyard Wind.

Response: While NMFS acknowledges that vessel strikes can result in Level A harassment or mortality, we have analyzed the potential for ship strike resulting from Vineyard Wind's activity and have determined that based on the nature of the activity and the required mitigation measures specific to ship strike avoidance included in the Renewal IHA, potential for ship strike is so low as to be discountable. These mitigation measures, which were included in the initial IHA, summarized in the Proposed Renewal IHA, and are likewise required in the Renewal IHA, include: A requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500-m or greater from any sighted North Atlantic right whale while underway; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 kn or less until the 500-m minimum separation distance has been established; a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from any sighted non-delphinoid species; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). For clarification, the requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA or DMA while underway is also still a required mitigation measure and applicable to the Renewal IHA. We have determined that the ship strike avoidance measures in the Renewal IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. We note that no documented vessel strikes have occurred for any marine site characterization surveys which were

issued IHAs from NMFS during the survey activities themselves, or while transiting to and from project sites.

Comment 19: Oceana commented that the IHA must include requirements for all vessels to maintain a separation distance of at least 500 m from North Atlantic right whales at all times.

Response: NMFS agrees with Oceana and has stipulated in both the **Federal Register** notice of proposed Renewal IHA (85 FR 30435, June 08, 2021) and this Renewal IHA that survey vessels must maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale. Further, if a whale is observed but cannot be confirmed as a species other than a right whale, NMFS requires that the vessel operator must assume that it is a right whale and maintain a minimum separation distance of 500 m.

Comment 20: Oceana recommended that the Renewal IHA should require all vessels to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water in order to support oversight and enforcement of the conditions of the HRG survey. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the project.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities were much louder than the marine site characterization surveys to be carried out by Vineyard Wind and resulted in the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and impracticability of this requirement to Vineyard Wind.

Comment 21: Oceana asserted that the IHA must include requirements to specify and require all vessels associated with the project, at all phases of development, follow the vessel plan and rules including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, contract. They noted that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommended that NMFS can simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics. They also recommended that the IHA must also include a condition to specify that developers are explicitly liable for behavior of all employees, contractors, subcontractors, consultants, and associated vessels and machinery.

Response: NMFS agrees with Oceana and required these measures in the initial IHA and the Renewal IHA. The IHA requires that a copy of the IHA must be in the possession of Vineyard Wind, the vessel operators, the lead PSO, and any other relevant designees of Vineyard Wind operating under the authority of this IHA. The IHA also states that Vineyard Wind must ensure that the vessel operators and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. Further the IHA includes a measure that states that the IHA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed in the IHA, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Comment 22: Oceana stated that the IHA must include a requirement for all phases of the Vineyard Wind site characterization to subscribe to the highest level of transparency, including frequent reporting to Federal agencies, requirements to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to the Fisheries Service or the Coast Guard as soon as possible and no later than the end of the Protected Species Observer shift. To foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the initial IHA and the proposed Renewal IHA, the Renewal IHA includes requirements for reporting that supports Oceana's recommendations. Vineyard Wind is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during both visual and passive acoustic monitoring, estimates the number of marine mammals that may have been taken during survey activities, and describes, assesses and compares the effectiveness of monitoring and mitigation measures. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. Further the Renewal IHA stipulates that if a North Atlantic right whale is observed at any time by any project vessels, during surveys or during vessel transit, Vineyard Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System and to the U.S. Coast Guard, and that any discoveries of injured or dead marine mammals be reported by Vineyard Wind to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. All reports and associated data submitted to NMFS are included on the project website for public inspection.

Comment 23: The ENGOs objected to NMFS' process to consider extending any one-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about Renewal IHAs (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year, and the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for Renewal IHAs. As noted above, the Request for Public Comments section made clear that the agency was seeking comment on both the proposed IHA and the potential issuance of a renewal for this project. Because any Renewal IHA (as explained in the Request for Public Comments section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of the Specified Activities and Anticipated

Impacts section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal IHA, should the IHA holder choose to request one.

While there are additional documents submitted with a renewal request, for a qualifying Renewal IHA these will be limited to, as they were in this case, documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS also confirms, as it did for Vineyard Wind's renewal request, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request also contains a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provided the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal IHA have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal IHA is 45 days.

In addition to the Renewal IHA process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewal IHAs in the regulations, description of the process and express invitation to comment on specific potential Renewal IHAs in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed IHAs and Renewal IHAs respectively, NMFS has ensured that the public ''is invited and encouraged to participate fully in the agency decision-making process.''

Determinations

The survey activities to be carried out by Vineyard Wind are identical to (and a subset of) those analyzed in the initial IHA, as are the method of taking and the effects of the action. The mitigation measures and monitoring and reporting requirements as described above are also identical to the initial IHA. The planned number of days of activity will be reduced given the completion of a portion of the originally planned work. Therefore, the amount of take authorized is equal to or less than that authorized in the initial IHA. The potential effect of Vineyard Winds' activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that Vineyard Wind's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundances of four stocks (North Atlantic right whales, humpback whales, fin whales, and minke whales) decreasing and the estimated abundances of one stock (common dolphins) increasing (Hayes *et al.* 2020, Pace 2021) since the issuance of the initial IHA. This also includes consideration of Vineyard Wind's preliminary monitoring report, increased density estimates for North Atlantic right whales based on updated model outputs from Roberts *et al.* (2020) as described above in the *Estimated Take* section, the information supporting the assessment that the Project Area includes areas that are important year-round habitats for North Atlantic right whales, and the recent designation of Gulf of Maine humpback whales as a strategic stock. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Vineyard Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

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 authorized action with respect to environmental consequences on the human environment.

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

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. On April 10, 2013, NMFS Greater Atlantic Regional Fisheries Office (GARFO) issued a programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas determining site assessment surveys were not likely to jeopardize the continued existence of North Atlantic these listed species. NMFS requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for issuance of the initial IHA to

Vineyard Wind. On April 16, 2020 GARFO issued an amended incidental take statement associated with the 2013 Biological Opinion and determined that the issuance of the initial IHA was not likely to jeopardize the continued existence of North Atlantic right, fin, sei and sperm whales. On May 12, 2021, NMFS GARFO determined that their initial consultation remains valid for the Renewal IHA and that the Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the opinion.

Renewal

NMFS has issued a Renewal IHA to Vineyard Wind for the take of marine mammals incidental to conducting marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. This Renewal IHA is effective from July 15, 2021 through June 20, 2022.

Dated: July 15, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–15383 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting for September 1–2, 2021

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Announcement for open public meeting and notice of request for public comments.

SUMMARY: This serves as notice of a virtual public meeting for the NOAA Hydrographic Services Review Panel (HSRP) on September 1, 2021, 12:45–5:30 p.m. EST, and September 2, 2021, 1–5:30 p.m. EST via webinar. The HSRP agenda will be posted in advance on the website. Individuals or groups who want to comment on NOAA navigation services topics are encouraged to submit advance public comments and letters via email or via the question function in the webinar.

DATES: NOAA HSRP public virtual meeting will meet via webinar as follows:

1. September 1, 2021, 12:45–5:30 p.m., EST.
2. September 2, 2021, 1–5:30 p.m., EST.

ADDRESSES: You may submit public comments identified by ''September 2021 HSRP meeting public comments'' in the subject line of the message in advance of the meeting or request to be added to the meeting announcements list by sending an email request to: *Virginia.Dentler@noaa.gov, and hydroservices.panel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, Office of Coast Survey, NOS, NOAA, email: *hydroservices.panel@noaa.gov, Lynne.Mersfelder@noaa.gov,* and phone 240–533–0064.

SUPPLEMENTARY INFORMATION: Advance registration is required for the webinar at: *https://register.gotowebinar.com/register/5627376790601178124.* The agenda, speakers and time are subject to change, please refer to the website for the most updated information. The HSRP meeting agenda, draft meeting documents, presentations, and background materials are posted and updated online and can be downloaded prior to the meeting at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.html* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.* Past HSRP recommendation letters, issue and position papers are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.html.*

Public comments are encouraged and requested on the navigation services portfolio for CO–OPS, NGS and OCS. Advance written statements will be shared with the HSRP members and will be included in the meeting public record. Due to the condensed nature of the meeting, each individual or group providing written public comments will be limited to one comment per public comment period with no repetition of previous comments. Comments can also be submitted in writing during the public comment period through the webinar. Comments will be read into the record, transcribed, and become part of the meeting record. Due to time meeting constraints, all comments may not be addressed during the meeting.

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Matters To Be Considered

The panel is convening on issues relevant to NOAA's navigation services, including offshore wind energy and data sharing for ocean mapping and technology to address ocean mapping in 40 meters and shallower. HSRP regularly discusses stakeholder use of navigation data, products and services, and other topics related to hydrographic surveys, nautical charting, coastal shoreline and ocean mapping, the National Spatial Reference System (NSRS) modernization efforts, navigation services contributions to resilience and coastal data and information systems to support planning for resilience to climate change, contributions to the blue economy, coastal and ocean modeling, PORTS® (Physical Oceanographic Real-Time System) sensor enhancements and expansion, Precision Marine Navigation, Electronic Navigation Charts and the sunset of RASTER charts, the scientific mapping and technology research projects of the cooperative agreements between NOAA and partners at the University of New Hampshire and the University of Southern Florida, and other topics. The meeting will include an update on the plans to address and implement two ocean and coastal mapping strategies—the Alaska Coastal Mapping Strategy (ACMS) and the ''Establishing a National Strategy for Mapping, Exploring, and Characterizing the U.S. EEZ'' (NOMEC), including the Standard Ocean Mapping Protocol (SOMP). Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, coastal and shoreline mapping, bathymetric mapping and modeling, hydrographic surveying, nautical charting, tide and water level observations, current observations, flooding, resilience, inundation and sea level rise, marine and coastal modeling, geospatial and LIDAR data, and related data and topics. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's climate needs and commerce. The Panel will hear about the missions and uses of NOAA's navigation services, the value these services bring, and what improvements could be made. Other matters may be considered.

Special Accommodations

This meeting is physically accessible to people with disabilities and there will be sign language interpretation and captioning services. Please direct requests for other auxiliary aids to *Melanie.Colantuno@noaa.gov* at least 10 business days in advance of the meeting.

Kathryn L. Ries,

Deputy Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–15332 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Papahānaumokuākea Marine National Monument & University of Hawaii Research Internship Program

The Department of Commerce will submit the following information collection request 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. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 8, 2021, (86 FR 13340) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Papahānaumokuākea Marine National Monument & University of Hawaii Research Internship Program.

OMB Control Number: 0648–0719.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 100.

Average Hours per Response: Scholarship application: 1 hour; Reference forms: 30 minutes; Support Letter: 30 minutes.

Total Annual Burden Hours: 62.5.

Needs and Uses: This is a request for extension of a currently approved information collection. The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service's Office of National Marine Sanctuaries (ONMS) Papahānaumokuākea Marine National Monument (PMNM) is sponsoring this collection. On June 15, 2006, President George W. Bush established the Papahānaumokuākea Marine National Monument (PMNM) by Presidential Proclamation 8031 under the authority of the American Antiquities Act, 16 CFR 431, to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystems and related resources of the Northwestern Hawaiian Islands (NWHI). At a time when ocean resources around the world are in major decline, the designation of PMNM enabled nearly 140,000 square miles of U.S. land and waters of the region to receive the highest form of environmental protection in the country and created one of the largest marine conservation areas in the world. As part of PMNM's mission to characterize its natural resources, PMNM conducts annual coral reef monitoring expeditions to the NWHI. Additionally, as part of PMNM's education mission, PMNM is committed to providing educational opportunities for students and educators. In order to accomplish these two missions, PMNM has partnered with the University of Hawaii to offer research internships. Each year, a limited number of research internships will be awarded to outstanding undergraduate students in the marine sciences at the University of Hawaii. These internships consist of training students in SCUBA surveys of coral reef fauna, a research expedition to PMNM aboard a NOAA or contract ship, and the development of an independent research project with data from the expedition. Due to the fact that space is very limited for these internships, only a small number of internships can be offered each year. This request collects information from internship applicants in order to allow PMNM staff to select candidates which are best suited for its research internships. The collection of information will consist of an electronic application package, which will be solicited annually from undergraduate students applying for the internship. The application package will include (1) an application form with information on academic background and professional experiences, (2) reference forms by two educational or professional references, and (3) a support letter from one academic professor or advisor. All gathered information would be used only by staff of PMNM for the purpose of selecting interns, and will not be shared with any other party. None of the information collected will be disseminated to the public.

Affected Public: Individuals.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority:

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0719.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15352 Filed 7–19–21; 8:45 am]

BILLING CODE 3510–JE–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0102]

Collection of Information; Proposed Extension of Approval; Comment Request—Follow-Up Activities for Product-Related Injuries Including the National Electronic Injury Surveillance System (NEISS)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval for an information collection to obtain data on consumer product-related injuries, and follow-up activities for product-related injuries. The Office of Management and Budget (OMB) previously approved the collection of information under OMB Control No. 3041–0029. CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: Submit written or electronic comments on the collection of information by September 20, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0102, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2009–0102, into the ''Search'' box, and follow the prompts. A copy of the supporting statement, ''PRI ICR 2021 60-day'' will be made available under Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the supporting statement contact: Bretford Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the CPSC to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That section also requires the CPSC to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products.

The CPSC obtains information about product-related deaths, injuries, and illnesses from a variety of sources, including newspapers, death certificates, consumer complaints, and medical facilities. In addition, the CPSC receives information through its internet website through forms reporting on product-related injuries or incidents. The CPSC also operates the National Electronic Injury Surveillance System (NEISS), which provides statistical data on consumer product-related injuries treated in hospital emergency departments in the United States. The CPSC also uses the NEISS system to collect information on childhood poisonings, in accordance with the Poison Prevention Packaging Act of 1970.

From these sources, CPSC staff selects cases of interest for further investigation, by contacting persons who witnessed or were injured in incidents involving consumer products. These investigations are conducted on-site (face-to-face), by telephone, or by the internet. On-site investigations are usually made in cases where CPSC staff needs photographs of the incident site, the product involved, or detailed information about the incident. This information can come from face-to-face interviews with persons who were injured or who witnessed the incident, as well as via contact with state and local officials, including police, coroners, and fire investigators, and others with knowledge of the incident.

Through interagency agreements, the CPSC also uses the NEISS system to collect information on injuries for the Centers for Disease Control and Prevention (CDC) under the NEISS All Injury Program (NEISS–AIP). The NEISS–AIP is a sub-sample of approximately two-thirds of the full NEISS sample. In addition to the standard data variables collected on all NEISS injuries, the NEISS–AIP collects variables on several studies for CDC (Firearm-Related Injuries, Adverse Drug Events, Assaults, Self-Inflicted Violence, and Work-Related Injuries) and one study on non-crash, motor vehicle-related injuries for the National Highway and Transportation Safety Administration (NHTSA).

The current NEISS probability sample was drawn and recruited in 1995–1996, and implemented in 1997. The current NEISS sample consists of 96 hospital emergency departments grouped into four strata, based on size, as measured by the annual number of emergency department (ED) visits, and a fifth stratum for children's hospitals. When a hospital stops participating in the NEISS, staff recruits a hospital of similar size and geographic location as a replacement. If a participating hospital closes, it is not replaced, because its closure is presumed to represent other hospitals that have closed nationally. As of January 1, 2021, there are currently 81 hospitals participating in the NEISS.

In September 2019, CPSC contracted with Westat, Inc., under CPSC contract 61320619F0134, to give the agency an independent statistical assessment of the NEISS and the NEISS–AIP samples.[1] The primary focus of this contract was to analyze the advantages and disadvantages of keeping, expanding, or resampling the current samples of NEISS and NEISS–AIP hospitals. Westat recommended that CPSC redesign the NEISS sample, and, consistent with that recommendation, CPSC is revising its sampling methodology.

In the redesigned NEISS sample, CPSC staff uses a resampling method that maximizes the probability of retaining as many of the current NEISS hospitals as possible, while maintaining the statistical integrity of the NEISS. Among eligible hospital emergency departments, some have migrated from one stratum to another; others have come into existence since the last resampling of the NEISS, or ceased to exist. The method used in resampling the NEISS is an extension of the Keyfitz procedures for stratified simple random samples.[2] Staff identified several advantages of retaining as many of the current NEISS hospitals as possible, including: (1) The contracting, data collection, and quality-control mechanisms already exist in the hospitals in the current sample; (2) it is a cost-effective procedure; and (3) there is less disruption in trend analysis. The new NEISS sample will contain a mixture of current NEISS hospitals, along with new hospitals recruited to join the NEISS, as follows:

[1] David Marker, Jim Green, Frost Hubbord, Richard Valliant, ''Statistical Assessment of the NEISS and NEISS–AIP Samples: Final Technical Report,'' Westat Inc., September 24, 2020.

[2] J. Michael Brick, David R. Morganstein, Charles, L. Wolter, ''Additional Uses for Keyfitz Selection,'' Westat Inc., 1987. (*http://www.asasrms.org/Proceedings/papers/1987_140.pdf*).

NEW NEISS SAMPLE

Stratum	NEISS redesign	2021 NEISS: reporting (retained)	2021 NEISS: reporting (dropped)	2021 NEISS: replacements (retained)	2021 NEISS: replacements (dropped)	New
Small	43	30	0	8	3	5
Medium	26	14	1	1	0	11
Large	12	11	8	0	1	1
Very Large	11	9	0	2	0	0
Children's	8	7	1	0	0	1
Total	100	71	10	11	4	18

CPSC recognizes that one of the advantages of a long-running NEISS sample is the ability to track trends across time, and updating the NEISS sample will impact that analysis. An overlap, or bridge period, during which data are collected from the old and the new samples, can adjust for any time series that crosses over two NEISS samples. CPSC plans to conduct a 12-month overlap as part of the implementation of the new NEISS sample. Having a full 12-month overlap period accounts better for seasonality of some consumer product-related injuries. By comparing estimates calculated from both samples, it is possible to adjust (backcast) old estimates to be consistent with the new sample. The overlap period will consist of all of calendar year 2023, but it is dependent on the successful recruitment of the 11 replacement and 18 new hospitals. If NEISS hospital recruitment is successful, the overlap period will run all of calendar year 2023. The national estimates for 2023 will be calculated using the new NEISS sample with historical estimates from 2022, and prior years ''backcast'' to adjust for the sample update. If NEISS hospital recruitment is delayed, and the 12-month overlap period spans July 2023 through June 2024, then 2023 national estimates will be calculated using the old NEISS sample, and 2024 national estimates would use the new NEISS sample.

OMB previously approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on July 31, 2022. However, to reflect CPSC's revised sampling methodology and resulting changes to the associated burden hours, CPSC is providing notice in this document prior to the expiration date, and now proposes to request an extension of approval of this updated collection of information.

B. NEISS Estimated Burden

The NEISS system collects information on consumer product-related incidents and other injuries from a statistical sample of hospitals in the United States. The number of hospitals participating in CY 2021 through CY 2024 will fluctuate from the current 81 reporting, to as high as 110.

Respondents to NEISS include hospitals that directly report information to NEISS, and hospitals that allow access to a CPSC contractor who collects the data. Collecting emergency department records for review, correcting error messages, and other tasks takes from 2.5 to 6 hours weekly. Each record requires about 30 seconds to review. Coding and reporting records that involve consumer products or other injuries takes about 2 minutes per record. Coding and reporting on additional special study information (Adverse Drug Effects) takes about 2 minutes and 90 seconds per record for other special studies. Respondents also spend about 8 to 36 hours per year in related activities (training, evaluations, and communicating with other hospital staff).

During CY 2023, assuming there will be a total of 110 hospitals participating in the NEISS, with an estimated 160 NEISS respondents (total hospitals and CPSC contractors), these NEISS respondents will review an estimated 6 million emergency department records and report 1.2 million total cases (470,000 consumer product-related injuries for CPSC, and 730,000 other injuries for the NEISS–AIP). The table below lists the estimated number of reported cases, and the estimated number of reported cases with additional special study information.

Total NEISS Cases Reported	1.2 million
Consumer Product-Related Injuries	470,000
CDC NEISS–AIP	730,000
Special Studies Reported (subset of above)	
Child Poisoning (CPSC)	5,000
Adverse Drug Events (CDC)	94,000
Assaults (CDC)	84,000
Firearm-Related Injuries (CDC)	12,000
Self-Inflicted Violence (CDC)	22,000
Work-Related Injuries (CDC)	54,000
Motor Vehicle Non-Crash Injuries (NHTSA)	17,000

The total burden hours for all NEISS respondents are estimated to be 130,000 for CY 2023. The average burden hours per respondent is 800 hours. However, the total burden hours on each respondent varies, due to differences in the sizes of the hospitals (*e.g.,* small rural hospitals versus large metropolitan hospitals). The smallest hospital will report an estimated 250 cases, with a burden of about 150 hours; while the largest hospital will report an estimated 60,000 cases, with a burden of about 4,500 hours.

The total costs to NEISS respondents for CY 2023 are estimated at $6.5 million. NEISS respondents enter into contracts with CPSC and are compensated for these costs. The average cost per respondent is estimated to be $41,000. The average cost per burden hour is estimated to be $50 per hour (including wages and overhead). However, the actual cost to each respondent varies, due to the type of respondent (hospital versus CPSC contractor), size of hospital, and regional differences in wages and overhead. Therefore, the actual annual cost for any given respondent may vary from $3,000 for a small rural hospital, up to $450,000 for the largest metropolitan hospital.

C. Other Burden Hours

In cases that require more information regarding product-related incidents or injuries, CPSC staff conducts face-to-face interviews with approximately 375 persons each year. On average, an on-site interview takes about 4.5 hours. CPSC staff also conducts about 2,000 in-depth investigations (IDIs) by telephone annually using a Computer Assisted Telephone Interview (CATI) or self-administered Computer Assisted internet Interview (CAII) questionnaires. Each CATI or CAII IDI requires about 20 minutes. CPSC staff estimates 2,355 annual burden hours on these

respondents: 1,688 hours for face-to-face interviews; 667 hours for in-depth telephone or internet interviews. CPSC's staff estimates the value of the time required for reporting is $38.60 an hour (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2021: *https://www.bls.gov>new.release>ecec.toc.htm*). At this valuation, the estimated annual cost to the public is about $90,903. The cost to the government for the collection of this NEISS information is estimated to be about $8.9 million a year. This estimate includes $6.5 million in compensation to NEISS respondents, as described above.

This information collection request excludes the burden associated with other publicly available Consumer Product Safety Information Databases, such as internet complaints, Hotline, and Medical Examiners and Coroners Alert Project (MECAP) reports, which are approved under OMB control number 3041–0146. This information collection request also excludes the burden associated with follow-up investigations conducted by other federal agencies.

D. Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2021–15385 Filed 7–19–21; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0017]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers 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 September 20, 2021.

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: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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 write to The U.S. Army Corps of Engineers-Sacramento District, Bountiful Utah Regulatory Field Office, 533 West 2600 South, Suite 150, Bountiful, Utah 84010, ATTN: Mr. Matthew Wilson, or call 801–295–8380.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Ordinary High Water Mark Field Identification Datasheet; OMB Control Number 0710–XXXX.

Needs and Uses: The U.S. Army Corps of Engineers, through its Regulatory Program, regulates certain activities in waters of the United States. Waters of the United States are defined under 33 CFR part 328. In order for the Corps to determine the amount and extent of waters of the United States at a site, aquatic resources must be geographically delineated in accordance with established Regulatory regulations, policy, and guidance. Non-tidal, non-wetland waters of the United States, which are defined in 33 CFR part 328, must be delineated to the extent of the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(7). The OHWM defines the lateral extent of non-tidal aquatic features in the absence of adjacent wetlands in the United States. The U.S. Army Corps of Engineers Engineer Research and Development Center (ERDC) has drafted the first national manual that provides and describes indicators and a methodology which will help improve consistency in the identification and delineation of the OHWM by (1) providing consistent definitions of OHWM indicators; (2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and (3) providing a datasheet for logging information at a site. Information collected on OHWM datasheets help inform the lateral limits of the Corps' jurisdiction in non-tidal, non-wetland aquatic resources (*e.g.,* streams or rivers). This information can then be used to inform jurisdictional determinations or permit evaluations. Applicants for Corps permits are generally required to submit delineations of aquatic resources as part of their permit application or in support of the permit evaluation process. The OHWM form will provide applicants with a tool to easily document and submit this information in a consistent format.

Affected Public: Individuals or households.

Annual Burden Hours: 7500.17.

Number of Respondents: 45,001.

Responses per Respondent: 1.

Annual Responses: 45,001.

Average Burden per Response: 10 minutes.

Frequency: As Required.

The OHWM is identified through physical characteristics that correspond

to a break in bank slope, transition in vegetation type and coverage, and changes in sediment characteristics. As such, the datasheet organizes OHWM indicators into four categories: Geomorphic indicators, vegetation indicators, sediment indicators, and ancillary indicators. Recognizing that streams are highly complex systems, space is provided to include additional indicators that may be particular to certain regions or channel types. The datasheet and field procedure guide users through the step-by-step process of identifying and documenting the OHWM in a more consistent, reliable, and repeatable manner. The OHWM form organizes the information into a logical and consistent format, and makes use of checkboxes and data entry prompts to ensure all of the necessary information to document the OHWM is provided as necessary in a manner that minimizes data entry for respondents.

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15373 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0009]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 19, 2021.

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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Survivor Advisory Working Group Application; OMB Control Number 0702–0144.

Type of Request: Extension.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 2 hours.

Annual Burden Hours: 40.

Needs and Uses: The information collection requirement is necessary to assess individuals who apply to become new members of the Army's Survivor Advisory Working Group (SAWG). SAWG advisors may provide advice and recommendations regarding vital Total Army (Active Component, Army National Guard, and U.S. Army Reserve) Survivor quality of life issues. Advisors assess how current Survivor programs and initiatives may affect the Survivor community. SAWG members are required to meet biannually for a four-day period. Additionally, members hold monthly phone calls discussion on SAWG issues.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15386 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2021–OS–0038]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 19, 2021.

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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Control Number 0730–0009.

Type of Request: Extension.

Number of Respondents: 4,500.

Responses per Respondent: 1.

Annual Responses: 4,500.

Average Burden per Response: 1.33 hours on average.

Annual Burden Hours: 6,000.

Needs and Uses: The information collected on this form will be used by the Defense Finance Accounting Service (DFAS) to determine whether there is indication of fraud, misrepresentation, fault, or lack of good faith, and whether it is in the best interest of the United States to forgive the debt. It will also be used to determine if a debtor should have been reasonably aware of the overpayment when it occurred. If a request for waiver is denied, the debt collection office (DCO) (usually the payroll office) will continue or resume collection if collection action was previously suspended. If a request for waiver is approved, then the DCO must cancel any outstanding portion of the debt and refund any portion of the debt that may have been collected prior to waiver approval.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–15382 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2021–OS–0065]

Proposed Collection; Comment Request

AGENCY: Chief Information Officer, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of Defense Chief Information Officer (DoD CIO) 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 September 20, 2021.

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: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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 write to Office of the Department of Defense Chief Information Officer 6000 Defense Pentagon, Washington, DC 20301–6000 ATTN: Mr. Rodney McCall, or call (703) 697–5936.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Cyber Scholarship Program; OMB Control Number 0704–0486.

Needs and Uses: DoD Cyber Scholarship Program (CySP), authorized by 10 U.S.C. 2200 is designed to: Increase the number of new entrants to DoD who possess key Information Assurance (IA) and Information Technology (IT) skill sets; and serve as a tool to develop and retain well-educated military and civilian personnel who support the Department's critical IT management and infrastructure protection functions. The DoD CySP recruitment track is for college students who, upon completion of the program, will work for the DoD. Pending availability of funds, the DoD CySP may also award capacity-building grants to colleges and universities designated as National Centers of Academic Excellence in Cybersecurity, (NCAE–Cs) for such purposes as developing cyber curricula and faculty, and building cyber laboratories. The recruitment track and institutional capacity-building grant programs both require a competitive application process. Recruitment scholarship applicants submit written documentation detailing their credentials. NCAE–Cs interested in applying for capacity-building grants must complete and submit a written proposal, and all NCAE–Cs receiving grants must provide documentation detailing the use of grant funding and the outcomes of the capacity-building initiative. DoD requires this information collection to measure the performance of the capacity-building components of the DoD CySP. DoD uses the information collected in the scholarship application process to assess the quality of applicants selected for inclusion in the DoD CySP. Without this written documentation detailing scholarship applicants' credentials, grant proposals, and grant execution accomplishments, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance.

Affected Public: Individuals or households (Student Applicants); Not-for-profit Institutions; State, Local or Tribal Government; Businesses or other for-profit (Academic Institutions).

Annual Burden Hours: 5,810.

Number of Respondents: 690.

Responses per Respondent: 1.

Annual Responses: 690.

Average Burden per Response: 8.42 hours.

Frequency: On Occasion.

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–15372 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2021–OS–0036]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 19, 2021.

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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Information System for Security; OMB Control Number 0704–0573.

Type of Request: Revision.

Number of Respondents: 45,377.

Responses per Respondent: 45.

Annual Responses: 2,041,965.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 680,655.

Needs and Uses: This information collection is necessary as the Defense Information System for Security (DISS) system requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. The respondents for this information collection are 45,377 Facility Security Officers (FSOs) working in industry companies, who are responsible for the regular servicing and updating of the DISS records of individuals with an industry person category. The specific purpose of this information collection is for FSOs to update the DISS records of contractor personnel within their company and Security Management Office (SMO) to facilitate DoD Adjudicators and Security Managers obtaining accurate up-to-date eligibility and access information on contractor personnel. FSO respondents electronically collect, update, and complete the collection directly into the DISS application.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15380 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2021–OS–0031]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 19, 2021.

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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Appointment of Chaplains for the Military Services; DD Form 2088; OMB Control Number 0704–0190.

Type of Request: Extension.

Number of Respondents: 150.

Responses per Respondent: 10.

Annual Responses: 1500.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 1,125 hours.

Needs and Uses: This information collection is needed to ensure that religious faith groups are appropriately organized and authorized by their constituencies to endorse clergy for service as chaplains in the Military Services. It also certifies the number of years of professional experience for each candidate.

DD Form 2088, ''Statement of Ecclesiastical Endorsement,'' is used to endorse that a Religious Ministry Professional is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promotion for appointees to the chaplaincies of the armed forces.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–15381 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2021–OS–0062]

Privacy Act of 1974; System of Records

AGENCY: United States Central Command (USCENTCOM), Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: USCENTCOM is adding a new system of records entitled, ''Contract Employees Vetting and Arming Authorization,'' FCENTCOM 05. This system provides multiple functionalities, including providing registration and vetting for contract employees working in the USCENTCOM Area of Operations and authorizing those contract employees to bear arms and ammunition.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before August 19, 2021. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Evlyn Hearne, Chief, FOIA/PA, U.S. Central Command (CCJ6–RDF), 7115 South Boundary Boulevard, MacDill AFB, FL 33621–5101, *evlyn.a.hearne.civ@mail.mil,* or at (813) 529–6135.

SUPPLEMENTARY INFORMATION:

I. Background

The Contract Employees Vetting and Arming Authorization system of records maintains USCENTCOM's registration, investigation, and verification of contract employees to work for the command in the theater of operations. The system also maintains the records of authorization for these employees to carry firearms and ammunition in this hostile threat area. This system of records will cover these records maintained in USCENTCOM IT systems, and any paper records that may be associated with it. This includes records maintained in the Joint Contingency Contracting System (JCCS), which registers and investigates contractors to verify their personal information and evaluates them for trustworthiness to work with DoD military and civilian employees and to access military installations located in the USCENTCOM Area of Operations.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov/privacy.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: July 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Contract Employees Vetting and Arming Authorization, FCENTCOM 05.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Ogden, 7879 Wardleigh Road, Hill AFB, UT 84056–5997.

SYSTEM MANAGER(S):

Joint Contingency Expeditionary Systems (JCXS) Portfolio Manager, Defense Logistics Agency (DLA), Joint Contingency and Expeditionary Services (JCXS), 8725 John J. Kingman Road, Fort Belvoir, VA 22060. *jccs.support@dla.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 822 of Public Law 116–92, ''National Defense Authorization Act for Fiscal Year 2020,'' December 20, 2020; Section 872 of Public Law 115–232, ''National Defense Authorization Act for Fiscal Year 2019,'' August 13, 2018; Sections 841 to 843 of Public Law 113–291, ''National Defense Authorization Act for Fiscal Year 2015,'' December 19, 2014; DoD DTM 18–003, ''Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records,'' April 9, 2018; USCENTCOM EXORD on Designation of Vendor Vetting Responsibilities in the USCENTCOM Theater Area of Operation, November 3, 2017; USCENTCOM EXORD on Designation of Vendor Vetting Responsibilities in the USCENTCOM Theater Area of Operation, MOD 01, July 10, 2019.

PURPOSE(S) OF THE SYSTEM:

This system of records maintains USCENTCOM's registration, investigation, and verification of contract employees to work for the command in the theater of operations. The system also maintains the records of authorization for these employees to carry firearms and ammunition in this hostile threat area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD contract employees and other federal agency contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identity information including name, telephone number(s), email address(es), Social Security number, other government-issued personal identification documents; criminal history information, (*e.g.,* arrests, convictions); financial information, limited to the number of shares of stock the employee holds in the company which employs him/her; and employment information, including employer's name and contact information.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and from DoD and other federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To Federal intelligence and law enforcement agencies to determine if a contract employee is suspected or confirmed to be affiliated with bad actors including, but not limited to, human traffickers, terrorists, drug traffickers, or individuals involved in other criminal activities or human rights violations.

K. To North Atlantic Treaty Organization (NATO) personnel working alongside DoD in theater, who are hiring contract employees to move goods and provide services such as food service and physical security.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored in paper form and on electronic storage media. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the contract employee's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

A. Individual records for contract employees maintained in the system may be destroyed or deleted no less than 7 years and no more than 10 years after cutoff of calendar year of employee termination.

B. Correspondence, memorandums, and other records relating to codes of ethics and standards of conduct information where contract employees were denied opportunity to work or carry arms in the USCENTCOM theater: These are cut off upon completion of final action, held 50 years, and then may be destroyed/deleted. Earlier destruction is authorized for routine materials not needed for legal purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is restricted by Common Access Cards. Access to records is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. All individuals granted access to this system of records are required to have taken Information Assurance and Privacy Act training.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to Chief, USCENTCOM FOIA/PA, FOIA Requester Service Center, 7115 South Boundary Boulevard, MacDill AFB, FL 33621–5101or be email at: *centcom.macdill.centcom-hq.mbx.freedom-of-information-act@mail.mil:* Signed, written requests should contain the full name, identifier (*i.e.,* SSN or DoD ID Number), current address and telephone number of the individual. In addition, the requester must provide either a notarized statement or a declaration made in accordance with 28 U.S.C. 1746, using the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are published in 32 CFR part 310 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–15392 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0064]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation (OLDCC) 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 September 20, 2021.

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: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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 write to Department of Defense, Office of Local Defense Community Cooperation, 2231 Crystal Drive, Suite 520, Arlington, Virginia, 22202–3711, ATTN: Ms. Elizabeth Chimienti or call (703) 901–7644.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Base Realignment and Closure (BRAC) Military Base Reuse Status; DD Form 2740; OMB Control Number 0790–0003.

Needs and Uses: Through the Office of Local Defense Community Cooperation (OLDCC), Department of Defense (DoD) funds are provided to communities for economic adjustment planning in response to closures and realignments of military installations. A measure of program evaluation is the monitoring of civilian job creation, and the type of redevelopment at former military installations. The respondents to the annual survey will generally be a single point of contact at the local level that is responsible for overseeing the base redevelopment effort. If this data is not collected, OLDCC will have no accurate, timely information regarding the civilian reuse of former military bases. As the administrator of the Defense Economic Adjustment Program, OLDCC has a responsibility to encourage private sector use of lands and buildings to generate jobs as military activity diminishes, and to serve as a clearinghouse for reuse data.

Affected Public: Business or other for-profit; State, Local, or Tribal Government.

Annual Burden Hours: 100.
Number of Respondents: 100.
Responses per Respondent: 1.
Annual Responses: 100.
Average Burden per Response: 1 hour.
Frequency: Annually.

Dated: July 14, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–15370 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Defense Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, U.S. Department of Defense (DoD).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Board of Actuaries, hereafter, ''Board'' will take place.

DATES: Open to the public Friday, July 30, 2021, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: THIS MEETING WILL BE HELD VIRTUALLY. For information on accessing the meeting, please contact Kathleen Ludwig, (703) 438–0223 or *Kathleen.A.Ludwig.civ@mail.mil* before July 26, 2021 at 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (Voice), *inger.m.pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Department of Defense Board of Actuaries was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its July 30, 2021 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Military Retirement Fund, the Voluntary Separation Incentive Fund, and the Education Benefits Fund in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 et. seq), and Section 1175 of Title 10, U.S.C.

Agenda: Discussion includes the Military Retirement Fund/VSI Fund ((1) Recent and Proposed Legislation; (2) Briefing on Investment Experience; (3) September 30, 2020, Valuation of the Military Retirement Fund*; (4) Proposed Methods and Assumptions for September 30, 2021, Valuation of the Military Retirement Fund*; and (5) Proposed Methods and Assumptions for September 30, 2020, VSI Fund Valuation.*) and the Education Benefits Fund ((1) Fund Overview; (2) Briefing on Investment Experience (3) September 30, 2020, Valuation Proposed Economic Assumptions*; (4) September 30, 2020,

Valuation Proposed Methods and Assumptions—Reserve Programs*; (5) September 30, 2020, Valuation Proposed Methods and Assumptions—Active Duty Programs*; and (6) Developments in Education Benefits. For * items, Board approval is required. Registered participants may obtain the most recent public agenda and other documentation by emailing the points of contact in the **FOR FURTHER INFORMATION CONTACT** section or on the Board's website.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via email to Kathleen Ludwig at *Kathleen.A.Ludwig.civ@mail.mil,* by July 23, 2021, in either Adobe or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: July 15, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15398 Filed 7–19–21; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; August 11 and September 9, 2021

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 11, 2021. A business meeting will be held the following month on Thursday, September 9, 2021. Both the hearing and the business meeting are open to the public. Both meetings will be conducted remotely. Details about the remote platform and how to attend will be posted on the Commission's website, *www.drbc.gov,* no later than July 28, 2021 for the public hearing and no later than August 28, 2021 for the business meeting.

Public Hearing. The Commission will conduct the public hearing remotely on August 11, 2021, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources.

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on August 11, 2021 will be accepted through 5:00 p.m. on August 16, 2021.

The public is advised to check the Commission's website periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on September 9, 2021 will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's February 25, 2021 Special Business meeting and June 9, 2021 Business Meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required.

After all scheduled business has been completed and as time allows, the Business Meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the September 9 Business Meeting on items for which a hearing was completed on August 11 or a previous date. Commission consideration on September 9 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on August 11 or to address the Commissioners informally during the Open Public Comment portion of the meeting on September 9 as time allows, are asked to sign up in advance through EventBrite. Links to EventBrite for the Public Hearing and the Business Meeting are posted at *www.drbc.gov.* For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Authority: Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: July 15, 2021.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2021–15389 Filed 7–19–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual combined meeting of the Consent Order Committee and Risk Evaluation and Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, August 18, 2021 1:00 p.m.–4:00 p.m.

ADDRESSES: This meeting will be held virtually via Webex. To attend, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov*, no later than 5:00 p.m. MT on Monday, August 16, 2021.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Consent Order Committee (COC): It is the mission of the COC to review the Consent Order, evaluate its strengths and weaknesses, and make recommendation as to how to improve the Consent Order. It is also within the mission of this committee to review and ensure implementation of NNMCAB Recommendation 2019–02, Improving the Utility of the Consent Order with Supplementary Information. The COC will work with the NNMCAB Risk Evaluation and Management Committee to review the risk-based approaches used to determine the prioritization of cleanup actions, as well as the ''relative risk ranking'' of the campaigns, targets, and milestones by the NNMCAB, to be recommended for use by the DOE EM Los Alamos Field Office (EM–LA) both within and outside of those activities covered by the Consent Order.

Purpose of the Risk Evaluation and Management Committee (REMC): The REMC provides external citizen-based oversight and recommendations to the DOE EM–LA on human and ecological health risk resulting from historical, current, and future hazardous and radioactive legacy waste operations at Los Alamos National Laboratory (LANL). The REMC will, to the extent feasible, stay informed of DOE EM–LA and LANL's environmental restoration and long-term environmental stewardship programs and plans. The REMC will also work with the NNMCAB COC to provide DOE EM–LA and LANL with the public's desires in determining cleanup priorities. The REMC will prepare recommendations that represent to the best of committee's knowledge and ability to determine, the public's position on human and ecological health risk issues pertaining to direct radiation or contaminant exposure to soils, air, surface and groundwater quality, or the agricultural and ecological environment.

Tentative Agenda

- Approval of Agenda
- Old Business
- New Business
  - Report from Nominating Committee
  - Election of Chair and Vice Chair for Fiscal Year 2022
- Overview of Natural Resource Damage Assessment (NRDA)
- Public Comment Period
- Presentation by the Pueblo de San Ildefonso Environmental Office
- Update from Deputy Designated Federal Officer

Public Participation: The online virtual meeting is open to the public. To sign up for public comment, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov*, no later than 5:00 p.m. MT on Monday, August 16, 2021. Written statements may be filed with the Committees either before or within five days after the meeting by sending them to Menice Santistevan at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on July 14, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–15356 Filed 7–19–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Form EIA–63C, *Densified Biomass Fuel Report,* OMB Control Number 1905–0209. The report is part of EIA's comprehensive energy data program. Form EIA–63C collects monthly data on the manufacture, shipment, exports, energy characteristics, and sales of densified biomass fuels and other densified biomass fuel products data from facilities that manufacture densified biomass fuel products (pellet fuels), for energy applications.

DATES: Comments on this information collection must be received no later than August 19, 2021. 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: Connor Murphy, EI–23, U.S. Energy Information Administration, telephone (202) 287–5982, email *Connor.Murphy@eia.gov.* The form and instructions are available at *https://www.eia.gov/survey/#eia-63.*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.:* 1905–0209;

(2) *Information Collection Request Title:* Densified Biomass Fuel Report;

(3) *Type of Request:* Three-year extension without changes;

(4) *Purpose:* Form EIA–63C is part of EIA's comprehensive energy data program. The survey collects information on the manufacture, shipment, exports, energy

characteristics, and sales of pellet fuels and other densified biomass fuel products data from facilities that manufacture densified biomass fuel products, primarily pellet fuels, for energy applications. The data collected on Form EIA–63C are a primary source of information for the nation's growing production of biomass products for heating and electric power generation, and for use in both domestic and foreign markets.

(5) *Annual Estimated Number of Respondents:* 106;

(6) *Annual Estimated Number of Total Responses:* 1,041;

(7) *Annual Estimated Number of Burden Hours:* 1,433;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $117,004 (1,433 burden hours times $81.65 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Statutory Authority: 15 U.S.C. 772(b), 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on July 14th, 2021.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2021–15355 Filed 7–19–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three-year extension, with changes, to the Generic Clearance for Questionnaire Testing, Evaluation, and Research, as required under the Paperwork Reduction Act of 1995. EIA–882T, *Generic Clearance for Questionnaire Testing, Evaluation, and Research,* provides EIA with the authority to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of data collected on EIA's surveys. EIA uses EIA–882T to meet its obligation to publish, and otherwise make available independent, high-quality statistical data to federal government agencies, state and local governments, the energy industry, researchers, and the general public.

DATES: EIA must receive all comments on this proposed information collection no later than September 20, 2021. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Submit comments electronically to Gerson Morales by email at *Gerson.Morales@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Gerson Morales, U.S. Energy Information Administration, telephone (202) 586–7077, or by email at *Gerson.Morales@eia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is requesting a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data that is collected on EIA and DOE survey forms. Through the use of these methodologies, EIA will conduct research studies to improve the quality of energy data being collected, reduce or minimize survey respondent burden, and increase agency efficiency. This authority would also allow EIA to improve data collection in order to meet the needs of EIA's customers while also staying current in the evolving nature of the energy industry.

The specific methods proposed for the coverage by this clearance are described below. Also outlined is the legal authority for these voluntary information gathering activities.

The following methods are proposed:

Pilot Surveys. Pilot surveys conducted under this clearance will generally be methodological studies, and will always employ statistically representative samples. The pilot surveys will replicate all components of the methodological design, sampling procedures (where possible), and questionnaires of the full scale survey. Pilot surveys will normally be utilized when EIA undertakes a complete redesign of a particular data collection methodology or when EIA undertakes data collection in new energy areas, such as HGL production, alternative fueled motor vehicles, and other emerging areas of the energy sector where data collection would provide utility to EIA.

Cognitive Interviews. Cognitive interviews are typically one-on-one interviews in which the respondent is usually asked to ''think aloud'' or is asked ''retrospective questions'' as he or she answers questions, reads survey materials, defines terminology, or completes other activities as part of a typical survey process. A number of different techniques may be involved including, asking respondents what specific words or phrases mean or asking respondents probing questions to determine how they estimate, calculate, or determine specific data elements on a survey. The objectives of these cognitive interviews are to identify problems of ambiguity or misunderstanding, examine the process that respondents follow for reporting information, assess survey respondents' ability to report new information, or identify other difficulties respondents have answering survey questions in order to reduce measurement error from estimates based on a survey.

Respondent Debriefings. Respondent debriefings conducted under this clearance will generally be methodological or cognitive research studies. The debriefing form is administered after a respondent completes a questionnaire either in paper format, electronically, or through in-person interviews. The debriefings contain probing questions to determine how respondents interpret the survey questions, how much time and effort was spent completing the questionnaire, and whether they have problems in completing the survey/questionnaire. Respondent debriefings also are useful in determining potential issues with data quality and in estimating respondent burden.

Usability Testing. Usability tests are similar to cognitive interviews in which a respondent is typically asked to ''think aloud'' or asked ''retrospective questions'' as he or she reviews an electronic questionnaire, website, visual aid, or hard copy survey form. The objective of usability testing is to check that respondents can easily and intuitively navigate electronic survey collection programs, websites, and other survey instruments to submit their data to EIA.

Focus Groups. Focus groups, in person, online, or by phone, involve group sessions guided by a moderator who follows a topic guide containing questions or subjects focused on a particular issue rather than adhering to

a standardized cognitive interview protocol. Focus groups are useful for exploring issues concerning the design of a form and the meaning of terms from a specific group of respondents, data users, or other stakeholders of EIA data. Focus groups may also be used to explore respondents' general opinions about data collection technologies or survey materials other than questionnaires.

(4a) *Proposed Changes to Information Collection:*

EIA proposes to add several other methodologies or techniques to improve survey design, pretest questionnaires and validate the quality of the data that is collected on EIA and DOE survey forms.

Field Techniques. Field techniques described in survey research and survey methodology literature will be employed as appropriate. These include follow-up probing, memory cue tasks, paraphrasing, confidence rating, response latency measurements, free and dimensional sort classification tasks, and vignette classifications. The objective of all of these techniques is to aid in the development of surveys that work with respondents' thought processes, thus reducing response error and burden. These techniques have also proven useful for studying and revising pre-existing questionnaires.

Behavior Coding. Behavior coding is a quantitative technique in which a standard set of codes is systematically applied to respondent/interviewer interactions in interviewer-administered surveys or respondent/questionnaire interactions in self-administered surveys. The advantage of this technique is that it can identify and quantify problems with the wording or ordering of questions, but the disadvantage is that it does not necessarily illuminate the underlying causes.

Split Panel Test. Split panel tests refer to controlled experimental testing of alternative hypotheses. Thus, they allow one to choose from among competing questions, questionnaires, definitions, error messages or survey improvement methodologies with greater confidence than any of the other methods. Split panel tests conducted during the fielding of the survey are superior in that they can support both internal validity (controlled comparisons of the variable(s) under investigation) and external validity (represent the population under study). Most of the previously mentioned survey improvement methods can be strengthened when teamed with this method.

(5) *Annual Estimated Number of Respondents:* 1,800;

(6) *Annual Estimated Number of Total Responses:* 1,800;

(7) *Annual Estimated Number of Burden Hours:* 2,200;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $179,630 (2,200 annual burden hours multiplied by $81.65 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on July 14th, 2021.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2021–15360 Filed 7–19–21; 8:45 am]

BILLING CODE 6450–01–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 Numbers: RP21–653–000.

Applicants: Ovintiv Marketing Inc., Kiwetinohk Marketing US Corp.

Description: Joint Petition of Ovintiv Marketing Inc. and Kiwetinohk Marketing US Corp. for Extension of Temporary and Limited Waivers.

Filed Date: 7/12/21.

Accession Number: 20210712–5024.

Comments Due: 5 p.m. ET 7/26/21.

Docket Numbers: RP21–963–000.

Applicants: Effingham County Power, LLC, Oglethorpe Power Corporation (An Electric Membership Corporation).

Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of Effingham County Power, LLC, et al.

Filed Date: 7/12/21.

Accession Number: 20210712–5136.

Comments Due: 5 p.m. ET 7/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15314 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10821–000]

Pacific Gas & Electric Company; Notice of Authorization for Continued Project Operation

On June 27, 2019, Pacific Gas & Electric Company (PG&E), licensee for the Camp Far West Transmission Line Project No. 10821, filed an Application for a Subsequent License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Camp Far West Transmission Line Project is located in Placer and Yuba Counties, California.

The license for Project No. 10821 was issued for a period ending June 30, 2021. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the

applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 10821 is issued to the Pacific Gas & Electric Company (PG&E), for a period effective July 1, 2021 through June 30, 2022 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2022, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas & Electric Company (PG&E) is authorized to continue operation of the Camp Far West Transmission Line Project, until such time as the Commission acts on its application for a subsequent license.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15399 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–28–000]

Commission Information Collection Activities (FERC–921); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–921 (Ongoing Electronic Delivery of Data from Regional Transmission Organization and Independent System Operators).

DATES: Comments on the collection of information are due August 19, 2021.

ADDRESSES: Send written comments on FERC–921 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0257) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC21–28–000) to the Commission as noted below. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–921, Ongoing Electronic Delivery of Data from Regional Transmission Organization and Independent System Operators.

OMB Control No.: 1902–0257.

Type of Request: Three-year extension of the FERC–921 information collection requirements with no changes to the current reporting requirements.

Abstract: The collection of data in FERC–921 is an effort by the Commission, implemented under Order No. 760,[1] to detect potential anti-competitive or manipulative behavior or ineffective market rules by requiring Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to electronically submit, on a continuous basis, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. Although provision was made by the Commission that market monitoring units (MMUs) may provide datasets, all data for this collection has (and is expected to continue to) come from each RTO or ISO and not the MMUs. Therefore, any associated burden is counted as burden on RTO and ISO.

While the ongoing delivery of data under FERC–921 is continuous and routine, each RTO or ISO makes sporadic changes to its individual market with Commission approval. When those changes occur, the RTO or ISO may need to change the data being routinely sent to the Commission to ensure compliance with Order No. 760. Such changes typically require respondents to alter the ongoing delivery of data under FERC–921. The burden associated with a change varies considerably based on the significance of the specific change; therefore, the estimate below is intended to reflect the incremental burden for an average change. Based on historical patterns, staff estimates there to be about one and a half changes of this nature per RTO or ISO per year.

Type of Respondent: Regional Transmission Organizations (RTO) and Independent System Operators (ISO).

The Commission published a 60-day Paperwork Reduction Act Notice[2] on May 13, 2021 and no comments were received.

[1] *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators,* Order No. 760, 139 FERC ¶ 61,053 (2012).

[2] 86 FR 26220.

Estimate of Annual Burden: [3] The Commission estimates the total annual burden and cost [4] for this information collection as follows. The ongoing electronic delivery of data requires the following occupations (which includes wages and benefits): [5]

- 75% of the time is spent by Computer Systems Analysts (Occupational Code: 15–1211) at $67.75/hr.,
- 12.5% of the time is spent by Legal (Occupation Code: 23–0000) at $142.25/hr., and
- 12.5% of the time is spent by Database Administrators and Architects (Occupational Code: 15–1245) at $71.92/hr.,

Therefore, we use the weighted hourly cost (for wages and benefits) of $77.59.[8]

FERC–921 (ONGOING ELECTRONIC DELIVERY OF DATA FROM REGIONAL TRANSMISSION ORGANIZATIONS AND INDEPENDENT SYSTEM OPERATORS)

Category	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average annual burden & cost per response (4)	Total average annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Ongoing electronic delivery of data	6	1	[6] 6	52 hrs.; $4,034.68	312 hrs.; $24,208.08	$4,034.68
Data Delivery Changes over the year	6	1	[7] 6	480 hrs.; $37,243.20	2,880 hrs.; $223,459.20	37,243.20
Total	6	2	12		3,192 hrs.; $247,667.28	41,277.88

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15400 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3251–000]

Cornell University; Notice of Authorization for Continued Project Operation

On June 28, 2019, Cornell University, licensee for the Cornell University Hydroelectric Project No.3251, filed an Application for a Subsequent License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Cornell University Hydroelectric Project is located on Fall Creek within the Cornell University campus in the City of Ithaca, Tompkins County, New York.

The license for Project No. 3251 was issued for a period ending June 30, 2021. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3251 is issued to Cornell University for a period effective July 1, 2021 through June 30, 2022 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2022, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or

[3] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[4] Costs (for wages and benefits) are based on the mean wage estimate by the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) program from May 2020 (*https://www.bls.gov/oes/current/naics2_22.htm.*) and benefits information, accounting for 70.3% of average employment (released March 2021) for private industry workers (*https://www.bls.gov/news.release/ecec.nr0.htm*). We estimate the total time required per change to be 320 hours. Because a response encompasses one year where there are, on average, 1.5 changes, the total time per response is 480 hours (1.5 × 320 hours).

[5] The loaded hourly wage for each occupation is as follows:

- Computer Systems Analysts: $47.63 (base hourly wage) ÷ 70.3% (benefits) = $67.75.
- Legal: $100 (base hourly wage) ÷ 70.3% (benefits) = $142.25.
- Database Administrators and Architects: $50.65 (base hourly wage) ÷ 70.3% (benefits) = $71.92.

[6] Each RTO/ISO electronically submits data daily. To match with past filings, we are considering the collection of daily responses to be a single response.

[7] Each RTO/ISO is estimated to make one and a half changes yearly. To be consistent with the formulation that the submissions over the course of a year constitute a single response, for the purpose of this calculation, we are assuming that each response requires one and a half changes over the course of the year and estimating burden accordingly.

[8] The rounded weighted hourly cost breakdown includes: [(0.75 * $67.75) + (0.125 * $142.25) + (0.125 * $71.92)] = $77.59.

notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Cornell University is authorized to continue operation of the Cornell University Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15407 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–16–000]

Notice of Format Change for Combined Notices; Filing Via the Internet

The purpose of this notice is to announce that the Commission will use a new format for Combined Notices (CNF) coming in early August 2021. The format will change to include a single table for each section of the combined notice for electric filings and two tables for the combined notice for natural gas filings, one for filings initiating proceedings and one for filings in existing proceedings, as shown in the examples below. This allows alignments which improve the readability of the document.

Beginning in August, the links displayed in these combined notices will include the following:

Docket Number Link: Links to the Docket List page.

Description Link: Links to the File List page. On the File List page, you can generate the FERC PDF, download single files, or download all files for the document.

Accession Number Link: Links to the Document Info page.

Also, the Combined Notices will include additional filing types, in particular complaints.

Examples

Electric CNF

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–1–000.
Applicants: VRP Energy Storage, LLC.
Description: Ventura Energy Storage, LLC submits Notice of Consummation of Transaction.
Filed Date: 5/19/21.
Accession Number: 20210519–5111.
Comment Date: 5 p.m. ET 6/9/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–1–000.
Applicants: NOP Renewables Americas, LLC.
Description: Self-Certification of EWG for Hickory Park Solar, LLC.
Filed Date: 5/19/21.
Accession Number: 20210519–5090.
Comment Date: 5 p.m. ET 6/9/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–100–000.
Applicants: ABC Electric Power Company.
Description: Compliance filing: ABC Energy Station 1, LLC submits tariff filing per 35: Revised Rate Schedule FERC No. 1 to be effective 12/1/2020.
Filed Date: 1/6/21.
Accession Number: 20210106–5021.
Comment Date: 5 p.m. ET 1/27/21.

Gas CNF

Filings Instituting Proceedings

Docket Numbers: RP21–100–000.
Applicants: GEF Pipeline LLC.
Description: § 4(d) Rate Filing: Updated Negotiated Rate PAL Agreements—February 2021 to be effective 5/10/2021.
Filed Date: 4/9/21.
Accession Number: 20210409–5065.
Comment Date: 5 p.m. ET 4/21/21.

Filings in Existing Proceedings

Docket Numbers: RP21–200–001.
Applicants: JLK Company of America LLC.
Description: Tariff Amendment: Amendment Filing to a Negotiated Rate Agreement—Sempra Gas & Power to be effective 4/1/2021.
Filed Date: 4/8/21.
Accession Number: 20210408–5290.
Comment Date: 5 p.m. ET 4/20/21.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15401 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2997–000]

South Sutter Water District; Notice of Authorization for Continued Project Operation

On July 1, 2019, South Sutter Water District, licensee for the Camp Far West Hydroelectric Project No.2997, filed an Application for a Subsequent License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Camp Far West Hydroelectric Project is located on the Bear River in Yuba, Nevada, and Placer Counties, California.

The license for Project No. 2997 was issued for a period ending June 30, 2021. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2997 is issued to the South Sutter Water District, for a period effective July 1, 2021 through June 30, 2022 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2022, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that South Sutter Water District is authorized to continue operation of the Camp Far West Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15406 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2376–003; ER15–2025–002.
Applicants: Energy Power Investment Company, LLC, EPP Renewable Energy, LLC.
Description: Notice of Non-Material Change in Status of Energy Power Investment Company, LLC, et al.
Filed Date: 7/12/21.
Accession Number: 20210712–5183.
Comments Due: 5 p.m. ET 8/2/21.

Docket Numbers: ER20–660–006; ER10–1892–019; ER10–2739–032; ER16–1652–019; ER16–1924–006; ER16–1925–006; ER16–1926–006.
Applicants: Bolt Energy Marketing, LLC, Columbia Energy LLC, LifeEnergy, LLC, LS Power Marketing, LLC, Bison Solar LLC, Pavant Solar II LLC, San Isabel Solar LLC.
Description: Notice of Change in Status of Bolt Energy Marketing, LLC, et al.
Filed Date: 7/12/21.
Accession Number: 20210712–5185.
Comments Due: 5 p.m. ET 8/2/21.

Docket Numbers: ER20–1719–003.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: PPL Electric submits Deficiency Response to Compliance in ER20–1719 re Order 864 to be effective N/A.
Filed Date: 7/13/21.
Accession Number: 20210713–5059.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER20–2452–003; ER20–844–002; ER20–2453–004.
Applicants: Hamilton Liberty LLC, Hamilton Patriot LLC, Hamilton Projects Acquiror, LLC.
Description: Notice of Non-Material Change in Status of Hamilton Liberty LLC, et al.
Filed Date: 7/9/21.
Accession Number: 20210709–5164.
Comments Due: 5 p.m. ET 7/30/21.

Docket Numbers: ER21–1191–007.
Applicants: Southwestern Electric Power Company.
Description: Tariff Amendment: Amended and Restated Minden PSA to be effective 8/1/2018.
Filed Date: 7/12/21.
Accession Number: 20210712–5128.
Comments Due: 5 p.m. ET 8/2/21.

Docket Numbers: ER21–1572–000.
Applicants: Avista Corporation.
Description: Report Filing: Avista Response to Request for Additional Information, Docket No. ER21–1572–000 to be effective N/A.
Filed Date: 7/8/21.
Accession Number: 20210708–5045.
Comments Due: 5 p.m. ET 7/29/21.

Docket Numbers: ER21–2400–000.
Applicants: Long Island Power Authority.
Description: Joint Request for Limited Waiver of Long Island Power Authority and Long Island Solar Farm.
Filed Date: 7/12/21.
Accession Number: 20210712–5181.
Comments Due: 5 p.m. ET 8/2/21.

Docket Numbers: ER21–2401–000.
Applicants: Oliver Wind Energy Center II, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 8/31/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5045.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2402–000.
Applicants: MET Southwest Trading LLC.
Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 7/14/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5051.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2403–000.
Applicants: Solios Power Mid-Atlantic Trading, LLC.
Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 7/14/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5052.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2404–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 6107; Queue No. AG1–318 to be effective 6/23/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5053.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2405–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Amended CLGIA ORNI 50 LLC & Notice of Termination of the eTariff to be effective 7/14/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5058.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2406–000.
Applicants: Lancaster Solar LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/12/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5097.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2407–000.
Applicants: SR Georgia Portfolio II Lessee, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/12/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5105.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2408–000.
Applicants: SR Lumpkin, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/12/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5114.
Comments Due: 5 p.m. ET 8/3/21.

Docket Numbers: ER21–2409–000.
Applicants: SR Snipesville II, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/12/2021.
Filed Date: 7/13/21.
Accession Number: 20210713–5119.
Comments Due: 5 p.m. ET 8/3/21.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–12–000.
Applicants: Enbridge Inc.
Description: Enbridge Inc. submits FERC–65A Notice of Material Change in Facts to Waiver Notification.
Filed Date: 7/9/21.
Accession Number: 20210709–5163.
Comments Due: 5 p.m. ET 7/30/21.

Docket Numbers: PH21–13–000.
Applicants: LS Power Development, LLC.
Description: LS Power Development, LLC submits FERC–65B Notice of Non-Material Change in Fact to Waiver Notification.
Filed Date: 7/12/21.
Accession Number: 20210712–5172.
Comments Due: 5 p.m. ET 8/2/21.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21–26–000.
Applicants: Northern Virginia Electric Cooperative.
Description: Application of Northern Virginia Electric Cooperative, Inc. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 7/13/21.
Accession Number: 20210713–5064.
Comments Due: 5 p.m. ET 8/10/21.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR21–6–000.
Applicants: North American Electric Reliability Corp, SERC Reliability Corporation.
Description: Joint Petition of the North American Electric Reliability Corporation and SERC Reliability Corporation for Approval of Amendments to the SERC Reliability Corporation Bylaws.
Filed Date: 7/9/21.
Accession Number: 20210709–5166.
Comments Due: 5 p.m. ET 7/30/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15318 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14513–003]

Idaho Irrigation District, Sweden Irrigation District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.
b. *Project No.:* 14513–003.
c. *Date filed:* September 29, 2020.
d. *Applicant:* Idaho Irrigation District, New Sweden Irrigation District (Districts).
e. *Name of Project:* County Line Road Hydroelectric Project.
f. *Location:* The proposed project would be located on the Snake River in Jefferson and Bonneville Counties, Idaho. The project would not affect federal lands.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Nicholas Josten, 2742 Saint Charles Ave., Idaho Falls, Idaho 83404; (208) 528–6152.
i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or email at *matt.cutlip@ferc.gov.*
j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–14513–003.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The proposed project would utilize water diverted from the Snake River at an existing diversion dam located 10 miles upstream of Idaho Falls. Currently the diversion dam diverts irrigation water for agricultural purposes into the existing Idaho Canal on the east side of the river and Great Western Canal on the west side of the river. Under the proposed project, the Districts would enlarge the canals by raising the banks of each by an additional 1 to 3 feet to increase their capacity and then divert up to 1,000 cubic feet per second (cfs) of additional flow into each canal for power generation. On the east side of the Snake River, flows for power generation would be diverted into the Idaho Canal and conveyed about 3.1 miles to a new East Side Powerhouse and then discharged back to the Snake River. On the west side of the Snake River, flows for power generation would be diverted into the Great Western Canal and conveyed about 3.5 miles to a new West Side Powerhouse and then discharged back to the Snake River. The Districts propose to maintain a 1,000-cfs minimum flow in the 3.5-mile-long segment of the Snake River bypassed by the project whenever the project is operating. The total capacity of both powerhouses would be 2.5 megawatts (MW), with a 1.2–MW capacity for the single Kaplan turbine in the East Side Powerhouse and a 1.3–MW capacity for the single Kaplan turbine in the West Side Powerhouse. The average annual generation is expected to be 18.3 gigawatt-hours. The project would also include two new 12.5-kilovolt transmission lines, extending 2,500 feet and 400 feet from the East Side and West Side Powerhouses, respectively, to the interconnection points with the existing electrical distribution system.

m. The Commission provides all interested persons with an opportunity to view and/or print the application 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 the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19),

issued by the President on March 13, 2020. For assistance, contact FERC 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 *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	September 2021.
Commission issues Draft EA or EIS	April 2022.
Comments on Draft EA or EIS	May 2022.
Modified Terms and Conditions	July 2022.
Commission Issues Final EA or EIS	October 2022.

p. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

q. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Dated: July 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15404 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3452–000]

Erie Boulevard Hydropower, L.P.; Notice of Authorization for Continued Project Operation

On June 28, 2019, Erie Boulevard Hydropower, L.P., licensee for the Oak Orchard Hydroelectric Project No. 3452, filed an Application for a Subsequent License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Oak Orchard Hydroelectric Project is located adjacent to the New York State Canal Corporation's Barge Canal in the Village of Medina, Orleans County, New York.

The license for Project No. 3452 was issued for a period ending June 30, 2021. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3452 is issued to Erie Boulevard Hydropower, L.P. for a period effective July 1, 2021 through June 30, 2022 or until the issuance of a new license for the project

or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2022, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Erie Boulevard Hydropower, L.P is authorized to continue operation of the Oak Orchard Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: July 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15402 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2411–029]

STS Hydropower, LLC, City of Danville, Virginia, Eagle Creek Schoolfield, LLC; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On June 14, 2021, STS Hydropower, LLC, (transferor), City of Danville, Virginia (co-licensee) and Eagle Creek Schoolfield, LLC (transferee) filed jointly an application for partial transfer of license for the Schoolfield Hydroelectric Project No. 2411. The project is located on the Dan River, in the City of Danville in Pittsylvania County, Virginia.

The applicants seek Commission approval to partially transfer the license for the Schoolfield Hydroelectric Project from the transferor to the transferee and keeping the City of Danville, Virginia and Eagle Creek Schoolfield, LLC as co-licensees. The transferee will be required by the Commission to comply with all the requirements of the license as though it were the original licensee.

Applicants Contact: For transferor: Mr. Martin Karpenski, STS Hydropower, LLC, c/o Eagle Creek Renewable Energy, LLC, 65 Madison Avenue, Morristown, NJ 07960, Phone: 973–998–8400, Email: *marty.karpenski@eaglecreekre.com* and Mr. Joshua E. Adrian, Thompson Coburn LLP, 1909 K Street NW, Suite 600, Washington, DC 20006, Phone: 202–585–6922, Email: *jadrian@thompsoncoburn.com.*

For co-licensee: Mr. Kenneth F. Larking, City Manager, City of Danville, P.O. Box 3300, 427 Patton St., Danville, VA 24543, Phone: 434–799–5100, Email: *klarking@danvilleva.gov.*

For transferee: Mr. Martin Karpenski, Eagle Creek Schoolfield, LLC, c/o Eagle Creek Renewable Energy, LLC, 65 Madison Avenue, Morristown, NJ 07960, Phone: 973–998–8400, Email: *marty.karpenski@eaglecreekre.com* and Mr. Joshua E. Adrian, Thompson Coburn LLP, 1909 K Street NW, Suite 600, Washington, DC 20006, Phone: 202–585–6922, Email: *jadrian@thompsoncoburn.com.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 15 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2411–029. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15408 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–20–000]

Commission Information Collection Activities (FERC–567, FERC–576); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–567 (Gas Pipeline Certificates: Annual Reports of System Flow Diagrams) and FERC–576 (Report of Service Interruptions or Damage to Facilities) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due August 19, 2021.

ADDRESSES: Send written comments on FERC–567 and/or FERC–576 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0005 and/or 1902–0004) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC21–20–000) to the Commission as noted below. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions:

OMB submissions must be formatted and filed in accordance with submission

guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

Comments: Comments are invited on: (1) Whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION: The Commission published a 60-day Paperwork Reduction Act Notice [1] in the **Federal Register** on May 11, 2021 and no comments were received on the renewal of FERC–567 and FERC–576 information collections. Inadvetently, the cost caluations for FERC–576 indicated that it used the 2020 Bureau of Labor Statistics (BLS) costs estimates when in fact it used the 2021 costs figures. The correct cost estimated are reflected below. This does not effect any information related to the collection of FERC–567.

The following information pertains to FERC–567 only.

Title: FERC–567, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams.

OMB Control No.: 1902–0005.

Type of Request: Three-year extension of the FERC–567 information collection requirements with no changes to the current reporting requirements.

Abstract: Per 18 Code of Federal Regulations (CFR) 260.8(a), each major interstate natural gas pipeline with a system delivery capacity exceeding 100,000 Mcf [2] per day is required to submit, by June 1 of each year, diagrams reflecting operating conditions on the pipeline's main transmission system during the previous 12 months ending on December 31. The submitted information must include (i) configuration and location of installed pipeline facilities; (ii) receipt and delivery points between shippers, and pipeline companies; (iii) location of compressor stations on a pipeline system; (iv) pipeline diameters; (v) maximum allowable operating pressures; (vi) suction and discharge pressures at compressor stations; (vii) installed horsepower and volumes compressed at each compressor station; (viii) existing shippers currently nominating service under firm contracts on each pipeline company; and (ix) peak capacity on the system. The data is collected so that it's available in the event the Commission needs to confirm pipeline facility data.

Type of Respondents: Natural gas pipeline companies with a system delivery capacity in excess of 100,000 Mcf per day.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–567—GAS PIPELINE CERTIFICATES: ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS

Respondents	Number of respondents [3] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average annual burden & cost per response [4] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Average annual cost per respondent ($) (5) ÷ (1)
Natural Gas Pipelines	124	1	124	4 hrs.; $332 ...	496 hrs.; $41,168	$332

The following information pertains to FERC–576 only.

Title: FERC–576, Report of Service Interruptions or Damage to Facilities.

OMB Control No.: 1902–0004.

Type of Request: Three-year extension of the FERC–576 information collection requirements with no changes to the current reporting requirements.

Abstract: Per 18 CFR 260.9, natural gas pipeline companies must report (i) damage to any jurisdictional natural gas facilities other than liquefied natural gas facilities caused by a hurricane, earthquake or other natural disaster or terrorist activity that results in a loss of or reduction in pipeline throughput or storage deliverability; and (ii) serious interruptions of service to any shipper involving jurisdictional natural gas facilities other than liquefied natural gas facilities.

The notifications, made to the Director, Division of Pipeline Certificates via email or fax as soon as feasibly possible, must state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain service; and (7) Company contact and telephone number. The information provided by these notifications are kept by the Commission and are not made part of the public record.

In addition, if an incident requires reporting of the incident to the Department of Transportation under the Natural Gas Pipeline Safety Act of 1968, a copy of such report shall be submitted to the Director of the Commission's

[1] 86 FR 25852.

[2] Mcf is a unit of measurement for natural gas that equals 1,000 cubic feet.

[3] The number of respondents in the currently approved OMB inventory for FERC–567 is 197. Changes to the estimate were based on average number of respondents over the past three years.

[4] The Commission staff estimates that the average respondent for FERC–567 is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's 2020 annual average of $172,329 (for salary plus benefits), the average hourly cost is $83/hour.

Division of Pipeline Certificates, within 30 days of the reportable incident. Natural gas companies must also send a copy of submitted reports to each state commission for the state(s) in which the reported service interruption occurred. If the Commission did not collect this information, it would lose a data point that assists in the monitoring of transactions, operations, and reliability of interstate pipelines.

Type of Respondents: Natural gas companies experiencing service interruptions or damage to facilities.

Estimate of Annual Burden: The Commission estimates the average annual burden and cost [5] for this information collection as follows. Please note that the cost figures in the Table for FERC–576 has been rounded (columns 4) for display purposes only. The calculations for the 'cost per response' are based on the number of hours multiplied by the total weight hourly cost.

FERC–576—REPORT OF SERVICE INTERRUPTIONS OR DAMAGE TO FACILITIES

	Number of respondents [6] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average annual burden hrs. & cost ($) per response (4)	Total annual burden hrs. & total annual cost (3) * (4) = (5)	Average annual cost per respondent ($) (5) ÷ (1)
Notification of Incident—Service Interruption.	50	1	50	1 hr.; $133.38	50 hrs.; $6,669	$133.38
Notification of Incident—Damage.	22	1	22	0.25 hrs.; $33.35	5.5 hrs.; $733.59	33.35
Submittal of DOT Incident Report.	10	1	10	0.25 hrs.; $33.35	2.5 hrs.; $333.45	33.35
Total	82				58 hrs.; $7,736.04	

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15409 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–502–001]

Commonwealth LNG, LLC; Notice of Application for Amendment and Establishing Intervention Deadline

Take notice that on July 8, 2021, Commonwealth LNG, LLC (Commonwealth), One Riverway, Suite 500, Houston, TX 77056, filed an application under section 3(a) of the Natural Gas Act (NGA) requesting an amendment to its August 20, 2019 application (2019 Application) requesting authorization from the Commission to site, construct, and operate a natural gas liquefaction and export facility (LNG Facility), including an NGA Section 3 natural gas pipeline in Cameron Parish, Louisiana. Commonwealth's LNG Facility, described in its 2019 Application included six 40,000 cubic meter full containment LNG Storage Tanks designed with an inner and outer tank fabricated from nine percent (9%) nickel steel which would have required a special authorization from the Department of Transportation, Pipeline and Hazardous Material Safety Administration (PHMSA). Commonwealth now plans to change the design of the LNG Storage Tanks to a traditional full-containment, modular-built, tank design with a nine percent (9%) nickel inner tank and a concrete outer tank with carbon steel liner which would not require a special authorization from the PHMSA. Commonwealth also proposes to increase the net capacity of the six LNG Storage Tanks from 40,000 to 50,000 cubic meters each (60,000 cubic meters total), for a new total working storage volume of 300,000 for the LNG Facility.

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.

Any questions regarding the proposed project should be directed to Scott Ray or Hans Verswijver, Commonwealth Projects, One Riverway, Suite 500, Houston, TX 77056 by phone at 346–352–4444, by email at *sray@teamcpl.com* or *hverswijver@teamcpl.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of

[5] Costs (for wages and benefits) are based on wage figures from the Bureau of Labor Statistics (BLS) at *http://bls.gov/oes/current/naics3_221000.htm,* as of June 2021. In the 60-day notice, the costs incorrectly reflected 2020 figures rather than the actual 2021 cost estimates. The corrected costs are listed above and does not impact the renewal notice for FERC–567. Commission staff estimates that 20% of the work is performed by a manager, and 80% is performed by legal staff. The hourly costs for wages plus benefits are:

- Management (Occupational Code: 11–0000) is $97.89.
- Legal (Occupational Code: 23–0000) is $142.25.

Therefore, the weighted hourly cost (for wages plus benefits) is $133.38 [(0.20 * $97.89) + (0.80 * $142.25)].

[6] The total number of respondents in the currently approved OMB inventory for FERC–576 is 147. Changes to the estimate were based on average number of respondents over the past three years.

[1] 18 CFR 157.9.

Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 3, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 3, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP19–502–001 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket number (CP19–502–001).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[2] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [3] and the regulations under the NGA [4] by the intervention deadline for the project, which is August 3, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP19–502–001 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP19–502–001.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 1717 K Street NW, Suite 900, Washington, DC 20006 or at *ksweeney@kmsenergylaw.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] Motions to intervene that are filed after the

[2] 18 CFR 385.102(d).

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[7] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 3, 2021.

Dated: July 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15405 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

[7] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–10–000]

Modernizing Electricity Market Design; Notice of Technical Conferences Regarding Energy and Ancillary Services Markets

Take notice that the Federal Energy Regulatory Commission (Commission) will convene two staff-led technical conferences regarding energy and ancillary services markets administered by Regional Transmission Organizations and Independent System Operators in the above-captioned proceeding. The technical conferences will discuss potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time.

The first technical conference will be held on Tuesday, September 14, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time. The second technical conference will be held on Tuesday, October 12, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time.

The technical conferences will be held remotely via WebEx and will be open to the public. Registration for the conference is not required and there is no fee for attendance. An additional supplemental notice will be issued with further details regarding the technical conference agenda, as well as any changes in timing or logistics. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations. This notice is issued and published in accordance with 18 CFR 2.1.

For more information about this technical conference, please contact Emma Nicholson at *emma.nicholson@ferc.gov* or (202) 502–8741. For legal information, please contact Adam Eldean at *adam.eldean@ferc.gov* or (202) 502–8047. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: July 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–15403 Filed 7–19–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0015; FRL–8584–01–OCSPP]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This submission announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 & Table 1A of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a May 11, 2021 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II to voluntarily cancel these product registrations. In the May 11, 2021 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the Agency received a notice from a registrant to withdraw a certain cancellation request. Accordingly, EPA hereby issues in this submission, a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0015, is available at *http://www.regulations.gov* or at the

Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This submission announces the cancellation, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 & Table 1A of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
100–886	100	Bicep Magnum	Atrazine & S-Metolachlor.
239–2661	239	Homedefense Indoor & Outdoor Insect Killer 3	Bifenthrin.
239–2687	239	0.3% Bifenthrin Liquid I&O Concentrate	Bifenthrin.
239–2698	239	Home Defense Max Perimeter Insect Killer RTS	Bifenthrin.
239–2705	239	Ortho Home Defense Max Outdoor Perimeter Insect Killer Ready-Spray II.	Bifenthrin.
279–3056	279	Talstar 2EC Insecticide/Miticide	Bifenthrin.
279–3086	279	Talstar 9.8 WSB Insecticide/Miticide	Bifenthrin.
279–3087	279	Talstar 9.9 WSB Insecticide/Miticide	Bifenthrin.
279–3121	279	Biflex TCC Insecticide	Bifenthrin.
279–3122	279	Biflex FTC Termiticide	Bifenthrin.
279–3152	279	Biflex Residential Flowable Insecticide/Miticide	Bifenthrin.
279–3156	279	Talstar GC Flowable Insecticide/Miticide	Bifenthrin.
279–3157	279	Talstar ME Insecticide/Miticide	Bifenthrin.
279–3161	279	Talstar RTU Insecticide/Miticide	Bifenthrin.
279–3162	279	Talstar Lawn & Tree Flowable Insecticide/Miticide	Bifenthrin.
279–3163	279	Talstar 0.2 G Lawn Granular Insecticide	Bifenthrin.
279–3166	279	Talstar Fire Ant Destroyer	Bifenthrin.
279–3172	279	Talstar 0.05 Lawn Granular Insecticide	Bifenthrin.
279–3173	279	Talstar 0.1 Lawn Granular Insecticide	Bifenthrin.
279–3193	279	Talstar GH Flowable Insecticide/Miticide	Bifenthrin.
279–3197	279	Talstar 0.073 GU Granular Insecticide with Fertilizer	Bifenthrin.
279–3198	279	Talstar 0.087 GL Granular Insecticide with Fertilizer	Bifenthrin.
279–3199	279	Talstar 0.069 GU Granular Insecticide with Fertilizer	Bifenthrin.
279–3200	279	Talstar 0.083 GU Granular Insecticide with Fertilizer	Bifenthrin.
279–3205	279	Talstar FT Flowable Termiticide/Insecticide	Bifenthrin.
279–3212	279	Talstar 0.069 GCGU Granular Insecticide	Bifenthrin.
279–3213	279	Talstar 0.069 GUPT1 Granular Insecticide with 19–0–19 Fertilizer.	Bifenthrin.
279–3224	279	Talstar 0.073 GCGU Granular Insecticide with 19–0–19 Fertilizer.	Bifenthrin.
279–3225	279	Talstar 0.073 GCGUPT1 Granular Insecticide with 19–0–19 Fertilizer.	Bifenthrin.
279–3226	279	Talstar 0.073 GUPT1 Granular Insecticide with 19–0–19 Fertilizer.	Bifenthrin.
279–3235	279	Talstar 0.057 GURR Granular Insecticide with 19–0–19 Fertilizer.	Bifenthrin.
279–3239	279	Talstar 0.03% Granular Insecticide with 18–0–12 Fertilizer.	Bifenthrin.
279–3252	279	FMC 01–0004 Insecticide	Bifenthrin.
279–3253	279	FMC 01–0004–2 Insecticide	Bifenthrin.
279–3264	279	F1785 GH 50 WG Insecticide	Flonicamid.
279–3277	279	F1785 N 50 WG Insecticide	Flonicamid.
279–3311	279	Bifenthrin 8% ME Termiticide/Insecticide	Bifenthrin.
279–3314	279	F5997 ME Insecticide/Miticide	Pyriproxyfen & Bifenthrin.
279–3335	279	F6320 Granular Insecticide	Bifenthrin.
279–3364	279	F8028–1 Aerosol	Bifenthrin.
279–3367	279	F6288 SC Liquid Insecticide	Bifenthrin & Imidacloprid.
279–9553	279	Intruder Residual with Cyfluthrin	Piperonyl butoxide; Pyrethrins & Cyfluthrin.
279–9604	279	Finesse Grass & Broadleaf Herbicide	Flucarbazone-sodium & Chlorsulfuron.
352–778	352	Dupont Require Q Herbicide	Dicamba & Rimsulfuron.
352–831	352	Dupont DPX–B2856 4.5 Herbicide	Glycine, N-(phosphonomethyl)-potassium salt & Glyphosate-isopropylammonium.
400–600	400	Flupro-EC	Flumetralin.
432–1407	432	Allectus G Insecticide	Bifenthrin & Imidacloprid.
432–1416	432	Allectus GC Granular Insecticide	Bifenthrin & Imidacloprid.
432–1418	432	Allectus 0.18 G Plus Turf Fertilizer Insecticide	Bifenthrin & Imidacloprid.
432–1419	432	Allectus 0.15 G Plus Turf Fertilizer Insecticide	Bifenthrin & Imidacloprid.
432–1421	432	Allectus GC SC Insecticide	Bifenthrin & Imidacloprid.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
432–1426	432	Allectus 0.18 GC Plus Turf Fertilizer Insecticide	Bifenthrin & Imidacloprid.
432–1428	432	Allectus 0.15 GC Plus Turf Fertilizer Insecticide	Bifenthrin & Imidacloprid.
499–529	499	TC–251A	Permethrin.
499–551	499	TC 251C	Permethrin.
2693–60	2693	Fiberglass Bottom Kote 449 Red	Cuprous oxide.
3862–158	3862	Weedzout	Bromacil, lithium salt.
4959–23	4959	Iosan	Nonylphenoxypolyethoxyethanol—iodine complex & Phosphoric acid.
8329–73	8329	ULV Mosquito Master 2+6	Permethrin & Chlorpyrifos.
8329–115	8329	Phoenix	Prallethrin; Phenothrin & Piperonyl butoxide.
9688–227	9688	Chemsico Herbicide Granules AN	Atrazine.
9688–274	9688	Chemsico Granules LAH	lambda-Cyhalothrin & Atrazine.
10324–89	10324	Maquat MC5814–80%	Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 14%C12).
10324–139	10324	Maquat TC76–40%	Dialkyl* methyl benzyl ammonium chloride *(60% C14, 30% C16, 5% C18, 5% C12) & Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
10324–140	10324	Maquat MQ2525M–CPV	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14).
10324–149	10324	Maquat TC76–80%	Dialkyl* methyl benzyl ammonium chloride *(60% C14, 30% C16, 5% C18, 5% C12) & Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
10324–187	10324	Maquat–1010N–10%	1-Decanaminium, N-decyl-*N,N*-dimethyl-, chloride.
26883–10	26883	High Performance Chem Copp	Cuprous oxide.
34704–920	34704	Quinclorac 75DF Herbicide	Quinclorac.
42750–41	42750	Dicambazine	Atrazine & Dicamba, potassium salt.
42750–44	42750	Atrazine 4L	Atrazine.
42750–45	42750	Weed Pro Atrazine 4L Herbicide	Atrazine.
42750–50	42750	Brox-AT Herbicide	Bromoxynil octanoate & Atrazine.
42750–53	42750	Albaugh Atrazine 90 DF	Atrazine.
45168–1	45168	VC 17M Antifouling	Copper as elemental.
55467–6	55467	Volley ATZ Lite Tenkoz Herbicide	Atrazine & Acetochlor.
55467–7	55467	Volley ATZ Tenkoz Herbicide	Atrazine & Acetochlor.
55467–8	55467	Volley Tenkoz Herbicide	Acetochlor.
59639–106	59639	Atrazine 90 DF Herbicide	Atrazine.
66222–163	66222	N-Lock Nitrogen Stabilizer	Nitrapyrin.
70506–214	70506	Super Tin 80WP	Fentin hydroxide.
70506–228	70506	Trike	Triclopyr, triethylamine salt.
70506–292	70506	UPI Captan 50 WP	Captan.
70506–293	70506	UPI Captan 80 WDG	Captan.
71368–119	71368	Nufarm Leopard Herbicide	Glufosinate.
84009–33	84009	RM43 RTU	Imazapyr, isopropylamine salt & Glyphosate-isopropylammonium.
85063–1	85063	Ethylene Release Canister ERC	Ethylene.
93923–1	93923	Dicamba Technical	Dicamba.
93923–2	93923	Dicamba Diglycolamine Salt SL	Dicamba, diglycolamine salt.
93923–3	93923	Dicamba Dimethylamine Salt SL	Dicamba, dimethylamine salt.
DE–120005	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
ID–150010	70506	Hydrothol 191 Aquatic Algicide and Herbicide	Endothall, mono (*N,N,*-dimethyl alkyl amine) salt.
ID–180008	69969	Avipel Hopper Box (Dry) Corn Seed Treatment	Anthraquinone.
MN–120002	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
OK–100003	279	Transport Termiticide-Insecticide	Bifenthrin & Acetamiprid.
SD–130004	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
SD–150007	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
WI–130003	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
WI–150005	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.
WY–140002	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone.

TABLE 1A—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
1021–2600	1021	Veratran D	Sabadilla alkaloids.

The registrant for the pesticide product registration listed in Table 1A has requested to the Agency via letter, that the cancellation becomes effective September 30, 2022.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 & Table 1A of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
239	The Scotts Company, d/b/a The Ortho Group, 14111 Scottslawn Road, Marysville, OH 43041.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E. I. Du Pont De Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
400	MacDermid Agricultural Solutions, Inc., Agent Name: UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
1021	McLaughlin Gormley King Company, d/b/a MGK, 7325 Aspen Lane N, Minneapolis, MN 55428.
2693	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
3862	ABC Compounding Co., Inc., P.O. Box 16247, Atlanta, GA 30321.
4959	West Agro, Inc., 11100 N Congress Ave., Kansas City, MO 64153.
8329	Clarke Mosquito Control Products, Inc., 675 Sidwell Court, St. Charles, IL 60174.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
10324	Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069.
26883	American Chemet Corporation, Agent Name: TSG Consulting, 1150 18th Street NW, Suite 1000, Washington, DC 20036.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
42750	Albaugh, LLC, 1525 NE 36th Street, Ankeny, IA 50021.
45168	Extensor AB, Agent Name: International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
55467	Tenkoz, Inc., 1725 Windward Concourse, Suite 410, Alpharetta, GA 30005.
59639	Valent U.S.A. LLC, 4600 Norris Canyon Road, P.O. Box 5075, San Ramon, CA 94583.
66222	Makhteshim Agan of North America, Inc., d/b/a Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
69969	Arkion Life Sciences, LLC, Agent Name: Landis International, Inc., 3815 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
71368	NuFarm, Inc., Agent Name: NuFarm Americas, Inc., 4020 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
84009	Ragan and Massey, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th St. Ct. NW, Gig Harbor, WA 98332.
85063	Balchem Corporation, 52 Sunrise Park Road, New Hampton, NY 10958.
93923	Hy-Green, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the May 11, 2021 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 & Table 1A of Unit II; however, the registrant FMC Corporation, withdrew their request for cancellation of the product registration 279–3333; therefore, this product registration has been removed from this cancellation order.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 & Table 1A of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are the subject of this document is July 20, 2021. Any distribution, sale, or use of existing stocks of the products identified in Table 1 & Table 1A of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of May 11, 2021 (86 FR 25861) (FRL–10023–30). The comment period closed on June 10, 2021.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For Products 400–600, 10324–89, 10324–139, 10324–140, 10324–149, 10324–187, 34704–920, 70506–214, 70506–292 & 70506–293

For products 400–600, 10324–89, 10324–139, 10324–140, 10324–149, 10324–187, 34704–920, 70506–214, 70506–292 & 70506–293, the registrants have requested 18-months to sell existing stocks. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of these product cancellations, identified in Table 1of Unit II, EPA anticipates allowing registrants to sell and

distribute existing stocks of these voluntarily canceled products for 18-months after the effective date of the publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing these products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For Product 1021–2600

For product 1021–2600, the registrant has requested that the cancellation becomes effective September 30, 2022. Because the Agency has identified no significant potential risk concerns associated with this pesticide product, upon cancellation of this product cancellation, identified in Table 1A of Unit II, EPA anticipates allowing registrants to sell and distribute existing stocks of this voluntarily canceled product for 1 year after the effective date of the product cancellation, which will be September 30, 2023. Thereafter, registrants will be prohibited from selling or distributing this product identified in Table 1A of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

The registrants may continue to sell and distribute existing stocks of all other products listed in Table 1 of Unit II until July 20, 2022, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing all other products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 & Table 1A of Unit II until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 9, 2021.

Marietta Echeverria,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2021–15394 Filed 7–19–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 4, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Richard R. Drake Family Trust—B, Radcliffe, Iowa; Cynthia A. Shirar, Marshalltown, Iowa; Edwin A. Drake, West Des Moines, Iowa; and Bryan S. Drake, Radcliffe, Iowa; all individually and as co-trustees;* to join the Drake Family Control Group, a group acting in concert, to retain voting shares of Drake Holding Company, and indirectly retain voting shares of Security State Bank, both of Radcliffe, Iowa.

Board of Governors of the Federal Reserve System, July 15, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–15384 Filed 7–19–21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 201 0108]

Seven & i Holdings Co., Ltd.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 19, 2021.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Seven & i Holdings Co., Ltd.; File No. 201 0108'' on your comment, and file your comment online at *www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nicholas Bush (202–326–2848), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC

website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 19, 2021. Write ''Seven & i Holdings, Ltd.; File No. 201 0108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Seven & i Holdings, Ltd.; File No. 201 0108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 19, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Seven & i Holdings Co., Ltd., a Japanese company, 7-Eleven, Inc., the U.S. subsidiary, (collectively, ''7-Eleven'') and Marathon Petroleum Corporation (''Marathon'') (collectively, the ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that likely are resulting from 7-Eleven's consummated acquisition of Marathon's wholly-owned subsidiary Speedway LLC (''Speedway''). The Commission also issued the Order to Maintain Assets included in the Consent Agreement. Pursuant to Commission Rules of Practice, a consent agreement was proposed prior to Respondents' consummation of the transaction, but the Commission had not accepted the proposal because a majority did not find certain provisions in the proposal sufficient to fully resolve competitive concerns stemming from the transaction. 7-Eleven closed on the acquisition on May 14, 2021 with full knowledge the acquisition was in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act.

Respondents subsequently agreed to a revised proposed Decision and Order (''Order''), described herein, that restores competition lost from the transaction. Under the terms of the Order included in the Consent Agreement, 7-Eleven must divest to Commission-approved Buyers certain Speedway retail fuel outlets and related assets in 291 local markets, and certain 7-Eleven retail fuel outlets and related assets in 2 local markets, across 20 states. The Order requires the divestitures to take place no later than 180 days after May 14, 2021, the day 7-Eleven closed on its acquisition of Marathon's assets. The Commission prefers divestitures to upfront buyers that occur close in time with the closing of the main transaction, but Commission orders will allow for a longer divestiture period when specific, demonstrable circumstances warrant. In this matter, the Commission recognizes that the particular logistical and regulatory requirements of transferring 293 stations across 20 states necessitates a longer process of rolling divestitures to three Buyers. To ensure that as many divestitures happen as quickly as possible, the Order requires that 7-Eleven divests the outlets to the Buyers based on the Buyer-approved divestiture schedules incorporated into the Order, and that 7-Eleven meets specific divestiture benchmarks at 90, 120, and 150 days.

The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Commission-approved Buyer acquires the outlet. In addition, the Order and Order to Maintain Assets require that until 7-Eleven divests the outlets, it must maintain separate retail fuel pricing teams and keep information related to pricing decisions for the divestiture outlets separate from the retail fuel pricing for 7-Eleven's other outlets.

The Order also prohibits 7-Eleven from enforcing noncompete provisions in its franchise agreements against current franchisees or others who might seek employment at the divestiture outlets. This provision reduces the likelihood any 7-Eleven noncompete provisions will have a chilling effect on

franchisees or others in seeking employment or doing business with the divestiture outlets. Given that 7-Eleven consummated an illegal transaction, expressly safeguarding the Buyers' access to essential employees or business partners is particularly necessary to protect the effectiveness of the divestitures.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Order final.

II. The Respondents

Seven & i Holdings Co., Ltd., a publicly-traded company headquartered in Tokyo, Japan, owns and operates convenience stores and retail fuel outlets worldwide under the 7-Eleven brand. 7-Eleven, Inc. owns, operates, and franchises approximately 9,000 stores in the United States, making it the largest convenience store chain in the country. Roughly 46 percent of 7-Eleven's stores offer fuel. 7-Eleven's revenue in 2020 totaled over $20 billion, with fuel sales accounting for over $13 billion.

Marathon, a publicly-traded company headquartered in Findlay, Ohio, operates a vertically-integrated refining, marketing, retail, and transportation system for petroleum and petroleum products. Marathon is the largest U.S. refiner, with approximately 2.9 million barrels per day of crude oil refining capacity. In 2020, Marathon's revenues totaled over $69 billion. Marathon's former wholly-owned subsidiary, Speedway, controls and sets retail fuel pricing at 3,898 retail transportation fuel and convenience stores across the United States, making it the third-largest domestic chain of company-owned and -operated retail fuel outlets and convenience stores. Speedway's 2020 retail business revenues totaled over $19 billion, with sales of nearly 6 billion gallons of gasoline and diesel in 2019.

III. The Transaction

Pursuant to an Asset Purchase Agreement dated August 2, 2020, 7-Eleven acquired substantially all of Marathon's Speedway retail assets for approximately $21 billion, subject to adjustments (the ''Transaction''). 7-Eleven and Marathon also entered into a 15-year agreement under which Marathon will supply and transport fuel to the Speedway business, with a base volume of 7.7 billion gallons per year of gasoline and diesel.

The Commission's Complaint alleges the Transaction violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for the retail sale of gasoline and/or the retail sale of diesel in 293 local markets across 20 states.

IV. The Retail Sale of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable. Vehicles that run on gasoline cannot run on diesel and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges 293 local relevant geographic markets in which to assess the competitive effects of the Transaction within the following states: Arizona; California; Florida; Illinois; Indiana; Kentucky; Massachusetts; Michigan; North Carolina; New Hampshire; Nevada; New York; Ohio; Pennsylvania; Rhode Island; South Carolina; Tennessee; Utah; Virginia; and West Virginia.

The geographic markets for retail gasoline and retail diesel are highly localized, depending on the unique circumstances of each area. Each relevant market is distinct and fact-dependent, reflecting many considerations, including commuting patterns, traffic flows, and outlet characteristics. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel are similar to the corresponding geographic markets for retail gasoline, as many diesel consumers exhibit preferences and behaviors similar to those of gasoline consumers.

The Transaction substantially lessens competition in each of these local markets, resulting in 264 highly concentrated markets for the retail sale of gasoline and 153 highly concentrated markets for the retail sale of diesel fuel, with many of the 293 markets presenting concerns for both products. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. In each of the local gasoline and diesel retail markets, the Transaction reduces the number of competitively constraining independent market participants to three or fewer. 7-Eleven will be able to raise prices unilaterally in markets where 7-Eleven and Speedway are close competitors. Absent the Transaction, 7-Eleven and Speedway would have continued to compete head to head in these local markets.

Moreover, the Transaction enhances the incentives for interdependent behavior in local markets where, including 7-Eleven, only two or three competitively constraining independent market participants remain. Two aspects of the retail fuel industry make it vulnerable to such coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors easily to observe each other's fuel prices. Second, retail fuel outlets regularly track their competitors' fuel prices and change their own prices in response. These repeated interactions give retail fuel outlets familiarity with how their competitors price and how changing prices affect fuel sales.

Entry into each relevant market will not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Transaction. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Order

The Order remedies the Transaction's likely anticompetitive effects by requiring 7-Eleven to divest Speedway retail fuel outlets in 291 local markets, and 7-Eleven retail fuel outlets in 2 local markets, in three separate packages, to CrossAmerica Partners LP (''CAPL''), Jacksons Food Stores, Inc. (''Jacksons''), and Anabi Oil Corporation (''Anabi'') (collectively, the ''Buyers'').

CAPL is a publicly-traded master limited partnership and a wholesale supplier of motor fuels, a convenience store operator, and an owner and lessor of real estate used in the retail distribution of motor fuels. CAPL distributes branded and unbranded fuel to approximately 1,800 locations and owns or leases approximately 1,100 sites, including 150 company-operated sites.

In 2020, the Commission fined Alimentation Couche-Tard Inc. (''ACT'') and its then-affiliate CAPL $3.5 million to settle allegations that the companies violated a 2018 Commission order requiring divestitures of 10 retail fuel outlets related to ACT's acquisition of Holiday Companies. ACT controlled CAPL's general partner when the alleged order violation occurred and agreed to divest a package of retail fuel outlets that were part of CAPL's retail network to resolve the Commission's concerns. The alleged order violation resulted from, among other things, ACT's failure to divest the CAPL outlets by the Commission-imposed deadline.

The alleged violation does not disqualify CAPL from consideration as an acceptable buyer in this instance. CAPL has not been affiliated with ACT in any way since November 2019, when Mr. Joseph V. Topper, Jr. and his organization, the Topper Group, acquired the controlling interest in CAPL's general partner from ACT, and thereby severed completely CAPL's affiliation with ACT. CAPL has since revamped its management. Mr. Topper now serves as CAPL's chairman of the board, and he and his organization have the ability to appoint all members of CAPL's board as well as control CAPL's operations and activities. Moreover, prior to Mr. Topper acquiring control of CAPL, ACT agreed to indemnify CAPL for penalties and legal costs associated with the alleged order violation.

The two other Buyers are Jacksons and Anabi. Jacksons is a privately-held corporation that controls a chain of over 230 Chevron-, Shell-, and Texaco-branded retail fuel locations in six western states. Jacksons also is a joint venture partner in Jackson Energy, a wholesale fuel supply company that distributes gasoline and diesel fuel to retail fuel outlets in the western United States. Anabi, a privately-owned and operated retail fuel supplier, is one of the largest Shell-branded distributors in California and controls retail fuel locations in California, Nevada, and Alaska. The Commission is satisfied that the Buyers present no competitive problems in markets where they will acquire divested assets and are otherwise qualified to acquire and operate the assets in their respective divestiture packages.

The Order requires 7-Eleven to divest: (a) 105 Speedway retail fuel outlets and a single 7-Eleven retail fuel outlet to CAPL; (b) 63 Speedway retail fuel outlets to Jacksons; and (c) 123 Speedway retail fuel outlets and a single 7-Eleven retail fuel outlet to Anabi. To ensure that 7-Eleven is incentivized to complete all of the divestitures in an expedient manner, the Order requires 7-Eleven to: (1) Divest on Buyer-approved divestiture schedules, and (2) divest no fewer than a certain number of outlets at certain points within the 180 day divestiture period.

Specifically, Paragraph II.A of the Order requires Respondents to divest pursuant to the Buyer-approved divestiture schedules. Under Paragraph XI.A.1 of the Order, 7-Eleven is required to submit to the Commission the Buyer-approved divestiture schedules—identifying the divestiture date for each location—within 60 days after May 14. The Buyers will control the divestiture schedules, and those schedules are enforceable by the Commission against 7-Eleven. The Order also requires 7-Eleven to meet certain divestiture benchmarks—with no fewer than 20 percent of each package divested within 90 days, an additional 20 percent of each package divested within 120 days, and an additional 20 percent of each package divested within 150 days of the main Transaction closing. 7-Eleven will have to complete all of the divestitures within 180 days. Taken together, this divestiture process will incentivize 7-Eleven to complete the divestitures in a timely and expeditious manner, and give the Commission close oversight into the divestiture schedules.

The Order contains additional provisions designed to ensure the effectiveness of the relief, and to prevent 7-Eleven from having access to critical competitive information regarding the divestiture outlets. The Order requires 7-Eleven and Marathon to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestitures are complete. Also, the Order requires Respondents to designate an Asset Maintenance Manager to oversee operations of the divestiture assets to ensure the Respondents maintain the divestiture assets' full economic viability, marketability, and competitiveness until the divestitures are completed and to help facilitate the transfer of the divestiture assets to the Buyers. Additionally, the Order requires the Respondents to establish a divestiture pricing team that will handle retail fuel pricing at the divestiture outlets, and to prevent access and disclosure of that pricing information to anyone other than the divestiture pricing team. The Asset Maintenance Manager will oversee the divestiture pricing team to ensure that confidential pricing information is not shared with other employees at 7-Eleven who may price retail fuel at competing stations. The Order requires the Respondents to institute information technology procedures, authorizations, protocols, and any other controls necessary to prevent unauthorized disclosure or access of information to or from the divestiture pricing team. Finally, the Order appoints The Claro Group as an independent third-party Monitor to oversee the Respondents' compliance with the requirements of the Order and to oversee the Asset Maintenance Manager.

The Order also contains provisions regarding Respondents' employees and franchisees, designed to protect the viability of the divestiture assets. Section V contains provisions to ensure that the Buyers face no impediments in hiring employees necessary to operate the divestiture assets as competitively as Speedway operated them before the Transaction. Paragraph V.E prohibits 7-Eleven from enforcing noncompete provisions against current franchisees or others who might seek employment at the divestiture outlets. This provision reduces the likelihood that the noncompete provisions will have a chilling effect on franchisees or others in seeking employment or doing business with the divestiture outlets. Given that 7-Eleven has consummated an illegal transaction, expressly safeguarding the Buyers' access to essential employees or business partners is particularly necessary to protect the effectiveness of the divestitures.

In addition to requiring retail fuel outlet divestitures, the Order also requires 7-Eleven, for a period of five years, to obtain prior Commission approval before purchasing any of the divested outlets, and for a period of ten years, to provide the Commission prior notice of future acquisitions of the divested outlets and of Commission-identified retail fuel outlets located in the 293 local markets at issue and three additional markets. These three additional markets raised concerns that are addressed by Speedway's near-term exit from the markets for reasons outside its control. The prior notice provision is necessary because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Transaction and may fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The purpose of this analysis is to facilitate public comment on the Order, and the Commission does not intend this analysis to constitute an official interpretation of the Order or to modify its terms in any way. The Offices of the California and Florida Attorneys General participated in both the investigation and the consent process.

By direction of the Commission, Chair Lina Khan not participating.

April J. Tabor,

Secretary.

Joint Concurring Statement of Commissioners Rebecca Kelly Slaughter and Rohit Chopra

Today, the Commission accepted for public comment an order that would resolve competitive concerns raised by the illegal acquisition of a Marathon Petroleum subsidiary by Seven & i Holdings (collectively ''7-Eleven''). The approximately $21 billion deal involved nearly 4,000 retail fuel and convenience store locations. On May 14, 2021, the parties consummated the deal, despite knowing that the Commission had outstanding—but resolvable—concerns about the transaction and about the parties' proposal to resolve those concerns at the time. The agreement to merge and the decision to consummate substantially lessened competition in 293 local geographic markets across twenty states, in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act. While Commission staff had worked diligently to resolve the competitive concerns raised by the transaction, negotiating hundreds of divestitures to three different buyers, the parties had not reached a settlement that the Commission could accept when they closed.

The job of the Commission is to pursue the correct outcome in cases, not the expedient one. Here, it was important to take the few extra weeks necessary to ensure that the resolution would effectively preserve competition and that any risk would be borne by the parties, not by consumers, workers, and other market participants. Today's settlement achieves that in a few key ways.

First, the order holds 7-Eleven accountable for executing divestitures quickly and efficiently. The Commission's general preference is for divestitures to happen as close in time to the transaction as is practicable in order to protect competition.[1] Here, given the scope and complexity of the required divestitures, a longer end date is justified, provided the divestitures happen on an ongoing basis. Today's proposal includes provisions with rolling divestiture timelines, benchmarked at 90, 120, and 150 days, and completed within 180 days from May 14, 2021—the date of the illegal merger. If 7-Eleven fails to follow these benchmarks and the buyers' schedules, 7-Eleven will be in violation of today's proposed order.

Second, 7-Eleven will be prohibited from enforcing noncompete provisions against current franchisees or others who might seek employment at the divestiture outlets. Noncompete provisions generally prevent workers and small business franchises from fairly bargaining for employment and opportunity. In this instance, they could also prevent divestiture buyers from accessing the talent that could best facilitate their ability to restore competition in the relevant markets. The prohibition in the order is consistent with prior Commission action,[2] but is especially important in this case, given that 7-Eleven consummated an illegal transaction. Expressly safeguarding the buyers' access to essential employees or business partners is particularly necessary to protect the effectiveness of the divestitures.

The terms of this order are well-grounded in Commission precedent and reflect learned experience from past orders. The Commission's past experiences show that divestitures that are not carefully constructed end up failing to adequately protect consumers, workers, and competition.[3] It is disturbing that 7-Eleven failed to resolve these matters before consummating their illegal transaction. Typically, merging parties will wait for the Commission to accept an order for public comment before closing on their transaction. Here, the transaction involved billions of dollars in thousands of unique geographic markets across the United States; when parties propose transactions this large and complex, with obvious violations of the law, they must accept that proper review may take time. Notwithstanding that scope, in this case, Commission staff conducted an extensive investigation, identified overlaps, vetted divestiture buyers, and negotiated terms of divestitures with the parties—all in a matter of months. Working through the remaining concerns at the Commission level would not have been and was not time-consuming.

7-Eleven chose to close under a cloud of legal uncertainty rather than to resolve its issues with the Commission; it learned that this Commission will not be dared into accepting settlements we do not find adequate. We hope other parties will learn that working constructively with the Commission—rather than consummating an illegal merger—is a more effective and responsible path.

Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson

Today, the Federal Trade Commission has accepted for public comment a consent agreement resolving all competition concerns presented by Seven & i Holdings Co.'s acquisition of nearly 4,000 gas stations from Marathon Petroleum Corporation. A settlement in this matter is long overdue. As we noted in our statement of May 14, 2021,[1] the day on which the parties consummated their transaction, the Commission had

[1] *See, e.g.,* Press Release, Fed. Trade Comm'n, *FTC Requires Divestitures as Condition of 7-Eleven, Inc. Parent Company's $3.3 Billion Acquisition of Nearly 1,100 Retail Fuel Outlets from Competitor Sunoco* (Jan. 18, 2020), *https://www.ftc.gov/news-events/press-releases/2018/01/ftc-requires-divestitures-condition-7-eleven-inc-parent-companys* (requiring the parties divest 26 stations over the course of 90 days); Press Release, Fed. Trade Comm'n, FTC Approves Final Order Imposing Conditions on Arko Holdings Ltd.'s Acquisition of Empire Petroleum Partners, LLC (Oct. 7, 2020), *https://www.ftc.gov/news-events/press-releases/2020/10/ftc-approves-final-order-imposing-conditions-arko-holdings-ltds* (ordering divestiture of 7 stations over the course of 20 days); Press Release, Fed. Trade Comm'n, FTC Approves Final Order Imposing Conditions on Tri Star Energy, LLC's Acquisition of Certain Assets of Hollingsworth Oil Company, Inc., C & H Properties, and Ronald L. Hollingsworth (Aug. 14, 2020), *https://www.ftc.gov/news-events/press-releases/2020/08/ftc-approves-final-order-imposing-conditions-tri-star-energy* (ordering divestiture of 2 stations over the course of 10 days); *but see* Press Release, Fed. Trade Comm'n, *FTC Requires Retail Fuel Station and Convenience Store Operator Alimentation Couche-Tard Inc. and its affiliate CrossAmerica Partners LP to Divest 10 Fuel Stations in Minnesota and Wisconsin as a Condition of Acquiring Holiday Companies* (Dec. 15, 2017), *https://www.ftc.gov/news-events/press-releases/2017/12/ftc-requires-retail-fuel-station-convenience-store-operator* (allowing 120 days to find a buyer for and divest 10 stations; the Commission later alleged the parties violated the divestiture order, and the parties agreed to pay a $3.5 million civil penalty to the FTC to settle those allegations).

[2] *See Statement of Commissioners Rohit Chopra and Rebecca Kelly Slaughter in the Matter of DTE Energy/Generation Pipeline,* Fed. Trade Comm'n (Sept. 12, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1544138/joint_statement_of_chopra_and_slaughter_dte_energy-generation_pipeline_9-13-19.pdf;* Press Release, Fed. Trade Comm'n, *FTC Approves Final Order Imposing Conditions on Merger of Air Medical Group Holdings, Inc. and AMR Holdco, Inc.* (May 3, 2018), *https://www.ftc.gov/news-events/press-releases/2018/05/ftc-approves-final-order-imposing-conditions-merger-air-medical* (divestiture of air ambulance services in Hawaii).

[3] *See* Press Release, Fed. Trade Comm'n, *FTC Releases Staff Study Examining Commission Merger Remedies between 2006 and 2012* (Feb. 3, 2017), *https://www.ftc.gov/news-events/press-releases/2017/02/ftc-releases-staff-study-examining-commission-merger-remedies;* Fed. Trade Comm'n, *A Study of the Commission's Divestiture Process* (1999), *https://www.ftc.gov/sites/default/files/documents/reports/study-commissions-divestiture-process/divestiture_0.pdf.*

[1] *See* Statement of Commissioners Noah Joshua Phillips & Christine S. Wilson, Seven & i Holdings Co., Ltd./Marathon Petroleum Corp., FTC File No. 201–0108 (May 14, 2021), *https://www.ftc.gov/system/files/documents/publicstatements/1590067/2010108sevenmarathonphillipswilson statement.pdf.*

ample opportunity to act before the parties merged.[2]

To the extent the Analysis to Aid Public Comment or other statements issued suggest that Seven & i Holdings or its U.S. subsidiary 7-Eleven Inc. acted in bad faith, the public is free to read our earlier statement and Seven & i Holding's side of the story,[3] the veracity of which no commissioner has disputed in the month since they were issued. Those accounts paint a different, and regrettable, picture of what happened.

We thank our staff for their diligence, professionalism, and responsiveness throughout this process; the Commission's failures here are in no way a reflection of their efforts.

[FR Doc. 2021–15350 Filed 7–19–21; 8:45 am]

BILLING CODE 6750–01–P

[2] Indeed, the settlement before the Commission on May 14 required the divestiture of 293 fuel outlets, *see* Press Release, 7-Eleven Inc., Response to FTC Commissioner Statement (May 14, 2021), *https://corp.7-eleven.com/corppress-releases/05-14-2021-7-eleven-inc-response-to-ftc-commissioner-statement;* and the settlement unanimously accepted by the Commission today similarly requires the divestiture of 293 fuel outlets. Commissioners Slaughter and Chopra highlight the order provision that prohibits Seven & i's subsidiary 7-Eleven from enforcing noncompete provisions against current franchisees or others who might seek employment at the divestiture outlets. This narrow provision is consistent with previous Commission orders that impose conditions to ensure that divested assets have access to the employees necessary to ensure the success of the divestiture.

[3] Statement of Commissioners Noah Joshua Phillips & Christine S. Wilson, *supra* note 1; Press Release, 7-Eleven, Inc., *supra* note 2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Accelerating Medicine Partnership in Parkinson's Disease (AMP PD).

Date: July 30, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, *mirela.milescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15367 Filed 7–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: August 23, 2021.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Larry Pinkus, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802 Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15329 Filed 7–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34 Clinical Trials Not Allowed) and NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: August 16, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20852, 301–761–6911, *anuja.mathew@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 15, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15366 Filed 7–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2021–N167; FXFR13110900000 201 FF09F11000; OMB Control Number 1018–New]

Agency Information Collection Activities; Administration of U.S. Fish and Wildlife Service Investigational New Animal Drug (INAD) Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without Office of Management and Budget (OMB) approval.

DATES: Interested persons are invited to submit comments on or before September 20, 2021.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number ''1018–INAD'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Aquatic Animal Drug Approval Partnership (AADAP) Program is part of the Fish and Aquatic Conservation fish health network. It is the only program in the United States singularly dedicated to obtaining U.S. Food and Drug Administration (FDA) approval of new medications needed for use in fish culture and fisheries management. Ultimately, the AADAP program allows fisheries professionals to more effectively and efficiently rear and manage a variety of fish species to meet production goals, stock healthy fish, and maintain a healthy environment. In order for participants (U.S. aquaculture facilities or researchers) to be able to use an unapproved drug under AADAP's National Investigational New Animal Drug (INAD) Program, they need to follow the FDA-approved study protocol(s) and submit the required data forms, including the INAD treatment data, to AADAP's INAD Program.

There are 18 approved INADs approved for use within the Service's INAD Program (see *fws.gov/fisheries/aadap/inads.html*) described as follows:

Medicated Feeds

Florfenicol (Aquaflor®) INAD #10–697—Aquaflor® is an aquaculture premix containing florfenicol and is only available through Merck Animal Health. The primary goal of field studies conducted under INAD #10–697 is to evaluate the efficacy of florfenicol-medicated feed for controlling mortality in a variety of fish species diagnosed with a variety of diseases that are caused by pathogens susceptible to florfenicol.

Slice® (Emamectin Benzoate) INAD #11–370—SLICE® is an aquaculture premix containing emamectin benzoate and is only available through Merck Animal Health. SLICE® premix can be purchased through Merck Animal Health and sent to an aquaculture feed mill for top coating. The primary goal of field studies conducted under INAD #11–370 is to evaluate the efficacy of SLICE®-medicated feed and safety of SLICE® to control mortality caused by external parasites in a variety of freshwater and marine fish species.

Oxytetracylcine dihydrate (Terramycin® 200 for Fish) INAD #9332—Terramycin 200® for fish is an aquaculture premix containing oxytetracycline dehydrate (OTC) and is available through Syndel USA. Feed medicated with OTC can be purchased from aquaculture feed mills and used to treat bacterial diseases or to apply a skeletal mark on the fish. The primary goal of field studies conducted under INAD #9332 is to generate additional OTC-medicated feed efficacy data which can be used to expand the existing OTC label claims. Five treatment options are allowed, and disposition of investigational animals (including withdrawal times) vary with treatment regimen.

17α-methyltestosterone INAD #11–236—17α-methyltestosterone (MET) is an aquaculture premix and is only available through Rangen Inc. The primary goal of studies conducted under INAD #11–236 is to generate data evaluating the efficacy of MET

administered in feed to larval tilapia to produce populations comprised of >90% male fish.

17α-methyltestosterone INAD #8557—17α-methyltestosterone (MET) is an aquaculture premix and is only available through Rangen Inc. The primary goal of studies conducted under INAD #8557 is to generate data evaluating the efficacy of MET administered in feed to larval rainbow trout and Atlantic salmon to produce masculinized female fish that produce sperm.

17β-Estradiol INAD #12–671—17β-estradiol (E2) will be administered as a medicated feed and is only available to FDA-approved facilities. The primary goal of studies conducted under INAD #12–671 is to generate data evaluating the efficacy of E2 administered in feed to larval brook trout to produce feminized male fish that produce eggs.

Immersion

Chloramine-T INAD #9321—Chloramine-T (CLT) is a powder that is applied as an immersion bath treatment. CLT is only available for purchase through Syndel USA or B.L. Mitchell, Inc. The primary goal of field studies conducted under INAD #9321 is to evaluate the efficacy of CLT for controlling mortality in a variety of freshwater fish species for bacterial diseases not currently listed on the approved label. Approval of INAD #9321 is for non-labeled use only and its use must comply with the approved label directions.

Hydrogen peroxide (35% Perox Aid®) INAD #11–669—35% Perox-Aid® (H2O2) is a liquid solution containing hydrogen peroxide that is applied as an immersion bath treatment. H2O2 is only available for purchase through Syndel USA. The primary goal of field studies conducted under INAD #11–669 is to evaluate the efficacy of H2O2 for controlling mortality caused by specific ectoparasites in freshwater or marine finfish species. It is also expected that the additional data will be used to expand the current H2O2 label claim. Approval of INAD #11–669 is for non-labeled use only and its use must comply with the approved label directions.

Oxytetracycline hydrochloride INAD #9033—Oxytetracycline hydrochloride (OTIMM) is an aquaculture premix containing oxytetracycline hydrochloride and is available through Pharmgate. OTIMM is available for purchase through many local farm and ranch stores or veterinarian supply outlets. The primary goal of field studies conducted under INAD #9033 is to evaluate the efficacy of OTIMM for controlling mortality in a variety of freshwater and marine finfish species for bacterial diseases. Immersion therapy is often the only option when treating young fish not yet accustomed to feeding on man-made fish diets.

Diquat® INAD #10–969—Reward® (DQT) is a liquid concentrate containing diquat dibromide that is applied as an immersion bath treatment. DQT is available for purchase through many local farm and ranch stores or through Syngenta Crop Protection, LLC. The primary goal of field studies conducted under INAD #10–969 is to evaluate the efficacy of DQT for controlling mortality in all freshwater-reared finfish diagnosed with BGD or external flavobacteriosis.

Sedatives

AQUI–S®20E INAD #11–741—Aqui-S®20E is a liquid containing 10% eugenol that is applied as an immersion bath treatment. Aqui-S®20E is only available for purchase through AquaTactics Fish Health. The primary goal of field studies conducted under INAD #11–741 is to evaluate the efficacy of Aqui-S®20E for use as an anesthetic/sedative in all freshwater-reared finfish, freshwater prawn, all saltwater-reared finfish, and sharks.

Spawning Aids

Lutenizing Hormone—Releasing Hormone (LHRHa) INAD #8061—Luteinizing Hormone—Releasing Hormone analogue (LHRHa) is a solution that is applied as either an intraperitoneal (IP) or intramuscular (IM) injection. LHRHa is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #8061 is to generate data to help determine appropriate LHRHa treatment regimens for inducing gamete maturation in a variety of cultured and wildstock finfish species.

GnRH IIa Chicken Gonadotropin—Releasing Hormone II analog INAD #13–345—GnRH IIa is a synthetic peptide analogue of chicken gonadotropin-releasing hormone (cGnRH IIa). It is presented as a dry powder to be resuspended in saline solution for IP injection and is only available for purchase through AquaTactics Fish Health. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #13–345 is to generate data to help determine appropriate GnRH IIa treatment regimens for use as a spawning aid for female ictalurids.

Ovaplant® Salmon Gonadotropin—Releasing Hormone analoque (sGnRHa) INAD #11–375—Ovaplant® is a synthetic peptide analogue of salmon gonadotropin-releasing hormone (sGnRHa). It is presented in a biodegradable cholesterol-based matrix as an IM pellet implant and is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #11–375 is to generate data to help determine appropriate Ovaplant® treatment regimens.

Ovaplant®–L Salmon Gonadotropin—Releasing Hormone analoque (sGnRHa) INAD #13–298—Ovaplant®-L is a synthetic peptide analogue of salmon gonadotropin-releasing hormone (sGnRHa). It is presented in a sustained release gel for injection and is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #13–298 is to generate data to help determine appropriate Ovaplant-L treatment regimens for inducing gamete maturation in a variety of cultured finfish species.

Common Carp Pituitary (CCP) INAD #8391—Common carp pituitary (CCP) is a powder (for suspension) that is applied as either an IP or IM injection. CCP is only available for purchase through Argent Aquaculture. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #8391 is to generate data to help determine appropriate CCP treatment regimens for inducing gamete maturation in a variety of cultured and wildstock finfish species.

Marking

Calcein (Se-Mark®) INAD #10–987—Calcein (Se-Mark®) is a liquid that contains 1% calcein for bath marking treatments on finfish and select freshwater mussels. Calcein is only available for purchase through Syndel

USA. Calcein is a fluorochrome compound that chemically binds with alkaline earth metals such as calcium, and upon binding, shows a marked increase in fluorescence when excited with blue light of about 500 nm wavelength. The primary goal of field studies conducted under INAD #10–987 is to establish the effectiveness of calcein to mark fin rays, scales, otoliths, and other calcified fish, oysters, or selected mussel tissues via immersion baths. This is a non-lethal marking evaluation method.

Injectable

Erythromycin 200 Injectable INAD #12–781—Erymicin 200 Injection (Erymicin 200) is a solution that contains erythromycin for injection on juvenile and adult Salmonids. Erymicin 200 is only available for purchase through Syndel USA. The primary goal of field studies conducted under INAD #12–781 is to evaluate the efficacy of erythromycin for (1) controlling mortality caused by BKD (causative agent: *Renibacterium salmoninarum*) in salmonid species; and (2) control the vertical transmission of *R. salmoninarum* from BKD positive female broodstock to eggs/progeny.

Approved INAD study protocols require submission of the following forms associated with the data collection:

- Form–W: Worksheet (all INADs);
- Form–1: Report on Receipt of Drug (all INADs);
- Form–2A or 2B: Chemical Use Log (all INADs);
- Form–3: Diagnosis, Treatment, and Mortality/Spawning/Anesthetic Record (all INADs);
- Form–4: Necropsy Report Form (specific INADs);
- Form–4a: Report on Efficacy Determination Sample (specific INADs); and,
- Form–5: Transfer of Treated Fingerling (specific INADs).

The INAD forms listed above collect the following information from program participants (specific information may vary depending on INAD protocol used):

- Study identification number and title;
- Sponsor name and contact information;
- Facility name;
- Study director and contact information;
- Principal clinical field trial coordinator name;
- Study monitor's name and addresses;
- Investigator's name and addresses;
- Proposed study starting and completion dates;
- Background, purpose, and objectives of study;
- Study materials;
- Experimental units;
- Entrance criteria;
- Identification of treatment groups;
- Treatment schedules;
- Treatment response parameters;
- Recordkeeping procedures;
- Disposition of investigational animals;
- Disposition of investigational drug;
- Data handling, quality control, monitoring, and administrative responsibilities;
- Plans for data analysis;
- Protocol and protocol amendments; and,
- Protocol deviations.

The Service's AADAP Program will use the information that is collected on the study forms to ensure the studies are following the guidelines set by the FDA. The study data will be downloaded to a spreadsheet where it will be analyzed for compliance. Summary reports will be created from the data collected from the forms and will be submitted to the FDA, as required. Submission of the data forms is required by the FDA for the facility to participate in the INAD Program.

A cooperative agreement is also needed between the participating companies/agencies and the Service's AADAP Program. This agreement establishes obligations to be met and procedures to be followed by the Service and participant to establish and maintain cooperative INADs to enable the use of certain drugs and chemicals under the INAD process as set forth by the FDA. The goal of this agreement is to consolidate the INAD process; eliminate duplication of effort; reduce workloads and costs; and ensure needed drugs are made available to aquaculture and fisheries management facilities in the U.S. in compliance with FDA regulations.

Additional information for the INAD Program and how to participate can be found at the following link: *https://www.fws.gov/fisheries/aadap/inad-university.html.* This web page describes frequently asked questions regarding how to participate in the INAD Program and what is expected of the participants. The site also includes the investigator and monitor guides created to explain the INAD Program process to study participants. We are currently developing additional study templates for the INADs for use as a guide for filling out the forms. These templates will provide study participants with helpful information to correctly complete each form. We also created a user manual for the online INAD database used to enter the data that also describes each step of the database for the INAD participants.

Title of Collection: Administration of U.S. Fish and Wildlife Service Investigational New Animal Drug (INAD) Program.

OMB Control Number: 1018–New.

Form Number(s): Form–W, Form–1, Form–2A or 2B, Form–3, Form–4, Form–4a, and Form–5.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Respondents will be the private aquaculture facilities; universities; and State, local, and Tribal governments that have a need to use INADs.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for the initial registration and submission of cooperative agreement, and on occasion for submission of study data.

Total Estimated Annual Nonhour Burden Cost: There is an enrollment fee that is currently $700 per INAD per facility each year as of 2021. The facility is also responsible for purchasing the INAD from the appropriate drug supplier. All equipment that would be used for the INAD studies is typically standard equipment already used by the facilities.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses *	Average completion time per response (hours)	Estimated annual burden hours *
Cooperative Agreement					
Private Sector	15	1	15	2	30
Government	5	1	5	2	10

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses *	Average completion time per response (hours)	Estimated annual burden hours *
Medicated Feed—Florfenicol (Aquaflor®) INAD #10–697					
Private Sector	4	1	4	0.25	1
Government	4	1	4	0.25	1
Medicated Feed—Slice® (Emamectin Benzoate) INAD #11–370					
Private Sector	5	1	5	0.25	1
Government	4	1	4	0.25	1
Medicated Feed—Oxytetracylcine dihydrate (Terramycin® 200 for Fish) INAD #9332					
Private Sector	5	1	5	0.25	1
Government	16	1	16	0.25	4
Medicated Feed—17α-methyltestosterone INAD #11–236					
Private Sector	4	1	4	0.25	1
Government	5	1	5	0.25	1
Medicated Feed—17α-methyltestosterone INAD #8557					
Private Sector	5	1	5	0.25	1
Government	1	1	1	0.25	0
Medicated Feed—17β-Estradiol INAD #12–671					
Private Sector	1	1	1	0.25	0
Government	1	1	1	0.25	0
Immersion—Chloramine-T INAD #9321					
Private Sector	1	1	1	0.25	0
Government	8	1	8	0.25	2
Immersion—Hydrogen peroxide (35% Perox Aid®) INAD #11–669					
Private Sector	1	5	5	0.25	1
Government	2	2	4	0.25	1
Immersion—Oxytetracycline hydrochloride INAD #9033					
Private Sector	1	1	1	0.25	0
Government	2	2	4	0.25	1
Immersion—Diquat® INAD #10–969					
Private Sector	1	1	1	0.25	0
Government	7	2	14	0.25	4
Sedative—AQUI-S®20E INAD #11–741					
Private Sector	11	1	11	0.25	3
Government	73	1	73	0.25	18
Spawning Aid—Lutenizing Hormone—Releasing Hormone (LHRHa) INAD #8061					
Private Sector	19	1	19	0.25	5
Government	7	2	14	0.25	4
Spawning Aid—GnRH IIa Chicken Gonadotropin—Releasing Hormone II analog INAD #13–345					
Private Sector	9	1	9	0.25	2
Government	1	1	1	0.25	0
Spawning Aid—Ovaplant® Salmon Gonadotropin—Releasing Hormone analoque (sGnRHa) INAD #11–375					
Private Sector	5	1	5	0.25	1
Government	12	1	12	0.25	3

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses *	Average completion time per response (hours)	Estimated annual burden hours *
Spawning Aid—Ovaplant®-L Salmon Gonadotropin—Releasing Hormone analoque (sGnRHa) INAD #13–298					
Private Sector	1	1	1	0.25	0
Government	4	1	4	0.25	1
Spawning Aid—Common Carp Pituitary (CCP) INAD #8391					
Private Sector	5	1	5	0.25	1
Government	7	2	14	0.25	4
Marking—Calcein (Se-Mark®) INAD #10–987					
Private Sector	1	1	1	0.25	0
Government	2	1	2	0.25	1
Injectable—Erythromycin 200 Injectable INAD #12–781					
Private Sector	2	1	2	0.25	1
≤Government	14	1	14	0.25	4
Form-W: "Worksheet for Designing Individual Field Trials"					
Private Sector	63	3	189	1	189
Government	148	3	444	1	444
Form-1: Report on Receipt of Drug					
Private Sector	45	2	90	0.5	45
Government	88	2	176	0.5	88
Form FFC–2A or 2B: Chemical Use Log					
Private Sector	63	3	189	0.25	47
Government	148	3	444	0.25	111
Form-3: Diagnosis, Treatment, and Mortality Record					
Private Sector	63	3	189	1.5	284
Government	148	3	444	1.5	666
Form-4: Necropsy Report Form					
Private Sector	27	1	27	0.5	14
Government	24	1	24	0.5	12
Form-4a: Report on Efficacy Determination Sample					
Private Sector	3	2	6	0.75	5
Government	3	2	6	0.75	5
Form-5: Transfer of Treated Fingerling					
Private Sector	2	8	16	0.5	8
Government	1	1	1	0.5	1
Totals	1,097		2,545		2,027

* Rounded.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–15418 Filed 7–19–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2018–0090; FF09M22000–212–FXMB1231099BPP0]

RIN 1018–BD76

Economic Analysis for Proposed Regulations Governing the Take of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; document availability.

SUMMARY: We announce the opportunity to review and comment on two economic analysis documents prepared during development of the proposed rule to revoke the January 7, 2021, rule governing the prohibitions on incidental take under the Migratory Bird Treaty Act. This document announces the availability of an initial regulatory flexibility analysis and a regulatory impact analysis for public review.

DATES: Submit comments by August 19, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov/docket/FWS-HQ-MB-2018-0090/document.* You may submit a comment by clicking on ''Comment.'' Please ensure you have located the correct document before submitting your comments.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–MB–2018–0090, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director, Migratory Birds, at 202–208–1050.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2021, the Service published a final rule defining the scope of the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*) as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA (86 FR 1134) (hereafter referred to as the ''January 7 rule''). The January 7 rule codified an interpretation of the MBTA set forth in a 2017 legal opinion of the Solicitor of the Department of the Interior, Solicitor's Opinion M–37050, which concluded that the MBTA does not prohibit incidental take.

Following Council on Environmental Quality regulations that implement the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Service prepared a final environmental impact statement (EIS) for the January 7 rule: ''Final Environmental Impact Statement; Regulations Governing Take of Migratory Birds,'' available on *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2018–0090 (*https://www.regulations.gov/document/FWS-HQ-MB-2018-0090-14242*). The alternatives analyzed in that EIS cover the effects of interpreting the MBTA both to include and exclude incidental take. We issued a record of decision based on the final EIS. The Service also prepared a regulatory impact analysis (RIA) to support the January 7 rule, available on *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2018–0090 (*https://www.regulations.gov/document/FWS-HQ-MB-2018-0090-14241*). That RIA analyzed the economic impacts of three alternatives: A *No Action Alternative*—Retain the existing legal interpretation under M–37050 that the MBTA excludes incidental take; *Alternative A*—Promulgate regulations that define the scope of the MBTA to exclude incidental take; and *Alternative B*—Promulgate regulations that define the scope of the MBTA to include incidental take.

On May 7, 2021, the Service published in the **Federal Register** (86 FR 24573) a proposed rule seeking public comment on whether the Service should revoke the January 7 rule, which defined the scope of the MBTA as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA. This proposed rule is available on *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2018–0090 (*https://www.regulations.gov/document/FWS-HQ-MB-2018-0090-18943*). For the May 7, 2021, proposed rule, we modified the analysis in the RIA for the January 7 rule, given that the January 7 rule went into effect on March 8, 2021. The regulatory impact analysis presented for the proposed rule revises the alternatives to reflect the current baseline with the January 7 rule in effect. While the proposed rule does not itself propose codification of a new regulation that interprets the MBTA to prohibit incidental take, the effects of the removal of the January 7 rule are substantially similar to those described in Alternative B of the RIA for the January 7 rule. Revoking the January 7 rule would have the effect of reverting the government's interpretation of the MBTA to prohibit incidental take consistent with longstanding agency practice prior to publication of M–37050, subject to the exercise of enforcement discretion and the applicable judicial precedent in a given jurisdiction. Consistent with Alternative B, the Service will consider further steps to implement the MBTA consistent with an interpretation that it prohibits incidental take if it finalizes the proposed revocation rule.

The Regulatory Flexibility Act of 1980 (RFA; 5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 603 of the RFA requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of proposed rules on small entities unless the agency can certify under section 605(b) that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 603(b) of the Act specifies that each IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- An identification, to the extent practicable, of all relevant Federal rules

that may duplicate, overlap, or conflict with the proposed rule.

While the Service believes that certification under section 605(b) of the RFA is likely appropriate in regard to the May 7, 2021, proposed rule and consistent with our analysis of economic impacts under the January 7 rule, we have developed an IRFA out of an abundance of caution to ensure that economic impacts on small entities are fully accounted for in this rulemaking process.

The Service is making available to the public for review and comment both the revised RIA and the IRFA for the May 7, 2021, proposed rule (86 FR 24573) to revoke the January 7, 2021, rule (86 FR 1134). As noted above, the proposed rule is also available in the same docket for reference when reviewing the RIA and IRFA. Comments on the RIA and IRFA and any additional comments on the proposed rule will be addressed in the final rule.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We will post your entire comment— including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available for public inspection on *http://www.regulations.gov.*

Authority: This document is published under the authority of the MBTA and section 603 of the RFA.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2021–15368 Filed 7–19–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32306; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 10, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 4, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 10, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ALASKA

Bristol Bay Borough

APA's Diamond NN Cannery, 101 Cannery Rd., South Naknek, SG100006826

Fairbanks North Star Borough

Gould Cabin, 105 Dunkel St., Fairbanks, SG100006828

Lake and Peninsula Borough

Oinuyang, Address Restricted, Igiugig vicinity, SG100006827

Matanuska-Susitna Borough

High Ridge, 9721 East Hilscher Hwy., Palmer, SG100006829

Yukon-Koyukuk Borough

Alaska Road Commission Shelter Cabin-Fritz's, (Iditarod Trail MPS), North side of Hunter Trail, approx. 34 mi. from Ophir, Ophir vicinity, MP100006832

CALIFORNIA

Los Angeles County

Pasadena Avenue Historic District, Roughly bounded by South Pasadena Ave., Arlington Dr., Avoca Ave., Columbia St., West Glenarm St., Hurlbut St., Madeline Dr., West State St. and Wigmore Dr., Pasadena, SG100006821

Pasadena Avenue Historic District Roughly bounded by South Pasadena Ave., Arlington Dr., Avoca Ave., Columbia St., West Glenarm St., Hurlbut St., Madeline Dr., West State St. and Wigmore Dr., South Pasadena, SG100006821

CONNECTICUT

Hartford County

Aetna Diner, 267 Farmington Ave., Hartford, SG100006804

MARYLAND

Frederick County

Beatty-Cramer House, Address Restricted, Frederick vicinity, SG100006825

NORTH CAROLINA

Brunswick County

John N. Smith Cemetery, 225 East Leonard St., Southport, SG100006808

Davidson County

St. Stephen United Methodist Church, 102 East First St., Lexington, SG100006812

Halifax County

Enfield Historic District, Roughly bounded by North Church, West Bryant, North Railroad, Liberty, North McDaniel, Whitaker, SW Railroad, Tucker and McGwigen Sts., East and West Burnette Aves., Enfield, SG100006809

Lee County

Downtown Sanford Historic District (Boundary Increase and Decrease), Roughly bounded by South Horner Blvd., Cole St., Maple Ave., South and North First Sts., Norfolk-Southern Railway tracks, Charlotte Ave., McIver St., North Moore St., Gordon St., Sanford, BC100006819

Wake County

Graves-Fields House (Oberlin, North Carolina MPS), 814 Oberlin Rd., Raleigh, MP100006810

Zebulon Historic District, Roughly bounded by North Arendell and East Gannon Aves., North Gill, East Horton, West Judd, East and West Sycamore, West Vance, North Wakefield, and North Whitley Sts., Rotary Dr., and the former Raleigh and Pamlico Sound Railroad tracks, Zebulon, SG100006811

OHIO

Wayne County

Schantz Organ Company, 626 South Walnut St., Orrville, SG100006818

VIRGINIA

Brunswick County

Dromgoole House-Canaan, 2578 Christanna Hwy., Valentines vicinity, SG100006813

Loudoun County

Hough, Bernard, House, 15563 Hillsboro Rd., Hillsboro vicinity, SG100006815

Pulaski County

Claremont Elementary School, 800 Ridge Ave., Pulaski, SG100006822

Warren County

Browntown Historic District, Portions of Bentonville, Browntown, Fetchett, and Smith Run Rds., Gooney Manor Alley, Gooney Manor Loop, Smelser Ln., Browntown, SG100006823

WASHINGTON

Chelan County

Burke-Hill Apartments, 119 South Okanogan Ave., Wenatchee, SG100006805

Whatcom County

Woodstock Farm, 1200 Chuckanut Dr., Bellingham, SG100006806

Whitman County

Whitman County Library, 102 South Main St., Colfax, SG100006803

WEST VIRGINIA

Summers County

Hilltop Cemetery, Elk Knob Rd., East Hill Cir., Tomkies Ln., Hinton, SG100006824

A request for removal has been made for the following resource:

ALASKA

Lake and Peninsula Borough

Bly, Dr. Elmer, House, Hardenburg Bay, Port Alsworth, OT06000240

A request to move has been received for the following resource. In the interest of preservation, a SHORTENED comment period has been requested:

VIRGINIA

Chesapeake Independent City

Cornland School, 2309 Benefit Rd., Chesapeake, MV15000546

Additional documentation has been received for the following resource:

NORTH CAROLINA

Lee County

Downtown Sanford Historic District (Additional Documentation), Roughly bounded by South Horner Blvd., Cole St., Maple Ave., South and North First Sts., Norfolk-Southern Railway tracks, Charlotte Ave., McIver St., North Moore St., Gordon St., Sanford, AD85002561

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

CALIFORNIA

San Bernardino County

Counsel Rocks, Address Restricted, Essex vicinity, SG100006816

Mary's Cave, Address Restricted, Essex vicinity, SG100006817

MISSOURI

St. Louis County

White Haven (Additional Documentation), Address Restricted, St. Louis vicinity, AD79003205

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 13, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–15369 Filed 7–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–ACAD–31765; PS.SACAD001.00.1]

Minor Boundary Revision at Acadia National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Acadia National Park is modified to include one parcel of land totaling 0.88 acres, more or less, and will exclude one parcel of land totaling 0.20 acres, more or less, both parcels are located in Bar Harbor, Hancock County, Maine.

DATES: The effective date of this boundary revision is July 20, 2021.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Interior Region 1, Land Resources Program Center, 115 John Street, 5th Floor, Lowell, MA 01852, and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Realty Officer Jennifer Cherry, National Park Service, Interior Region 1, Land Resources Program Center, 115 John Street, 5th Floor, Lowell, MA 01852, telephone (978) 970–5260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to Public Law 99–420, 100 stat. 955, as amended by Public Law 116–9, 133 Stat. 728–30, the boundary of Acadia National Park is modified to include one adjoining tract containing approximately 0.88 acres of land, and to exclude a portion of one tract of land containing approximately 0.20 acres of land. The National Park Service intends to exchange these two tracts following the completion of the boundary revision. The boundary revision is depicted on Map No. 123/173,690, dated September 2020.

Sections 101 and 102 of Public Law 99–420, 100 Stat. 955, as amended by section 2108 of Public Law 116–9, 133 stat. 728–30, provide that the Secretary of the Interior is authorized to make a limited boundary revision, conforming to the terms of the legislation, by publication in the **Federal Register** after submitting written notice of the proposed boundary revision to the Committee on Natural Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Acadia National Park Advisory Commission, and the Maine Congressional Delegation. The Committees, the Advisory Commission, and the Maine Congressional Delegation have been notified of this boundary revision. Required consultations with the Town of Bar Harbor have also been completed and written consent obtained from the affected property owners. This boundary revision and subsequent real property exchange are necessary for the preservation, protection, and proper management of the park's natural resources.

Gay E. Vietzke,

Regional Director, Interior Region 1.

[FR Doc. 2021–15387 Filed 7–19–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1271]

Notice of Institution of Investigation; Certain Silicon Photovoltaic Cells and Modules With Nanostructures, and Products Containing the Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 11, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Advanced Silicon Group Technologies, LLC of Lowell, Massachusetts. A first supplement was filed on June 17, 2021,

and a second supplement was filed on July 6, 2021. The complaint, as supplemented, alleges violations of 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 silicon photovoltaic cells and modules with nanostructures, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,450,599 (''the '599 patent''); U.S. Patent No. 8,852,981 (''the '981 patent''); U.S. Patent No. 9,601,640 (''the '640 patent''); U.S. Patent No. 9,768,331 (''the '331 patent''); U.S. Patent No. 10,269,995 (''the '995 patent''); and U.S. Patent No. 10,692,971 (''the '971 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 13, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 15, 17, 23–25, and 27 of the '599 patent; claims 1, 2, 4, 13, 18, 23, 26, and 27 of the '981 patent; claims 1, 4, 11–14, and 16–18 of the '640 patent; claims 1, 2, and 10 of the '331 patent; claims 1, 2, and 7–11 of the '995 patent; and claims 1, 7, 8, 10, and 15 of the '971 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''silicon photovoltaic cells and modules containing such cells . . . in which at least one surface of the silicon photovoltaic cell has nanostructures'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Advanced Silicon Group Technologies, LLC, 600 Suffolk Street, Lowell, Massachusetts 01854

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Canadian Solar, Inc., 545 Speedvale Avenue West, Guelph, Ontario, Canada N1K 1E6

Canadian Solar International Limited, Unit 1520, 15/F, Tower 2, Grand Century Place, 193 Prince Edward Road West, MongKok, Kowloon, Hong Kong, People's Republic of China

Canadian Solar Manufacturing (Changshu) Co. Inc., No. 2 Changsheng Road, YangYuan, Xinzhuang Town, Changshu, Jiangsu 215562, People's Republic of China

Canadian Solar Manufacturing (Luoyang) Inc., 2 Yingzhou Road, Luolong Science Park, Luoyang, Henan Province, 471000, China

Canadian Solar Manufacturing (Thailand) Co. Ltd., 168/2 Moo 4, Rojana Industrial Estate, Si Racha, Chon Buri 20230, Kingdom of Thailand

Canadian Solar Manufacturing Vietnam Co. Ltd., D11, No. 5, Dong Tay Road, VSIP Hai Phong Urban, Industrial and Service Park, Duong Quan Commune, Thuy Nguyen District, Hai Phong City 04359, Socialist Republic of Vietnam

Canadian Solar Solutions, Inc., 545 Speedvale Avenue, Guelph, Ontario N1K 1E6, Canada

Canadian Solar Construction (USA) LLC, 3000 Oak Road, Suite 300, Walnut Creek, California 94597

Canadian Solar (USA) Inc., 3000 Oak Road, Suite 400, Walnut Creek, California 94597

Recurrent Energy Group, Inc., 123 Mission Street, Floor 18, San Francisco, California 94105

Recurrent Energy LLC, 3000 Oak Road, Suite 300, Walnut Creek, California 94597

Recurrent Energy SH Proco LLC, 3000 Oak Road, Suite 400, Walnut Creek, California 94597

Hanwha Q CELLS & Advanced Materials Corp., 86 Cheonggyecheon-ro, Jung-gu, Seoul, Republic of Korea 04541

Hanwha Q Cells GmbH, Sonnenallee 17–21 06766 Bitterfeld-Wolfen, Federal Republic of Germany

Hanwha Q Cells Malaysia Sdn. Bhd., Lot 1, Jalan CV 2, Selangor Cyber Valley, 63300 Cyberjaya, Selangor Malaysia

Hanwha Q Cells (Qidong) Co., Ltd., 888 Linyang Road, Qidong Jiangsu 226200, People's Republic of China

Hanwha Solutions Corporation, 24F, 86, Cheonggyecheon-ro, Jung-gu, Seoul, Republic of Korea 04541

Hanwha Energy USA Holdings Corp., (dba 174 Power Global Corporation), 300 Spectrum Center Dr., Irvine, California 92618

Hanwha Q Cell EPC USA LLC, 400 Spectrum Center Drive, Suite 1400, Irvine, California 92618 USA

Hanwha Q Cells America Inc., 400 Spectrum Center Drive, Suite 1400, Irvine, California 92618 USA

Hanwha Q Cells USA Corp., 300 Spectrum Center Drive, Suite 1250, Irvine, California 92618 USA

Hanwha Q Cells USA Inc., 300 Nexus Drive, Dalton, Georgia 30721

HQC Rock River Solar Holdings LLC, 300 Spectrum Center Drive, Suite 1250, Irvine, California 92618

HQC Rock River Solar Power Generation Station, LLC, 3753 US–51, Beloit, Wisconsin 53511

Boviet Solar Technology Co., Ltd., B5–B6, Song Khe-Industrial Zone, Noi Hoang District, Bac Giang Province 26115, Socialist Republic of Vietnam

Ningbo Boway Alloy Material Co., Ltd., No. 1777 Yinzhou Dadao Dong Duan, Ningbo City, Zhejiang Province 315137, People's Republic of China

Boviet Renewable Power LLC, 1740 Technology Drive, Suite 205, San Jose, California 95110

Boviet Solar USA Ltd., 2701 North 1st Street, Suite 550, San Jose, California 95131

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: July 14, 2021.

Katherine Hiner,

Secretary to the Commission.

[FR Doc. 2021–15325 Filed 7–19–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0060]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Firearms Disabilities for Nonimmigrant Aliens

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), 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 1140–0060 (Firearms Disabilities for Nonimmigrant Aliens) is being revised due to an increase in respondents, responses, and burden hours since the last renewal in 2018. This information collection 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 September 20, 2021.

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: Lindsay Babbie, EPS/FEID/FIPB, either by mail at 99 New York Avenue NE, Mail Stop 6.N–518, Washington, DC 20226, by email at *Lindsay.Babbie@atf.gov,* or by telephone at 202–648–7252.

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:* Firearms Disabilities for Nonimmigrant Aliens.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

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): Individuals or households.

Abstract: Nonimmigrant alien information will be used to determine their eligibility to obtain a Federal firearms license, and/or purchase, obtain, possess, or import a firearm. Nonimmigrant aliens also must maintain these documents while in possession of firearms or ammunition in the United States, for verification purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,970 respondents will provide information for this information collection once each year, and it will take each respondent approximately 4.08 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 133.96 or 134 hours, which is equal to 1,970 (# of respondents) * .068 (5.08 minutes).

7. *An Explanation of the Change in Estimates:* The increase in the total responses and burden hours by 536, and 36 hours respectively since the last renewal of this information collection in 2018, are due to more nonimmigrant aliens applying to obtain and renew federal firearms licenses.

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, Mail Stop 3E.405A, Washington, DC 20530.

Dated: July 15, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–15422 Filed 7–19–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Information Collection; Financial History Questionnaire—ATF Form 8620.28

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) 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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 19, 2021.

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.

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:* New collection.

(2) *The Title of the Form/Collection:* Financial History Questionnaire.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 8620.28.

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: Individuals or Households.

Other: None.

Abstract: The Financial History Questionnaire—ATF Form 8620.28 will be used to determine if a candidate for Federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), satisfies all just financial obligations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will use the form annually, and it will take each respondent 10 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 333 hours, which is equal to 2,000 (# of respondents) * .166667 (20 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, Mail Stop 3E.405A, Washington, DC 20530.

Dated: July 15, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–15420 Filed 7–19–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0031]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection; Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Defense Articles on the U.S. Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), 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 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 September 20, 2021.

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: Corey Bodencak, Office 1350/Imports Branch/FESD, either by mail at 244 Needy Rd., Martinsburg, WV 25405, by email at *Corey.Bodencak@atf.gov,* or by telephone at 304–616–4558.

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): Extension with without change of a currently approved collection.

2. *The Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Defense Articles on the U.S. Munitions Import List.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

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): None.

Abstract: This information collection is a record retention requirement for imported items on the United States Munitions Import List. The records are maintained at the registrant's business premises and must be made available to personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives, during compliance inspections, and/or criminal investigations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will use this information collection once per year, and it will take each respondent approximately 5 hours to prepare their response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 250 hours, which is equal to 50 (# of responses) * 5 (# of hours to prepare each response).

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, Mail Stop 3E.405A, Washington, DC 20530.

Dated: July 15, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–15421 Filed 7–19–21; 8:45 am]

BILLING CODE 4410–XX–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before August 19, 2021.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Jessica D. Senk, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Senk.Jessica@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2021–004–M.

Petitioner: Genesis Alkali, LLC, 580 Westvaco Rd., Green River, Wyoming (Zip 82935).

Mine: Genesis Alkali @WESTVACO, MSHA ID No. 48–00152, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing 30 CFR 57.22305 standard to permit an alternative, non-MSHA approved Powered Air Purifying Respirator (PAPR). The petitioner seeks approval for the use of the CleanSpace EX PAPR (CleanSpace EX) in its Class III underground, trona mine in areas in or beyond the last open crosscut and in areas where methane may enter the air current.

The petitioner states that:

(a) Genesis Alkali @WESTVACO is an underground trona mine. The petitioner has provided miners who wished to wear a PAPR voluntarily with one as a means to provide a fresh air flow over their face in a warm environment and to reduce exposure to nuisance dust. Some of the miners who choose to wear a PAPR work inby the last open cross cut. The petitioner historically purchased 3M Airstream Headgear-Mounted PAPRs. 3M discontinued these in 2020.

(b) Other intrinsically safe (IS) respirators available commercially have been approved by other certification bodies, *e.g.,* European Union and the International Electrotechnical Commission (IEC). However, these other IS PAPRs have not been approved by MSHA pursuant to 30 CFR parts 18 through 36.

(c) The CleanSpace EX manufactured by CleanSpace was determined to be IS

under other certification bodies. CleanSpace is not pursuing MSHA approval.

(d) The CleanSpace EX's design allows the miners to wear their standard head protection, including cap lamps.

(e) The CleanSpace EX has been tested and approved as IS under many internationally recognized testing standards. The CleanSpace EX was designed to and is approved pursuant to ATEX ''Equipment or Protective System Intended for use in Potentially Explosive Atmospheres Directive 2014/34/EU'' and is approved to be marked ''I Ml Ex ia I Ma, II 2 G Ex ib IIB T4 Gb, −20°C <Ta<40°C.'' Additionally, the CleanSpace EX was designed and is approved as IS pursuant to the IEC Certification Scheme for Explosive Atmospheres (IECEX) and is approved to be marked ''Ex ia I Ma, Ex ib IIB T4 Gb, IECEx TSA 13.0024X.''

(f) The scientific literature includes peer-reviewed papers, which suggest that there is an equivalent level of safety for miners when IS equipment is approved by either the ACRI2001 standard or relevant international standards.

(g) The CleanSpace EX was tested to standards that are equivalent to the MSHA ACRI2001 criteria. The CleanSpace EX has been subjected to extensive testing requirements under several North American and International Standards which all available scientific literature and studies have concluded are as effective as testing and approval under MSHA's ACRI2001 criteria.

(h) All available information supports a determination that use of the CleanSpace EX in the Genesis Alkali @ WESTVACO mine will achieve the same result as the standard.

The petitioner proposes the following alternative method:

(a) The petitioner requests the use of the CleanSpace EX, which is not MSHA approved, in this mine in areas in or beyond the last open crosscut and in areas where methane may enter the air current.

(b) Affected mine employees will be trained in the proper use and care of the CleanSpace EX in accordance with the manufacturer's recommendations. Task Training and annual refresher training will be documented using MSHA form 5000–23.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2021–15324 Filed 7–19–21; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–035]

Senior Executive Service (SES) Performance Review Board members

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of members.

SUMMARY: I am announcing that I have appointed new members to NARA's Senior Executive Service (SES) Performance Review Board. The board members are: Debra Steidel Wall, Deputy Archivist of the United States; William J. Bosanko, Chief Operating Officer; Micah M. Cheatham, Chief of Management and Administration; and Valorie F. Findlater, Chief Human Capital Officer. These appointments supersede all previous appointments.

DATES: These appointments are effective on July 20, 2021.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Valorie Findlater, Chief Human Capital Officer, by mail at Office of Human Capital, National Archives and Records Administration; 8601 Adelphi Road; College Park, Maryland 20740, or by telephone at 301.837.3754.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board reviews a supervisor's initial appraisal of a senior executive's performance and recommends final action to the appointing authority regarding matters related to senior executive performance.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2021–15319 Filed 7–19–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Community Development Revolving Loan Fund—Loan and Grant Programs

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before September 20, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6060, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov*. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0138.

Title: Community Development Revolving Loan Fund—Loan and Grant Programs, 12 CFR part 705.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA's Community Development Revolving Loan Fund (CDRLF or Fund) was established by Congress (Pub. L. 96–123, November 20, 1979) to stimulate economic development in low-income communities. Part 705 was adopted by the Board under section 130 of the Federal Credit Union Act (12 U.S.C. 1772c–1), which implements the Community Development Credit Union Revolving Loan Fund Transfer Act (Pub. L. 99–609, 100 Stat.3475 (Nov. 6. 1986)).

The Fund is used to support credit unions that serve low-income communities by providing loans and technical assistance grants to qualifying institutions. The programs are designed to increase income, ownership, and employment opportunities for low-income residents, and to stimulate

economic growth. In addition, the programs provide assistance to improve the quality of services to the community and formulate more effective and efficient operations of credit unions. The information will allow NCUA to assess a credit union's capacity to repay the Funds and/or ensure that the funds are used as intended to benefit the institution and community it serves.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 450 Grant program; 4 Loan program.

Estimated No. of Responses per Respondent: Once.

Estimated Total Annual Responses: 785 Grant program; 14 Loan program.

Estimated Burden Hours per Response: 0.95.

Estimated Total Annual Burden Hours: 760.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on July 14, 2021.

Dated: July 14, 2021.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2021–15330 Filed 7–19–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, July 22, 2021.

PLACE: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov*) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. NCUA's 2022–2026 Strategic Plan.
2. Request for Information and Comment, Digital Assets and Related Technologies.
3. NCUA Rules and Regulations, Complex Credit Union Leverage Ratio.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021–15456 Filed 7–16–21; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 7 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Literary Arts (review of applications): This meeting will be closed.

Date and time: August 3, 2021; 1:00 p.m. to 3:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: August 4, 2021; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 11, 2021; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 12, 2021; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: August 13, 2021; 1:00 p.m. to 3:00 p.m.

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: August 17, 2021; 2:00 p.m. to 4:00 p.m.

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: August 18, 2021; 2:00 p.m. to 4:00 p.m.

Dated: July 15, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021–15358 Filed 7–19–21; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on Science and Engineering Policy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business as follows:

TIME AND DATE: Friday, July 23, 2021, from 1:00–2:00 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Chair's opening remarks; discussion of proposed key themes and Board policy messages to accompany the release of Science & Engineering Indicators 2022.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science

Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at the National Science Board website *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–15519 Filed 7–16–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, August 10, 2021.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTER TO BE CONSIDERED:

67354 Safety Research Report—*Preventing Turbulence-Related Injuries in Air Carrier Operations Conducted Under Title 14 Code of Federal Regulations Part 121*

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Chris O'Neil by email at *chris.oneil@ntsb.gov* or at (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Webcast of Events'' on the NTSB home page at *www.ntsb.gov.*

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID–19). Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: Friday, July 16, 2021.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2021–15527 Filed 7–16–21; 4:15 pm]

BILLING CODE 7533–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Public Listening Sessions on Scientific Integrity and Evidence-Based Policymaking

AGENCY: Office of Science and Technology Policy (OSTP), The White House.

ACTION: Announcement of meeting.

SUMMARY: The White House Office of Science and Technology Policy (OSTP) is organizing a series of three virtual listening sessions to hear about issues and concerns related to scientific integrity from members of the public who produce, communicate, and use scientific and technical information. Perspectives gathered during the virtual listening sessions will inform the assessment of Federal agencies' scientific-integrity policies and identification of best practices and lessons-learned that the National Science and Technology Council's Task Force on Scientific Integrity is preparing, pursuant to the January 2021 *Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.*

DATES:

Virtual listening sessions (all times Eastern Daylight Time):

1. Communications: Wednesday, July 28, 2021, 2:00 p.m. to 4:00 p.m.
2. Science and Education: Thursday, July 29, 2021, 11:00 a.m. to 1:00 p.m.
3. Use of Scientific and Technical Information: Friday, July 30, 2021, 2:00 p.m. to 4:00 p.m.

Registration deadline: Friday, July 23, 2021, 5:00 p.m.

ADDRESSES: Register for a virtual listening session using the session-specific links below:

1. Communications: *https://ida-org.zoomgov.com/meeting/register/vJIsdeGrqTstHfZn-KhEXlhuusJW7sGzvx0.*
2. Science and Education: *https://ida-org.zoomgov.com/meeting/register/vJIsdeyspjgrG4tLkU3xiX8wbbxq_DPsDIM.*
3. Use of Scientific and Technical Information: *https://ida-org.zoomgov.com/meeting/register/vJItd-2grjMiHcF1JwMUaZQ9hxBRY9iJEKI.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Ryan Donohue, 202–456–4444, *ScientificIntegrity@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: The *Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking,* issued on January 27, 2021, calls for the establishment of an interagency Task Force on Scientific Integrity of the National Science and Technology Council to review the effectiveness of agency scientific integrity policies developed since the issuance of the Presidential Memorandum of March 9, 2009 on scientific integrity. To inform its review, the Task Force is organizing a series of virtual listening sessions to hear from members of the public who produce, communicate, and use scientific and technical information. Perspectives gathered during the virtual listening sessions will inform the Task Force's assessment of Federal agencies' scientific-integrity policies and identification of best practices and lessons-learned.

Each of three listening sessions will be organized around a particular theme and audience, described below:

Session 1 (Wednesday, July 28, 2:00 p.m. to 4:00 p.m. EDT): Communications, including effective policies and practices to improve the communication of scientific and technological information, including for engagement of Federal scientists and contractors with news media and on social media. The target audience includes individuals from news media, science writers, and science communicators.

Session 2 (Thursday, July 29, 2021, 11:00 a.m. to 1:00 p.m. EDT): Science and Education, including effective policies and practices to support professional development of scientists and researchers of all genders, races, ethnicities, and backgrounds; address scientific-integrity issues related to emerging technologies, such as artificial intelligence and machine-learning, and evolving scientific practices, such as citizen science and community-engaged research; improve training of scientific staff about scientific integrity; and handle disagreements about scientific methods and conclusions. The target audience includes scientists, engineers, and educators from the Federal and non-Federal sectors.

Session 3 (Friday, July 30, 2021, 2:00 p.m. to 4:00 p.m. EDT): Use of Scientific and Technical Information, including the effectiveness of Federal scientific integrity policies in promoting trust in Federal science and concerns about a lack of scientific integrity impeding the equitable delivery of the Federal Government's programs. Target audience includes individuals who use Federal scientific and technical information for decision-making or provision of services; individuals from disadvantaged communities; and other consumers of science.

Participants in all sessions may also comment on the predominant challenges they perceive to scientific integrity in Federal agencies and effective practices for minimizing political or other inappropriate interference in the conduct, communication, or use of Federal science. Speakers will have up to two minutes each to make a comment. As

many speakers will be accommodated as the scheduled time allows.

Staff from the IDA Science and Technology Policy Institute will facilitate the meeting, which will be recorded for use by the Task Force. Participation in a listening session will imply consent to capture participant's names, voices, and likenesses. Anything said may be recorded and transcribed for use by the Task Force. Moderators will manage the discussion and order of remarks.

Individuals unable to attend the listening sessions or who would like to provide more detailed information may respond to the *Request for Information (RFI) to Improve Federal Scientific Integrity Policies* that was published in the **Federal Register** [86 FR 34064, June 28, 2021].

Dated: July 13, 2021.

Stacy Murphy,

Operations Manager.

[FR Doc. 2021–15309 Filed 7–19–21; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92408; File No. SR–CboeBZX–2021–050]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Eliminate the Opt-In Functionality Offered Under the Lead Market Maker Pricing

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule applicable to its equities trading platform (''BZX Equities'') to eliminate the opt-in functionality offered under the Lead Market Maker (''LMM'') Pricing provided under footnote 14. Specifically, the Exchange is proposing to automatically provide an LMM with the greater of the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate instead of requiring an LMM to opt-in.[3]

The Exchange currently offers a comprehensive liquidity provision program to incentivize LMMs to provide enhanced market quality across all BZX-listed securities. Specifically, as provided in paragraph (A) of footnote 14, the Exchange offers the LMM Liquidity Provision Rates which provide LMMs daily incentives that are based on whether the LMM meets certain performance based criteria (*i.e.,* the applicable Minimum Performance Standard[4]).[5] The Exchange provides each LMM with a daily incentive based on how many Qualified Securities or Enhanced Securities[6] the LMM has and the average aggregate daily auction volume in the BZX-listed securities for which it is an LMM (''LMM Securities''). The LMM Liquidity Provision Rates were implemented to incentivize LMMs to meet the Minimum Performance Standards across all of their LMM Securities, especially for newly listed and other lower volume securities. The Exchange also currently offers, as provided in paragraph (B) of footnote 14, the LMM Add Liquidity Rebate which is available to LMMs in BZX-listed securities that have a consolidated average daily volume (''CADV'')[7] equal to or greater than 1,000,000 (an ''ALR Security''). The LMM Add Liquidity Rebate allows the Exchange to offer LMM pricing comparable to other traditional LMM programs available on other listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes July 1, 2021 (SR–CboeBZX–2021–049). On July 12, 2021, the Exchange withdrew that filing and submitted this proposal.

[4] As defined in Rule 11.8(e)(1)(E), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread..[sic].

[5] The current Minimum Performance Standards include: (i) Registration as a market maker in good standing with the Exchange; (ii) time at the inside requirements (generally between 3% and 15% of Regular Trading Hours for Qualified Securities and between 5% to 50% for Enhanced Securities, depending on the average daily volume of the applicable LMM Security); (iii) auction participation requirements (generally requiring that the auction price is between 3% and 5% of the last Reference Price, as defined in Rule 11.23(a)(19), for a Qualified Security and 1%–3% for an Enhanced Security (the ''Enhanced Auction Range''); (iv) market-wide NBB and NBO spread and size requirements (generally requiring between 200 and 750 shares at both the NBB and NBO for both Qualified Securities and Enhanced Securities with an NBBO spread between 1% and 10% for a Qualified Security and .25% to 4% for Enhanced Securities, depending on price of the security and underlying asset class); and (v) depth of book requirements (generally requiring between $25,000 and $250,000 of displayed posted liquidity for both Qualified Securities and Enhanced Securities within 1% to 10% of both the NBB and NBO for Qualified Securities and 0.25% and 5% for Enhanced Securities, depending on price of the security and underlying asset class). *See* Securities Exchange Act No. 86213 (June 27, 2019) 84 FR 31951 (July 3, 2019) (SR–CboeBZX–2019–058) (the ''Original Filing''). The Exchange notes that as of February 1, 2021, the Enhanced Auction Range will be .50%–3%. The Original Filing provides that ''[b]efore diverging significantly from the ranges described above, the Exchange will submit a rule filing to the Commission describing such proposed changes.'' The Exchange does not believe that this change represents a ''significant divergence'' but is instead noting the change in order to provide transparency regarding the current state of the Minimum Performance Standards.

[6] An ''Enhanced Security'' refers to a BZX-listed security which meets certain enhanced qualifying market quality standards.

[7] ''CADV'' means consolidated average daily volume calculated as the average daily volume reported for a security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the three calendar months preceding the month for which the fees apply and excludes volume on days when the market closes early and on the Russell Reconstitution Day.

venues. Specifically, the LMM Add Liquidity Rebate encourages LMMs to meet the Minimum Performance Standards for Qualified Securities, but also provides the potential for additional incentives for higher volume securities.

As currently constructed, an LMM in an ALR Security that wants to participate must proactively opt-in to the program using the Exchange's ETP Portal. Further, an LMM that opts in to the LMM Add Liquidity Rebate program will receive the LMM Add Liquidity Rebate regardless of whether they would have been better off receiving the LMM Liquidity Provision Rates.

Now, the Exchange proposes to eliminate the opt-in requirement, and instead proposes to automatically apply either the LMM Add Liquidity Rebate or LMM Liquidity Provision Rates for each ALR Security based on whichever would result in a greater total rebate in a particular calendar month. In determining the applicable rebate on a monthly basis for each ALR Security, the Exchange will choose the greater of: (i) The monthly total LMM Liquidity Provision Rates + (the applicable per share rebate that the LMM would receive for adding liquidity in the ALR Security x the number of shares for which the LMM added liquidity in the ALR Security); and (ii) $0.0039 × the number of shares for which the LMM added liquidity in the ALR Security. If an LMM Security does not meet the CADV requirement to be an ALR Security and become eligible to receive the LMM Add Liquidity Rebate, the LMM will continue to be subject to the LMM Liquidity Provision Rates by default.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that its listing business operates in a highly competitive market in which market participants, which includes both issuers and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The LMM pricing as a whole reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all securities listed on the Exchange. The proposed amendment to the program is designed to provide an automated value-add service to LMMs without changing the pricing structure of the program.

The Exchange believes that the proposal is reasonable because it provides a value-added service to LMMs without changing the fees and rebates applicable to LMMs under footnote 14 of the fee schedule. Specifically, the proposal will streamline the LMM pricing process by eliminating the requirement that an LMM opt-in to the LMM Add Liquidity Rebate. As described above, under the proposal an LMM would also no longer have to consider whether it would receive higher incentives under the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate on a per security and per month basis. Instead, the Exchange will automatically apply whichever rate is greater in that ALR Security for the month. Further, as noted above, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. The proposal is designed to enhance the existing LMM program and is intended to help the Exchange compete as a listing venue by streamlining the process for LMMs to maximize their incentives. Further, the proposal does not change any of the existing LMM fees or incentives provided under footnote 14.

The Exchange believes the LMM Add Liquidity Rates coupled with the LMM Liquidity Provision Rates will continue to create a comprehensive incentive structure that encourages participation and, further, competition among LMMs. The proposal is intended to enhance the existing incentive structure, and encourage participation among LMMs. The Exchange believes that increased participation among LMMs will result in better market quality across all of its listings, resulting in greater market quality to the benefit of investors and other market participants.

The Exchange believes that the proposal represents an equitable allocation of payments and is not unfairly discriminatory because, while the LMM pricing is currently and will continue to apply only to LMMs, such LMMs must meet rigorous Minimum Performance Standards [10] in order to receive the rebates provided under footnote 14. Where an LMM does not meet the Minimum Performance Standards for the applicable LMM Security, they will not be eligible for those rebates. Further, registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. As discussed above, the proposed changed merely eliminates the requirement that an LMM opt-in to the LMM Add Liquidity Rebate and instead will automatically provide an LMM with the greater of the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, or competing listing venues to maintain their competitive standing. The Exchange does not believe the proposed amendment would burden intra-market competition as it would be available to all Members uniformly. Registration as an LMM is available

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] As defined in Rule 11.8(e)(1)(E), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread..[sic]

equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–050 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15343 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92409; File No. SR–BX–2021–030]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 4703

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rule 4703,[3] in light of planned changes to the System, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange Systems and order entry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to BX Rules in the 4000 Series shall mean Rules in BX Equity 4.

[4] An ''Order Attribute'' is a set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* Equity 1, Section 1(a)(11).

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See *http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocols.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for these upgrades and enhancements, the Exchange recently submitted two rule filings to the Commission that amended its rules pertaining to, among other things, Market Maker Peg Orders and Orders with Reserve Size.[9] The Exchange now proposes to further amend its Rules governing Order Attributes, at Rule 4703. In particular, the Exchange proposes to adjust the current functionality of the Pegging [10] and Trade Now Attributes,[11] as described below, so that they align with how the System, once upgraded, will handle these Order Attributes going forward.

Changes to Pegging Order Attribute

First, the Exchange proposes to amend Rule 4703(d), which governs the Pegging Order Attribute. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.[12] The Rule presently provides that if, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected, provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. The Exchange proposes to replace this text by stating that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price.[13] The Exchange proposes this change so as to enhance the manner in which the Exchange presently handles Pegged Orders in this scenario. Rather than reject such Orders outright, and require customers to continuously reenter the Orders thereafter until a pegging price emerges, which may cost them queue priority, the Exchange believes that it would be more efficient and customer-friendly to simply hold a Pegged Order until a permissible pegging price emerges.[14]

A similar rationale applies to the Exchange's proposal to cease accepting certain Market or Primary Pegged Orders at their limit prices if no pegging price is available. Because participants presumably prefer for their orders to post at the pegging price, the Exchange believes that participants would prefer for the Exchange to hold such orders until a permissible pegging price emerges, rather than post the orders at their limit prices.[15] [16]

The Exchange proposes similar changes to the paragraph of Rule 4703(d) that applies to Pegged Orders entered through RASH or FIX that posted to the Exchange Book. The text presently provides that if the price to which an Order is pegged is not available, the Order will be rejected. The Exchange proposes instead to state that if the price to which an Order is pegged becomes unavailable or pegging would lead to a price at which the Order cannot be posted,[17] then the Exchange will remove the Order from the Exchange Book and re-enter it once there is a permissible price. Again, the Exchange proposes this change to enhance and make the System more efficient by providing for the Exchange to re-post the Pegged Orders rather than rejecting them when there is no permissible pegging price and requiring participants to re-enter them once a valid price becomes available.[18] The

[6] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See *https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (''Nasdaq''), has already filed similar proposed rule changes with the Commission. *See* Securities Exchange Act Release No. 34–92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR–NASDAQ–2021–044).

[9] *See* Securities Exchange Act Release No. 34–91334 (March 16, 2021), 86 FR 15277 (March 22, 2021) (SR–BX–2021–005); Securities Exchange Act Release No. 34–90607 (December 8, 2020), 85 FR 80842 (December 14, 2020) (SR–BX–2020–034).

[10] *See* Rule 4703(d).

[11] *See* Rule 4703(l).

[12] *See* Rule 4703(d) (defining ''Primary Pegging'' as pegging with reference to the inside quotation on the same side of the market, ''Market Pegging'' as pegging with reference to the inside quotation on the opposite side of the market, and ''Midpoint Pegging'' as pegging with reference to the midpoint between the inside bid and the inside offer).

[13] This change is applicable to Primary, Market and Midpoint Pegging Orders entered via RASH/FIX; OUCH/FLITE Midpoint Pegging behavior is not affected by this change. The Exchange also proposes to amend existing language in this provision which states that ''if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected.'' The proposed amendment would specify that this language applies only to Orders with Midpoint Pegging entered through OUCH or FLITE and also replace the phrase ''will be cancelled or rejected'' with ''will not be accepted'' (to render the text consistent with the analogous Nasdaq rule). The proposed changes to pegged orders entered through RASH or FIX will allow the Exchange to handle the Order more consistent with the customer intended instruction, and are necessary to facilitate forthcoming System enhancements.

[14] Meanwhile, the Exchange proposes to amend the Rule to state that if a Pegged Order is assigned a Routing Order Attribute, and a permissible pegging price is not available upon entry, then the Order will continue to be rejected. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

[15] When a Pegged Order lacks a pegging price or a permissible pegging price, the System will not wait indefinitely for a pegging price or a permissible pegging price to become available. Instead, the System will cancel the Order if no permissible pegging price becomes available within one second after Order entry or after the Order was removed due to the lack of a permissible pegging price and no longer available on the Book. The Exchange may, in the exercise of its discretion, modify the length of this maximum time period by posting advance notice of the applicable new time period on its website.

[16] In this paragraph of Rule 4703(d), the Exchange again proposes to state that it will continue to reject a Pegged Order entered through RASH or FIX when a permissible pegging price is unavailable, if the Pegged Order is assigned a Routing Order Attribute. The Exchange will continue to accept certain Market and Primary Pegged Orders at their limit price where they have Routing Order Attributes. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

[17] An example of a scenario where pegging would lead to a price at which an Order cannot be posted is as follows. Assume that the NBBO is $0.0002 × $0.0003. A Primary Pegged Order to buy is entered with a passive offset amount of $0.0003. This would result in the Order being made unavailable by the Exchange as −$0.0001 is not a permissible price. Currently, the Exchange accepts such Orders at its limit price, and will post the Orders to the Exchange Book in accordance with the parameters that apply to the underlying Order Type.

[18] The Exchange proposes to apply a similar time limitation to the holding period prescribed above. Similarly, the Exchange proposes to add that for an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed, or there is no Inside Bid or Inside Offer, the System will cancel the Order if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion

Continued

Exchange notes that the proposed change will not apply to Pegged Orders with Routing Attributes assigned to them; the existing Rule functionality will continue to apply to those Orders.

Rule 4703(d) also subjects Pegging Orders to collars, meaning that any portion of a Pegging Order that would [19] execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. Although the Rule states that it applies this collar to Orders with Primary and Market Pegging, the Exchange has always intended for the collar to also apply to Orders with Midpoint Pegging, and in practice, it does so. The failure of the Rule to reflect the application of the collar to Midpoint Pegged Orders was an unintended omission. The Exchange now proposes to revise Rule 4703(d) to correct this omission.

Changes to the Trade Now Order Attribute

Additionally, the Exchange proposes to amend its rules governing the Trade Now Attribute, at Rule 4703(l). Pursuant to Rule 4703(l), Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of a contra-side locking Order as a liquidity taker.

The Exchange proposes to amend Trade Now by streamlining and simplifying the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios.[20] Specifically, rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH or FLITE.[21] For Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now. The proposal will not extend Trade Now functionality to new Order Types.[22]

The Exchange intends to implement the foregoing changes during the Third Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 4703(d), are consistent with the Act. The proposals to eliminate the functionality that provides for the System to reject certain Pegged Orders that lack a permissible pegging price, or to post the Orders at their limit price, are consistent with the Act because they eliminate unwarranted inefficiencies that arise when participants must repeatedly re-enter rejected Pegged Orders until a permissible price becomes available.[25] [26] It is also consistent with the Act to maintain the existing practice in the Rule of rejecting a Pegged Order without a permissible pegging price where the Order has been assigned a Routing Attribute. The Exchange is not yet prepared to hold such Orders in the same way that it proposes to do so for Pegged Orders without Routing Attributes, although it contemplates doing so in the near future.

Moreover, the proposal to amend Rule 4703(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will correct an unintended omission and ensure that the Rule is consistent with existing Exchange practice and with customer expectations. The application of these collars will prevent Pegged Orders from having prices that deviate too far away from where the security was trading when the Order was first entered.[27]

The Exchange's proposals to amend its rules governing the Trade Now Attribute, at Rule 4703(l), is consistent with the Act. The proposal will

modify the length of this one second time period by posting advance notice of the applicable time period on its website). For an Order with Midpoint Pegging with a Routing Attribute, the new one second time period will be applicable. The Exchange notes that it had inadvertently omitted from the existing Rule portions of this new proposed language that addresses the handling of Midpoint Pegged Orders if the Inside Bid or Inside Offer become crossed or if there is no Inside Bid or Inside Offer, even though this provision was intended to mirror a corresponding rule 4703(d) in the Nasdaq Rulebook. The proposal corrects this omission.

[19] Additionally, the Exchange proposes to replace the word ''would'' with ''could'' in this provision, so as to clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. An example of a circumstance in which such Orders do not execute is as follows. Assume that the NBBO is $10.00 × $10.01. A Market Pegged Order to buy posts at $10.01. The NBBO then updates to $10.00 × $11.00. Because re-pricing and posting the Market Pegged Order would result in the Order being available on the Book and executable at $11.00 (outside of the collars), the Order will be canceled.

[20] The Exchange notes that the Rule presently does not refer to crossing scenarios. The Exchange proposes to add such references for completeness and consistency with the corresponding rules of Nasdaq and Nasdaq PHLX. An example of a crossing scenario is as follows. A non-displayed Order to buy rests on the Book at $0.9995. Thereafter, a Post Only Order to sell is entered at $0.9994, which would post on the Book and display at $0.0014 [sic], thereby crossing the non-displayed Order as the price improvement requirements were not met.

[21] This proposed change in functionality for OUCH and FLITE is enabled by the migration of Trade Now to the Exchange's matching System.

[22] The Exchange proposes to add language to Rule 4703(l) to state that Trade Now allows a resting Order that becomes locked ''or crossed, as applicable at its non-displayed price'' by the ''posted price'' of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase ''or crossed, as applicable, at its non-displaced [sic] price'' for completeness. It also proposes to add the phrase ''posted price'' for purposes of clarity. It merely communicates that the incoming Displayed Order first posts to the Exchange Book, thereby locking or crossing the resting Order at its non-displayed price.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] The Exchange notes that as part of this proposed change, if there is no Pegging Price upon entry for a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, then it will no longer accept such Orders at their limit price. The Exchange believes that this proposed change is consistent with the Act because it better aligns with customer intentions for Pegged Orders to post at a Pegging Price. That is, the Exchange believes that participants prefer for Pegged Orders to be entered at a Pegging Price, rather than its entered limit price, even if that means that the Order must wait for a Pegging Price to become available. As discussed above, the Exchange does not propose this change for Pegged Orders with Routing Attributes.

[26] It is also consistent with the Act to limit the time period for which the Exchange will hold, without canceling, Pegged Orders for which there is no pegging price or permissible pegging price because the Exchange does not believe that customers would want the Exchange to hold their orders indefinitely. Moreover, holding such orders indefinitely would encumber the Exchange's System. The Exchange believes that a one second holding period for such orders is long enough to provide the above-stated efficiencies for participants, but not too long as to encumber them. However, the Exchange believes that it is reasonable to reserve discretion to alter the holding period, from time to time, should it determine that doing so better meets the needs of customers or its System resources.

[27] Additionally, the Exchange believes that it is consistent with the Act to replace the word ''would'' with ''could'' in this provision, because doing so would clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. *See supra,* n.19.

streamline and simplify the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios. Rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH and FLITE.[28] Furthermore, it is consistent with the Act to add language to Rule 4703(l) to state that Trade Now allows a resting Order that becomes locked ''or crossed, as applicable, at its non-displayed price'' by the ''posted price'' of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase ''or crossed, as applicable, at its non-displayed price'' for completeness. The Exchange also proposes to add the phrase ''posted price'' for purposes of clarity. It merely communicates that the incoming Displayed Order first posts to the Nasdaq Book, thereby locking or crossing the resting Order at its non-displayed price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals to hold (up to one second), rather than reject (or accept at their limit price), Pegging Orders (other than those with Routing Attributes) in circumstances in which no permissible pegging price is available, as these proposals will merely eliminate unwarranted inefficiencies that ensue from the System requiring participants to repeatedly re-enter Pegged Orders until a price becomes available, or the System posting Pegged Orders at their limit prices, if there is no pegging price. Moreover, the proposal to amend Rule 4703(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will have no competitive impact as the proposal is consistent with existing Exchange practice and with customer expectations.

The Exchange's proposals to amend its rules governing Trade Now will have no competitive impact on participants other than by rendering these Order Attributes more efficient and easier for participants to utilize.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[29] and Rule 19b–4(f)(6) thereunder.[30]

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–BX–2021–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–030. 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–BX–2021–030, and should be submitted on or before August 10, 2021.

[28] As noted above, for Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 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.

[31] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15344 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92402; File No. SR–ICC–2021–015]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook, ICC Risk Management Framework, and ICC Treasury Operations Policies and Procedures

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to make changes to the Governance Playbook, Risk Management Framework, and Treasury Operations Policies and Procedures (''Treasury Policy'') (together, the ''Documents''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes amendments to its Governance Playbook, Risk Management Framework, and Treasury Policy to update descriptions of certain internal committees and make other clarification or clean-up changes. ICC maintains the Participant Review Committee (''PRC'') and the Credit Review Subcommittee of the PRC (''CRS'') (together, the ''Committees''), which are internal committees that assist in fulfilling counterparty review responsibilities with respect to ICC's Clearing Participants (''CPs'') and financial service providers (''FSPs''). The proposed changes amend descriptions related to membership composition, meeting frequency, and responsibilities of the Committees in the Documents to reflect recent changes to the Committees' charters. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

I. Governance Playbook

The Governance Playbook contains information regarding the roles and responsibilities of the Board and various committees at ICC. ICC proposes amendments in respect of the Committees in Section IV (Committees) to reflect recent changes to their charters. ICC proposes a grammatical edit to refer to ''financial services providers'' as ''financial service providers'' in the description of the PRC and throughout the document. ICC proposes updated language on the membership composition of the PRC, including to add the ICC Risk Oversight Officer as a member. With respect to the CRS, the proposed changes remove the authority to approve FSPs and specify that the CRS has an advisory role. In this role, the CRS may make recommendations to the PRC with respect to matters of creditworthiness of CPs and creditworthiness and performance of FSPs. The proposed changes also update the membership composition of the CRS to include the Risk Oversight Officer and remove the ICC Risk Management representative as a voting member. Risk Management representatives will participate as non-voting members and continue to present materials to allow the CRS to perform its responsibilities and duties.

II. Risk Management Framework

ICC proposes conforming revisions to the Risk Management Framework to update descriptions of the Committees and to make other clarification or clean-up changes. ICC proposes to amend Section II (Governance and Organization) to update a chart that details the governance and committee structure at ICC. The updated chart indicates that the Intercontinental Exchange, Inc. (''ICE, Inc.'') Enterprise Risk Management Department (''ERM'') reports to the Board and corrects a typographical error to replace the ''BCP Oversight Committee'' with the ''BCP & DR Oversight Committee.''[3] In Section II.A (Committees), the proposed changes further clarify the review and approval process of the policies and procedures that comprise ICC's overall risk management framework, which consists of review by the Risk Committee and review and approval by the Board at least annually.

In Section II.A (Committees), ICC also proposes to update descriptions of the Committees to align with their amended charters. ICC proposes a grammatical edit to refer to ''financial services providers'' as ''financial service providers'' and a footnote to further define the entities included as FSPs. The proposed changes specify that the PRC meets at least quarterly and more frequently as needed. Additionally, the proposed changes further distinguish PRC and CRS responsibilities with respect to FSPs, noting that the PRC is responsible for overseeing the due diligence and approval of FSPs and the CRS is responsible for overseeing initial due diligence and monitoring ongoing credit due diligence for FSPs. ICC also proposes language describing the advisory role of the CRS to the PRC for matters regarding the creditworthiness of CPs and the creditworthiness and performance of FSPs. ICC further proposes to amend Appendix 1 to the document to update language related to the membership composition of the PRC, including to add the Risk

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ERM provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization and has dedicated resources focused on various ICE, Inc. business units, including ICC. The ICC BCP & DR Oversight Committee assists in fulfilling oversight responsibilities with respect to business continuity planning (''BCP'') and disaster recovery (''DR'') for ICC.

Oversight Officer as a member, and the meeting frequency of the PRC.

III. Treasury Policy

ICC proposes corresponding changes to Section IV (Cash Settlement) of the Treasury Policy to update responsibilities of the Committees based on their amended charters. Currently, a bank's capitalization, creditworthiness, access to liquidity, operational reliability and supervision are reviewed prior to accepting services, and approval of the CRS is required before ICC may begin using the bank's services. Under the amended policy, approval of the PRC is required before ICC may begin using the bank's services and the CRS may make recommendations to the PRC regarding approval.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[5] In particular, Section 17A(b)(3)(F) of the Act [6] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed rule change updates descriptions of the PRC and CRS related to membership composition, meeting frequency, and responsibilities in the Documents to reflect recent changes to the PRC and CRS charters. Such changes ensure that the Documents clearly and accurately set out the functions of the Committees to remain effective and to ensure that the Committees carry out their required functions. The proposed clarification and clean-up changes would further ensure readability and transparency across the Documents and should enhance the implementation of such policies and procedures. The proposed rule change is therefore consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[8] Rule 17Ad–22(e)(2)(i), (ii) and (v) [9] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and specify clear and direct lines of responsibility. The proposed changes update governance arrangements in the Documents to align with the amended PRC and CRS charters. These revisions clarify the responsibilities and interaction of the Committees by specifying the advisory role of the CRS to the PRC for matters regarding the creditworthiness of CPs and the creditworthiness and performance of FSPs. The proposed changes update membership composition and meeting frequency to clearly set out the responsibilities and duties of ICC personnel in respect of the Committees, including the Risk Oversight Officer and Risk Management representatives. Moreover, the amended Risk Management Framework memorializes the reporting line of ICE, Inc. ERM to the Board and corrects a typographical error in respect of the BCP & DR Oversight Committee to promote clear and transparent governance arrangements that specify clear and direct lines of responsibility. As such, in ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements that clearly prioritize the safety and efficiency of ICC and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i), (ii), and (v).[10]

Rule 17Ad–22(e)(3)(i) [11] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the Board annually. ICC maintains a sound risk management framework that identifies, measures, monitors, and manages the range of risks that it faces. The amended Risk Management Framework further clarifies that the review and approval process of the policies and procedures that comprise ICC's overall risk management framework includes review and approval by the Board at least annually. As such, the amendments would satisfy the requirements of Rule 17Ad–22(e)(3)(i).[12]

Rule 17Ad–22(e)(4)(ii) [13] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed changes enhance ICC's ability to manage its financial resources, including by clearly articulating its review, approval, and monitoring process for CPs and FSPs by the Committees across the Documents to ensure that such policies and procedures remain transparent and up-to-date. The proposed changes further define the entities included as FSPs to ensure that ICC appropriately identifies and monitors its counterparty relationships. Such amendments ensure financial health and the ability to fulfill obligations by ICC's counterparties, which promotes and strengthens ICC's own financial condition and supports ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[14]

Rule 17Ad–22(e)(18) [15] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(e)(2)(i), (ii) and (v).

[10] *Id.*

[11] 17 CFR 240.17Ad–22(e)(3)(i).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(e)(4)(ii).

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(18).

utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. ICC believes that the proposed rule change will ensure that the Committees carry out the functions required in their charters to ensure proper review and ongoing monitoring of CPs and FSPs, including by clarifying the responsibilities and interaction of the Committees and further defining the entities included as FSPs. As such, the proposed rule change will strengthen ICC's ability to manage and mitigate the potential risks associated with its CPs and FSPs, thereby continuing to ensure that CPs and FSPs have sufficient financial resources and robust operational capacity to meet obligations and promoting ICC's ability to monitor compliance with such requirements on an ongoing basis, consistent with Rule 17Ad–22(e)(18).[16]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Governance Playbook, Risk Management Framework, and Treasury Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2021–015 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2021–015 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15337 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92406; File No. SR–CboeBZX–2021–048]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule by Adopting a New Single Market Participant Identifier Investor Tier

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'' or ''BZX Equities'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule by adopting a new Single Market Participant Identifier (''MPID'') Investor Tier under footnote 4 of the Fee Schedule, effective July 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0018 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Pursuant to footnote 4 of the Fee Schedule, the Exchange currently offers three Single MPID Investor Tiers that provide Members an opportunity to receive incrementally greater enhanced rebates from the standard rebate for liquidity adding orders that yield fee codes B, V and Y[4] where Members (by MPID) meet certain incrementally more difficult volume-based criteria. For example, Single MPID Investor Tier 1 currently provides an enhanced rebate of $0.0031 per share for qualifying orders (*i.e.,* yield fee code B, V and Y) where an MPID has (1) an ADAV[5] as a percentage of TCV[6] greater than or equal to 0.30%, and (2) an ADAV as a percentage of ADV[7] greater than or equal to 90%. Single MPID Investor Tier 2 provides an enhanced rebate of $0.0032 per share for qualifying orders where an MPID has (1) an ADAV as a percentage of TCV greater than or equal to 0.75%, and (2) an ADAV as a percentage of ADV greater than or equal to 80% and Single MPID Investor Tier 3 provides an enhanced rebate of $0.0032 per share for Tape B securities or $0.00033 [sic] per share for Tapes A and C securities for qualifying orders where an MPID has (1) a Step-Up ADV[8] as a percentage of TCV greater than or equal to 0.10% from May 2021; or MPID has a Step-Up ADV≥8,000,000 from May 2021, and (2) an ADAV as a percentage of TCV greater than or equal to 0.55%; or an ADAV greater than or equal to 50,000,000.

The Exchange proposes to offer a new Single MPID Investor Tier 1 (and, subsequently update the titles of current Tier 1 to Tier 2, current Tier 2 to Tier 3 and current Tier 3 to Tier 4). New Tier 1 provides a proposed enhanced rebate $0.0030 for a Member's qualifying orders where an MPID has (1) a Step-Up ADV from May 2021 greater than or equal to 0.10% of TCV, or a Step-Up ADV greater than or equal to 8,000,000 from May 2021, and (2) adds a Step-Up ADAV from May 2021 greater than or equal to 0.05% of TCV. Members that achieve the proposed Single MPID Investor Tier 1 must therefore increase the amount of overall liquidity, both add and remove volume, that they provide on BZX over a baseline amount, thereby contributing to a deeper and more liquid market. More specifically, incentivizing an increase in both liquidity adding volume and in liquidity removing volume, through additional criteria and enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange notes that volume-based rebates such as that proposed herein have been widely adopted by exchanges,[11] including the Exchange,[12] and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (May 26, 2021), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[4] Fee code B is appended to displayed orders adding liquidity to BZX (Tape B), fee code V is appended to displayed orders adding liquidity to BZX (Tape A), and fee code V [sic] is appended to displayed orders adding liquidity to BZX (Tape C). Each is provided a rebate of $ 0.00180.

[5] ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[6] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[7] ADV means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[8] ''Step-up ADV'' means ADV in the relevant baseline month subtracted from current day ADV.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See generally* NYSE Price List, Transaction Fees; Nasdaq Equity 7, Section 118(a)(1), Fees for Execution and Routing of Orders in Nasdaq-Listed Securities; and EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[12] *See* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes.

In particular, the Exchange believes the proposed Single MPID Investor Tier 1 is a reasonable means to encourage Members to increase their relative add and remove liquidity on the Exchange each month over a predetermined baseline by offering Members' an additional opportunity to meet criteria to receive an enhanced rebate. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, and greater remove volume order flow may increase transactions on the Exchange, which the Exchange believes incentivizes liquidity providers to submit additional liquidity and execution opportunities. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

Further, the Exchange believes that proposed Tier 1 is reasonable as it does not represent a significant departure from the criteria or corresponding enhanced rebates currently offered in the Fee Schedule, including other Single MPID Investor Tiers, and that the proposed enhanced rebate is commensurate with the new criteria. Particularly, the proposed rebate is reasonably based on the difficulty of satisfying the tier's proposed criteria as compared to the existing Single MPID Investor Tiers, which provide higher rebates for more stringent criteria. Indeed, the proposed criteria in new Tier 1 includes smaller volume threshold percentages that Members can achieve than Tier 2 (current Tier 1), and, as a result, a lesser enhanced rebate of $0.0030, as proposed, than the enhanced rebate offered in Tier 2 ($0.0031).

The Exchange also believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for new Single MPID Investor Tier 1 and have the opportunity to meet the tier's criteria and receive the applicable enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least six Members will be able to satisfy the criteria proposed under the new tier. The Exchange also notes that the proposed tier will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding proposed enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed new Single MPID Investor Tier applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed change to adopt a new Single MPID Investor Tier burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by adopting an additional pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[13] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[14] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

[13] *See supra* note 3.

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

dealers'. . . .''.[15] Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b–4[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–048 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15341 Filed 7–19–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92400; File No. SR–NYSEARCA–2021–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

July 14, 2021.

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 July 1, 2021, NYSE Arca, Inc. (''NYSE Arca'' 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 the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (1) eliminate an alternative credit applicable under Tier 2 pricing tier, and (2) eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers. The Exchange proposes to implement the fee changes effective July 1, 2021. 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 the Fee Schedule to (1) eliminate an alternative credit applicable under Tier 2 pricing tier, and (2) eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers. The Exchange proposes to implement the fee changes effective July 1, 2021.

Currently, a Tier 2 credit of $0.0029 per share for orders in Tape A and Tape C Securities that provide liquidity to the Book, and a credit of $0.0022 per share for orders in Tape B Securities[4] that

[15] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An additional credit applies to ETP Holders and Market Makers affiliated with LMMs that provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. *See* LMM

Continued

provide liquidity to the Book, applies to ETP Holders [5] that either (1) provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (2) provide liquidity of 0.10% of more of the US CADV per month, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (''OCC''). In May 2019, the Exchange adopted a higher credit of $0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and $0.0024 per share for orders that provide liquidity in Tape B Securities. The higher credit is applicable for orders that provide displayed liquidity to the Book for ETP Holders and Market Makers that meet the requirements of Tier 2 [6] and, for the billing month, (1) execute providing volume equal to at least 0.30% of US CADV, (2) execute removing volume equal to at least 0.285% of US CADV, and (3) execute Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV.[7]

The Exchange proposes to eliminate the higher credit of $0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and $0.0024 per share for orders that provide liquidity in Tape B Securities and remove it from the Fee Schedule. The Exchange has observed that not a single ETP Holder has qualified for the higher credit over the last six months. Given that the higher credit adopted by the Exchange has not served to meaningfully increase activity on the Exchange, the Exchange has determined to eliminate it from the Fee Schedule. The Exchange is not proposing any other change to the Tier 2 pricing tier.

Additionally, the Exchange proposes to eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers.

The Exchange adopted volume-based tiers applicable to Tracking Orders [8] in 2009 in order to incentivize the use of this order type and attract liquidity to the Exchange.[9] Currently, Tracking Order Tier 1 currently offers ETP Holders a credit of $0.0015 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month greater than or equal to 10 million shares. Additionally, Tracking Order Tier 2 currently offers ETP Holders a credit of $0.0012 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month between 5 million shares and 9,999,999 shares. Finally, Tracking Order Tier 3 currently offers ETP Holders a credit of $0.001 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month between 1 million shares and 4,999,999 shares.[10]

No ETP Holder has qualified for the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers in the last six months. Given that the pricing incentives offered under these tiers have not served to meaningfully increase activity on the Exchange or attract order flow in any meaningful way, the Exchange proposes to eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers and remove them from the Fee Schedule. Given that the Tracking Order functionality continues to be available on the Exchange, the Exchange proposes to retain Tracking Order Tier 3, which provides the minimum level of credit for the use of Tracking Orders on the Exchange. The Exchange also proposes to amend the volume requirement applicable to current Tracking Order Tier 3 so that the $0.001 per share credit would be applicable for Tracking Orders that result in executions on the Exchange with an average daily volume per month of at least 1 million shares. Finally, with the proposed elimination of Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers, the Exchange proposes to rename current Tracking Order Tier 3 as Tracking Order Tier 1.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change to eliminate the Tier 2 credit of $0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and $0.0024 per share for orders that provide liquidity in Tape B Securities, and eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers is reasonable because each of the pricing tiers that are the subject of this proposed rule change have been underutilized and have generally not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. In the last six months, no ETP Holder has availed itself of the higher Tier 2 credit. Similarly, no ETP Holder has qualified for Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers in the last six months. The Exchange does not anticipate any ETP Holder in the near future to qualify for any of the tiers that are the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tiers that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule. The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable and not unfairly

Transaction Fees and Credits on the Fee Schedule for the applicable tiered credits.

[5] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[6] To qualify for Tier 2, ETP Holders and Market Makers must provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (a) provide liquidity an average daily share volume per month of 0.25% or more, but less than 0.70% of the US CADV, (b) execute removing volume in Tape B Securities equal to at least 0.40% of US Tape B CADV, and (c) are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.25% of total Customer equity and ETF option ADV as reported by OCC. *See* Tier 2, Fee Schedule.

[7] *See* Securities Exchange Act Release No. 85888 (May 17, 2019), 84 FR 23821 (May 23, 2019) (SR–NYSEArca–2019–37).

[8] *See* NYSE Arca Rule 7.31–E(d)(4). A Tracking Order is an order to buy (sell) with a limit price that is not displayed, does not route, must be entered in round lots and designated Day, and trades only with an order to sell (buy) that is eligible to route.

[9] *See* Securities Exchange Act Release No. 60944 (November 5, 2009), 74 FR 58668 (November 13, 2009) (SR–NYSEArca–2009–99). *See also* Securities Exchange Act Release No. 66379 (February 10, 2012), 77 FR 9277 (February 16, 2012) (SR–NYSEArca–2012–11).

[10] *See* Securities Exchange Act Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR–NYSEArca–2012–17).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

discriminatory because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder.

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

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange's proposal to eliminate certain requirements and credits, and pricing tiers in their entirety, will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act given that not a single ETP Holder has qualified for any of the credits under the pricing tiers that are the subject of this proposed rule change in the past six months. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that none of the pricing tiers proposed for deletion have served their intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange. Moreover, ETP Holders can choose to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive.

Intermarket Competition. The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would 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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2021–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2021–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2021–60 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15335 Filed 7–19–21; 8:45 am]

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[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92404; File No. SR–Phlx–2021–41]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Rules

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules at Options 8, Section 2 (Definitions); Section 8 (Trading Floor Registration); Section 12 (Clerks); Section 22 (Execution of Options Transactions on the Trading Floor); Section 28 (Responsibilities of Floor Brokers); and Section 39 (Option Minor Rule Violations and Order and Decorum Regulations) at C–2 (Options Floor Based Management System).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 8, Section 2 (Definitions); Section 8 (Trading Floor Registration); Section 12 (Clerks); Section 22 (Execution of Options Transactions on the Trading Floor); Section 28 (Responsibilities of Floor Brokers); and Section 39 (Option Minor Rule Violations and Order and Decorum Regulations) at C–2 (Options Floor Based Management System). Each change is described below.

The Exchange also proposes a technical amendment to Options 10, Section 20 (Options Communications).

Options 8, Section 2

The Exchange proposes to amend Options 8, Section 2, Definitions, to alphabetize the existing definitions. The Exchange proposes to relocate and renumber the current definitions without change, with one exception which is described below. The Exchange proposes to amend the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add ''/her'' next to ''his'' in two places. The amendment to this rule will bring greater clarity to the defined term.

The Exchange proposes to add two new definitions, ''Floor Transaction'' and ''Remote FBMS Transaction'' to Options 8, Section 2. The Exchange proposes to define ''Floor Transaction'' as a transaction that is effected in open outcry on the Exchange's Trading Floor. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The Exchange also proposes to define ''Remote FBMS Transaction.'' The Exchange recently amended Options 8, Section 28, ''Responsibilities of Floor Brokers'' at subsection (g) and Section 30, ''Crossing, Facilitation and Solicited Orders'' at subsection (e) to permit Floor Brokers to utilize the Options Floor Based Management System (''FBMS''),[3] remotely,[4] to enter certain orders that do not require exposure in open outcry.[5] At this time the Exchange proposes to define a ''Remote FBMS Transaction'' as a transaction that is effected by a Floor Broker, while not physically present on the Trading Floor, by submitting limit, market or stop orders pursuant to Options 8, Section 28(g) and Floor Qualified Contingent Cross Orders pursuant to Options 8, Section 30(e) to the electronic order book, through FBMS, pursuant to Options 8, Sections 28 and 30, respectively, in accordance with the Prior Rule Change. Further, the Exchange proposes to specify that members and member organizations must comply with certain regulatory requirements, unless the member or member organization is otherwise exempt from the requirements in accordance with Supplementary Material .08 to Options 10, Section 6[6] or Phlx General 4, Rule 1230.[7] The Exchange proposes to state that in order to conduct remote FBMS transactions, unless exempt from such requirements, Floor Brokers are subject to the following regulatory requirements: (1) Compliance with branch office requirements as described in Supplementary Material .08 to Options 10, Section 6, as well as supervision of such branch office as described in Phlx General 9, Section 20; and (2) compliance with applicable registration requirements described in Phlx General 4.[8] Finally, the Exchange proposes to make clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. The proposed definition would describe and cite to the types of orders that may be submitted remotely by a Floor Broker for ease of location in the Options 8 Rules. Further, the proposed rule indicates the various existing Phlx Rules that are relevant today for regulatory compliance when transacting Remote FBMS Transactions. The last sentence of the proposed rule indicates that open outcry transactions may only be effected while physically present on the Exchange's Trading Floor and therefore uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. Today, Floor Brokers must comply with these regulatory requirements. This proposed rule would serve as a guide for Floor Brokers conducting Remote FBMS Transactions.

[3] FBMS, an order management system, is the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange's Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx's electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

[4] Utilizing FBMS while not physically present on the Trading Floor would be considered remote access.

[5] *See* Securities Exchange Act Release No. 90909 (January 13, 2021), 86 FR 6389 (January 21, 2021) (SR–Phlx–2021–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Phlx Options 8, Section 28, ''Responsibilities of Floor Brokers'' and Section 30, ''Crossing, Facilitation and Solicited Orders'') (''Prior Rule Change'').

[6] Supplementary Material .08(i)–(vii) to Options 10, Section 6 describe branch office exclusions.

[7] Phlx General 4 Rules are incorporated by reference to the General 4 Rules of The Nasdaq Stock Market LLC. General 4, Rule 1230 describes associated persons exempt from registration.

[8] General 4 Rules describe registration, qualification and continuing education requirements. Phlx floor members are required to comply with Phlx General 4 Rules. If a member is no longer present on a trading floor, the member would not be subject to the exemption associated with effecting transactions on the floor of another national securities exchange. A Floor Broker conducting a Remote FBMS Transaction would therefore need to comply with General 4 registration requirements, including but not limited to, the Series 57 registration.

Options 8, Sections 8 and 12

The Exchange proposes to update cross citations to General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks to reflect The Nasdaq Stock Market LLC's (''Nasdaq'') General 4 rule numbering that was amended.[9] These amendments are non-substantive.

The Exchange proposes to amend Options 8, Section 12, Clerks, at subparagraph (c) to remove the phrase ''or assigned to their employer's clearing firm.'' Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange proposes to update a citation to Options 8, Section 22(a)(3). The citation is incorrect and should instead refer to Options 8, Section 22(a)(2). There is no Options 8, Section 22(a)(3). Similar changes are also proposed for Options 8, Section 28(e)(2) and Options 8, Section 39 at C–2 to correct improper citations.

Options 8, Section 28

The Exchange proposes to amend Options 8, Section 28, Responsibilities of Floor Brokers, at subsection (g) to replace the word ''limit'' with ''electronic'' before the term ''order book.'' The term ''electronic order book'' makes clear the order book is being described. Also, the Exchange notes that, today, Floor Brokers may enter limit,[10] market,[11] stop-limit or stop orders [12] into the electronic order book. Options 8, Section 28(g) only refers to limit orders when it should have also noted market, stop-limit and stop orders. With respect to remotely entering limit orders into the electronic order book through FBMS, the Prior Rule Change stated that this capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.[13] Placing limit orders on the electronic order book does not require exposure in open outcry and allows Floor Brokers the ability to clear resting Customer orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).[14] The Exchange notes that Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers' orders from the electronic order book. Also, placing market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry today.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications. Phlx Rule 1049 was the prior reference to Options 10, Section 20.[15] At this time the Exchange proposes to replace ''Nasdaq PHLX Rule 1049'' with ''Options 10, Section 20.'' In addition the Exchange proposes to replace ''Nasdaq PHLX'' throughout this rule with ''Phlx'' to conform the reference to the Exchange to the remainder of the Rulebook.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 8, Section 2

The Exchange's proposal to alphabetize the existing definitions within Options 8, Section 2 is consistent with the Act as the definitions will become easier to locate. Amending the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add ''/her'' next to ''his'' in two places is a non-substantive rule change. These amendments are intended to bring greater clarity to the Options 8 Rules.

The proposal to define ''Floor Transaction'' as a transaction that is effected in open outcry on the Exchange's Trading Floor is consistent with the Act. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The defined term is consistent with the use of that term in the current rules. This defined term will bring greater clarity to the Options 8 Rules.

The Exchange's proposal to define ''Remote FBMS Transaction'' is consistent with the Act. The Exchange recently amended Options 8, Section 28, ''Responsibilities of Floor Brokers'' at subsection (g) and Section 30, ''Crossing, Facilitation and Solicited Orders'' at subsection (e) to permit Floor Brokers to utilize the FBMS remotely,[18] to enter certain orders that do not require exposure in open outcry.[19] The proposed term ''Remote FBMS Transaction'' would serve to provide members and member organizations a description of the manner in which a Floor Broker may remotely transact

[9] *See* Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR–NASDAQ–2020–079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

[10] A Limit Order is an order to buy or sell a stated number of option contracts at a specified price, or better. *See* Options 8, Section 32(a)(2).

[11] A Market Order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the post. *See* Options 8, Section 32(a)(1).

[12] A Stop-Limit Order is a contingency order to buy or sell at a limited price when a trade or quote on the Exchange for a particular option contract reaches a specified price. A Stop-Limit Order to buy becomes a Limit Order executable at the limit price or better when the option contract trades or is bid on the Exchange at or above the stop-limit price. A Stop-Limit Order to sell becomes a Limit Order executable at the limit price or better when the option contract trades or is offered on the Exchange at or below the stop-limit price.

A Stop Order is a contingency order to buy or sell when a trade or quote on the Exchange for a particular option contract reaches a specified price. A Stop Order to buy becomes a Market Order when the option contract trades or is bid on the Exchange at or above the stop price. A Stop Order to sell becomes a Market Order when the option contract trades or is offered on the Exchange at or below the stop price.

Notwithstanding the foregoing, a Stop or Stop-Limit Order shall not be elected by a trade that is reported late or out of sequence. *See* Options 8, Section 32(b)(1) and (2).

[13] *See* Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR–Phlx–2013–09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (''FBMS'') by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided the following explanation, ''For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price.'' Phlx XL refers to the electronic order book.

[14] *See supra* note 5.

[15] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 4.

[19] *See supra* note 5.

certain orders while not physically present on the Trading Floor. This defined term provides the citations to the applicable rules and further makes clear the current regulatory requirements that apply to such remote activity. Today, Floor Brokers must comply with these regulatory requirements provided they are not exempt from those requirements pursuant to Supplementary Material .08 to Options 10, Section 6 or Phlx General 4, Rule 1230. Also, the defined term makes clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. This proposed rule would serve as a guide for Floor Brokers conducting Remote FBMS Transactions.

Options 8, Sections 8 and 12

The Exchange's proposal to update cross citations to Nasdaq General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks is consistent with the Act. These amendments are non-substantive and will clarify the rules.

The Exchange's proposal to amend Options 8, Section 12, Clerks at subparagraph (c) to remove the phrase ''or assigned to their employer's clearing firm'' is consistent with the Act. Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange's proposal to update citations to Options 8, Section 22(a)(3) within Options 8, Section 22(a)(2)(E)(i), Options 8, Section 28(e)(2), and Options 8, Section 39 at C–2 is consistent with the Act as the rule text corrects improper citations. Citations to Options 8, Section 22(a)(3) should instead refer to Options 8, Section 22(a)(3). Options 8, Section 22(a)(3) does not exist.

Options 8, Section 28

The Exchange's proposal to amend Options 8, Section 28, Responsibilities of Floor Brokers, to replace the word ''limit'' with ''electronic'' before the term ''order book'' is consistent with the Act. The term ''electronic order book'' makes clear that specific order book being described.

The Exchange's proposal to amend Options 8, Section 28 to provide that Floor Brokers may enter limit, market, stop-limit or stop orders into the electronic order book is consistent with the Act. Currently, Options 8, Section 28 only refers to limit orders when it should have also noted market, stop-limit and stop orders. With respect to remotely entering limit orders into the electronic order book through FBMS, the Prior Rule Change stated that this capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.[20] Placing limit orders on the electronic order book does not require exposure in open outcry and allows Floor Brokers the ability to clear resting Customers orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).[21] Today, Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers orders from the electronic order book. Also, placing market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications, and replace ''Nasdaq PHLX'' throughout this rule with ''Phlx'' are non-substantive amendments that will clarify the Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 8, Section 2

The Exchange's proposal to alphabetize the existing definitions within Options 8, Section 2 does not impose an undue burden on competition as the definitions will become easier to locate. Amending the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add ''/her'' next to ''his'' in two places is a non-substantive rule change. These amendments are intended to bring greater clarity to the Options 8 Rules.

The proposal to define ''Floor Transaction'' as a transaction that is effected in open outcry on the Exchange's Trading Floor does not impose an undue burden on competition. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The defined term is consistent with the use of that term in the current rules. This defined term will bring greater clarity to the Options 8 Rules. The Exchange's proposal to define ''Remote FBMS Transaction'' does not impose an undue burden on competition. The proposed term ''Remote FBMS Transaction'' would serve to provide members and member organizations a description of the manner in which a Floor Broker may remotely transact certain orders while not physically present on the Trading Floor. This defined term provides the citations to the applicable rules and further makes clear the current regulatory requirements that apply to such remote activity. Today, Floor Brokers must comply with these regulatory requirements. Also, the defined term makes clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor.

Options 8, Sections 8 and 12

The Exchange's proposal to update cross citations to Nasdaq General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks does not impose an undue burden on competition. These amendments are non-substantive and would clarify the current rules.

The Exchange's proposal to amend Options 8, Section 12, Clerks at subparagraph (c) to remove the phrase ''or assigned to their employer's clearing firm'' does not impose an undue burden on competition. Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange's proposal to update citations to Options 8, Section 22(a)(3) within Options 8, Section 22(a)(2)(E)(i), Options 8, Section 28(e)(2), and Options 8, Section 39 at C–2 does not impose an undue burden on competition as the rule text corrects improper citations. Citations to Options 8, Section 22(a)(3) should instead refer to Options 8, Section 22(a)(3). Options 8, Section 22(a)(3) does not exist.

Options 8, Section 28

The Exchange's proposal to amend Options 8, Section 28, Responsibilities of Floor Brokers, at subsection (g) to replace the word ''limit'' with ''electronic'' before the term ''order book'' does not impose an undue

[20] *See supra* note 10.

[21] *See supra* note 5.

burden on competition. The term ''electronic order book'' makes clear that specific order book being described.

The Exchange's proposal to amend Options 8, Section 28(g) to provide that Floor Brokers may enter limit, market, stop-limit or stop orders into the electronic order book does not impose an undue burden on competition. Currently, Options 8, Section 28(g) only refers to limit orders when it should have also noted market, stop-limit and stop orders. The Exchange notes that Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers orders from the electronic order book. Today, placing market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications, and replace ''Nasdaq PHLX'' throughout this rule with ''Phlx'' are non-substantive amendments that will clarify the Rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–41. 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–Phlx–2021–41 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15339 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92410; File No. SR–DTC–2021–012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Consisting of Modifications to the Text of the Rules and the Procedures, of the Service Guide for the DTC Canadian-Link Service and the DTC Operational Arrangements Relating to the Elimination of the Canadian Dollar Settlement Feature of the Canadian-Link Service

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of DTC [5] consists of modifications to the text of the Rules and the Procedures,[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws, and Organization Certificate of DTC (''Rules''), *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf* and the Guide.

[6] Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *supra* note 5. Pursuant to Rule 27, each Participant and DTC is bound by the Procedures and any amendment thereto in the same manner as it is

Continued

including Rule 30, of the service guide (''Guide'')[7] for the DTC Canadian-Link Service (''Canadian-Link Service'') and the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (''OA'')[8] relating to the elimination of the Canadian dollar (''CAD'') settlement feature of the Canadian-Link Service, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the text of the Rules and the Procedures, including Rule 30,[9] the Guide and the OA relating to the elimination of the CAD settlement feature of the Canadian-Link Service, as described below.

Background

In 2006, DTC established a ''northbound'' Canadian-Link Service that supports transactions settled in CAD.[10] Rule 30[11] describes the operation of the Canadian-Link Service, that permits DTC Participants using the Canadian Link Service (''Canadian-Link Participants'') to (A) settle Delivery Versus Payment (''DVP'') Securities transactions with participants (''CDS Participants'') of The Canadian Depository for Securities Limited (''CDS'') and other Canadian-Link Participants in CAD and (B) transfer CAD to or receive CAD from CDS Participants and other Canadian-Link Participants without any corresponding delivery or receipt of Securities.[12]

The Canadian-Link Service provides Participants with a single depository interface for CAD transactions. The link facilitates Participants' ability to maintain U.S. and Canadian Security positions in their DTC accounts for Securities listed in both Canada and the United States (*i.e.,* dually listed). This eliminates the need for Participants to maintain separate positions in an eligible[13] Security in CDS for CAD settlements and in DTC for USD settlements. It also eliminates the need for Participants to reposition Securities inventory between DTC and CDS in preparation for corporate action events and or transaction processing for dually listed issues.

Transactions between Canadian-Link Participants and CDS Participants are processed through an omnibus account maintained by DTC at CDS (''DTC Omnibus Account'') in accordance with the rules and procedures of CDS. Canadian-Link Participants are able (i) to deliver Securities to or receive Securities from CDS Participants against payment (*i.e.,* DVP) in CAD and (ii) to transfer funds to or receive funds from CDS Participants in CAD without any corresponding delivery or receipt of Securities. Transactions between Canadian-Link Participants and other Canadian-Link Participants are processed through accounts at DTC in accordance with the Rules.

For both transactions (i) between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account and (ii) between Canadian-Link Participants and other Canadian-Link Participants processed through accounts at DTC, there is a single end-of-day CAD money settlement between DTC and its Canadian-Link Participants.[14] For the transactions between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account, there is a separate end-of-day CAD money settlement between CDS and DTC.

As with all transactions processed at DTC, DTC maintains risk controls with respect to transactions processed by Canadian-Link Participants, including the Net Debit Cap and Collateral Monitor.[15] With respect to Collateral Monitor, each Canadian-Link Participant has a single Collateral Monitor with respect to transactions processed for such Participant through the Canadian-Link Service and other transactions processed by DTC for such Participant.

Proposed Rule Change

In recent years, activity at DTC in CAD has accounted for less than 0.20 percent of DTC's average daily valued settlement volume. Most of this activity relates to distributions such as principal, interest and dividend payments in Securities held at CDS by DTC on behalf of Participants. While Participants continue to use the Canadian-Link Service for custody purposes to position Securities inventory at CDS through DTC's CDS account and receive related distribution payments, no Participants have effectuated a DVP of Securities through the Canadian-Link Service since 2018. DTC attributes this lack of DVP activity to a lack of demand among its Participants for the DVP aspect of the Canadian-Link Service.

CDS recently communicated to CDS's participants, including DTC, that it will be modernizing its settlement system through an initiative referred to as the Post Trade Modernization (''CDS PTM'') Project.[16] For DTC to continue to maintain access to CDS's CAD settlement services, it would have been necessary for DTC to perform systems development in order to be able to continue to use this aspect of the Canadian-Link service. However, the CDS modernization does not adversely impact DTC's ability to hold Securities

bound by the Rules. *See* Rule 27 at 97, *supra* note 5.

[7] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Canadian_Dollar_Settlement.pdf.*

[8] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[9] *Supra* note 5.

[10] *See* Securities Exchange Act Release No. 52784 (November 16, 2005), 70 FR 70902 (November 23, 2005) (SR–DTC–2005–08).

[11] *Supra* note 5.

[12] The Canadian-Link Service also provides for Cross-Border USD Securities Transactions between Participants and CDS Participants. *See* Rule 30, Section 1(a)(2), *supra* note 5. *See also* Securities Exchange Act Release No. 55239 (February 5, 2007), 72 FR 6797 (February 13, 2007) (SR–DTC–2006–15).

[13] DTC may determine the Securities that are eligible for the Canadian-Link Service. Some Securities may be eligible for all purposes of the Canadian-Link Service, and some Securities may be eligible only for limited purposes (*e.g.,* clearance and settlement through the facilities of CDS but only custody and asset servicing through the facilities of DTC). *See* Rule 30, Section 4, *supra* note 5.

[14] Pursuant to Section 1(h)(15) of Rule 30, the term ''Canadian-Link CAD Money Settlement'' is defined as the money settlement of Canadian-Link Transactions in CAD Funds between the DTC and Canadian-Link Participants. Rule 30, *supra* note 5. DTC notes that in a list of defined terms at the beginning of Rule 30, the definition of Canadian-Link CAD Money Settlement is specified to appear in Section 1(a)(15); however, the definition actually appears in Section 1(h)(15) of Rule 30 and not Section 1(a)(15) of Rule 30. *Id.*

[15] The term ''Collateral Monitor'' of a Participant, as used with respect to its obligations to the Corporation, means, on any Business Day, the record maintained by the Corporation for the Participant which records, in the manner specified in Procedures, the algebraic sum of (i) the Net Credit or Debit Balance of the Participant and (ii) the aggregate Collateral Value of the Collateral of the Participant. Rule 1, Section 1 at 3, *supra* note 5.

[16] *See* CDS's website at *https://www.cds.ca/about/post-trade-modernization* for information published by CDS regarding CDS PTM.

at CDS on behalf of Participants, receive distributions on behalf of Participants and facilitate Free Deliveries [17] through the link.

Rule 30, Section 2 provides:

The Corporation has entered into various agreements with CDS, and as a participant of CDS has undertaken to abide by the rules, procedures and user guides of CDS (the ''Rules and Procedures of CDS''). Such agreements and the Rules and Procedures of CDS, as the same may be amended or supplemented from time to time, are collectively referred to as the ''CDS Documents''. Notwithstanding anything else contained in this Rule 30 or otherwise in the Rules and Procedures of the Corporation, the Corporation shall offer the Canadian-Link Service only for so long as the Corporation continues to be a participant of CDS and there have been no changes in the CDS Documents, or actions taken by CDS, which would, in the judgment of the Corporation, prevent or impair the ability of the Corporation to offer the Canadian-Link Service or make it impractical or onerous for the Corporation to do so.

DTC has determined that it would no longer be able to access CDS's CAD settlement service without making necessary system changes consistent with CDS PTM. In DTC's judgement, it would be impractical for DTC to incur the costs to undertake such changes, including incurring development costs, due to the lack of demand by its Participants to use the valued aspect of the Canadian Link Service.

In this regard, because there is no Participant demand for valued CAD Securities transaction and CAD Funds transfer aspect of the Canadian-Link Service, it is DTC's judgement that it would be impractical for DTC to continue to process valued CAD Securities and CAD Funds transfer transactions and, in accordance with its discretion set forth in Rule 30 as described above, DTC has discontinued processing of CAD Securities and CAD Funds transactions through the Canadian-Link Service.[18] DTC proposes to amend the Rules to clarify its Rules in this regard and reflect the elimination of the function of processing of CAD Securities and CAD Funds transactions pursuant to the provisions of Rule 30, Section 2.[19] However, because the CDS PTM changes are not expected to materially impact DTC's ability to perform custody and process Free Deliveries at CDS, DTC would continue to maintain its membership, including its Securities account, at CDS, to hold Securities on behalf of DTC Participants at CDS and offer the functionality allowing Participants the ability to process Free Deliveries through the Canadian-Link Service. In addition, DTC would continue to pass distributions paid on Securities held in its DTC account to the applicable Participants in CAD or USD.[20]

In this regard, DTC proposes to update the text of its Rules to reflect the discontinuance of processing valued CAD Securities transactions and CAD Funds transfers through the Canadian-Link Service.

Proposed Rule Changes

Proposed Changes to Rulebook

Pursuant to the proposed rule change, DTC will delete text in Rule 30 relating to the processing of CAD transactions in the Canadian-Link Service, including as follows.

Defined Terms

Defined terms relating to the description of the processing of CAD transactions in Rule 30 would be deleted, including CAD Funds,[21] Canadian-Link CAD Money Settlement,[22] Canadian-Link CAD Net Debit Cap,[23] Canadian-Link CAD Net Settlement Credit,[24] Canadian-Link CAD Settlement Debit,[25] Canadian-Link Funds Transactions,[26] Canadian-Link Net Debit Cap,[27] Canadian-Link Net Settlement Credit,[28] Canadian-Link Net Settlement Debit,[29] Canadian-Link Participants Fund Cash,[30] Canadian-Link Required Participants Fund Deposit,[31] Canadian-Link USD Net Debit Cap,[32] Canadian-Link USD Net Settlement Credit,[33] Canadian-Link USD Net Settlement Debit,[34] CDS Payment Exchange,[35] Canadian-Link Securities

[17] Pursuant to Rule 1, the term ''Free Delivery'' means a Delivery free of any payment by the Receiver through the facilities of the Corporation, as provided in Rule 9(B) and as specified in the Procedures. See *supra* note 5.

[18] *See* DTC Important Notice 13639–20 (July 10, 2020). *Available at https://www.dtcc.com/-/media/Files/pdf/2020/7/10/13639-20.pdf.*

[19] *Supra* note 5.

[20] *See* OA at 23–27, *supra* note 8.

[21] Pursuant to Section 1(h)(3) of Rule 30, the term ''CAD Funds'' are defined as funds denominated in Canadian dollars. *See* Rule 30, *supra* note 5.

[22] *See supra* note 14.

[23] Pursuant to Section 8(a) of Rule 30, the term ''Canadian-Link CAD Net Debit Cap'' is defined as a limit established by DTC (i) on the negative CAD Funds balance that may, from time to time, be incurred by a Canadian-Link Participant in respect of Canadian-Link Transactions processed for such Participant through the Canadian-Link Service in CAD Funds. *See* Rule 30, *supra* note 5.

[24] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link CAD Net Settlement Credit'' is defined as the net amount of CAD Funds, calculated by DTC by a time on a CDS Business Day set forth in the Procedures, payable by DTC to a Canadian-Link Participant. *Id.*

[25] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link CAD Net Settlement Debit'' is defined as the net amount of CAD Funds, calculated by DTC by a time on a CDS Business Day set forth in the Procedures, payable to DTC by a Canadian-Link Participant. *Id.*

[26] Pursuant to Rule 30, Section 1(h)(8), the term ''Canadian-Link Funds Transactions'' is defined as Cross-Border CAD Funds Transactions and Intra-DTC CAD Funds Transactions, referred to individually or collectively as the context may require. *Id.*

[27] Pursuant to Rule 30, Section 8(a), the term ''Canadian-Link Net Debit Cap'' is defined as the Canadian-Link CAD Net Debit Cap and Canadian-Link USD Net Debit Cap referred to, individually or collectively as the context may require. This section provides that the Canadian-Link Net Debit Cap of each Canadian-Link Participant shall be determined by a formula (taking into account the volume of Canadian-Link Transactions of each Canadian-Link Participant) that shall be fixed by DTC and set forth in the Procedures. *Id.*

[28] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link Net Settlement Credit'' is defined as the Canadian-Link CAD Net Settlement Credit and Canadian-Link USD Net Settlement Credit referred to, individually or collectively as the context may require. *Id.*

[29] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link Net Settlement Debit'' is defined as the Canadian-Link CAD Net Settlement Debit and Canadian-Link USD Net Settlement Debit referred to, individually or collectively as the context may require. *Id.*

[30] Pursuant to Rule 30, Section 6(c), the term ''Canadian-Link Participants Fund Cash'' is defined as that portion of the cash in the Participants Fund equal to the aggregate amount of the Canadian-Link Required Participants Fund Deposits of all Canadian-Link Participants. *Id.*

[31] Pursuant to Rule 30, Section 6(a), the term ''Canadian-Link Required Participant Fund Deposit'' is defined as an amount each Canadian-Link Participant shall be required to deposit to the Participants Fund (as described in Section 1 of Rule 4) an amount of USD Funds in addition to the amount of USD Funds specified in Section 1(a)(i) of Rule 4. The Canadian-Link Required Participants Fund Deposit shall be in cash. The Canadian-Link Required Participants Fund Deposit of each Canadian-Link Participant shall be determined by a formula (considering the volume of transactions of each Canadian-Link Participant) that shall be fixed by the DTC and set forth in the Procedures. DTC may, from time to time, change the formula for determining the Canadian-Link Required Participants Fund Deposits of Canadian-Link Participants; provided, however, that notice of such change shall be given to each Canadian-Link Participant at least ten Business Days in advance of the effective date thereof. *Id.*

[32] Pursuant to Rule 30, Section 8(a), a ''Canadian-Link USD Net Debit Cap'' is to be established by DTC on the negative USD Funds balance that may, from time to time, be incurred by a Canadian-Link Participant in respect to Canadian-Link Transactions processed for such Participant through the Canadian-Link Service in USD Funds. *Id.*

[33] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link USD Net Settlement Credit'' is defined as the net amount of USD Funds calculated by DTC by a time on a CDS Business Day set forth in the Procedures and payable by DTC to a Canadian-Link Participant. *Id.*

[34] Pursuant to Rule 30, Section 12(b), the term ''Canadian-Link USD Net Settlement Debit'' is defined as the net amount of USD Funds calculated by DTC by a time on a CDS Business Day set forth in the Procedures and payable to DTC by a Canadian-Link Participant. *Id.*

[35] Pursuant to Rule 30, Section 13(a), ''CDS Payment Exchange'' is defined as on each CDS Business Day, during a period of time set forth in the Rules and Procedures of CDS, when CDS is required to pay to DTC the amount of its DTC Omnibus Account CAD Net Settlement Credit, *id,* or DTC is required to pay to CDS the amount of its

Continued

Transactions,[36] CDS Settlement Recap,[37] CDS Settlement Recap Time,[38] Collateral Monitor Conversion Rate,[39] Cross-Border CAD Funds Transactions,[40] Cross-Border CAD Securities Transactions,[41] Cross-Border Net Additions,[42] Cross-Border USD Securities Transactions,[43] DTC Omnibus Account CAD Net Debit Cap,[44] DTC Omnibus Account CAD Net Settlement Credit,[45] DTC Omnibus Account CAD Net Settlement Debit,[46] DTC Omnibus Account Net Debit Cap,[47] DTC Omnibus Account Net Settlement Credit,[48] DTC Omnibus Account Net Settlement Debit,[49] DTC Omnibus Account USD Net Debit Cap,[50] DTC Omnibus Account USD Net Settlement Credit,[51] DTC Omnibus Account USD Net Settlement Debit,[52] DTC Canadian Settlement Bank,[53] DTC Settlement Payment Deadline,[54] DTC Settlement Recap,[55] DTC Settlement Recap Time,[56] Funds,[57] Intra-DTC CAD Funds Transactions,[58] Intra-DTC CAD Securities Transactions,[59] Participant Canadian Settlement Bank,[60] Payment Default Conversion Rate,[61] Payment

DTC Omnibus Account CAD Net Settlement Debit, as specified in the CDS Settlement Recap. All such payments to or by DTC are made to or by a Canadian bank acting on behalf of DTC. *Id.*

[36] Pursuant to Rule 30, Section 1(h)(7), ''Canadian-Link Securities Transactions'' is defined, individually or collectively as the context may require, Cross-Border CAD Securities Transactions, Cross-Border USD Securities Transactions and Intra-DTC CAD Securities Transactions. *Id.*

[37] Pursuant to Rule 30, Section 12(a), provides the definition of ''CDS Settlement Recap'' as follows: ''On each CDS Business Day, by a time set forth in the Rules and Procedures of CDS, CDS calculates and provides to the Corporation a settlement recap (the ''CDS Settlement Recap'') with (i) the net amount of CAD Funds payable by CDS to the Corporation (a ''DTC Omnibus Account CAD Net Settlement Credit'') or by the Corporation to CDS (a ''DTC Omnibus Account CAD Net Settlement Debit''), (ii) the net amount of USD Funds payable by CDS to the Corporation (a ''DTC Omnibus Account USD Net Settlement Credit'') or by the Corporation to CDS (a ''DTC Omnibus Account USD Net Settlement Debit'') and (iii) other information in respect of the Cross-Border Transactions processed by CDS for the Corporation on such CDS Business Day.'' *Id.*

[38] Pursuant to Rule 30, Section 12(a), ''CDS Settlement Recap Time'' is defined as time when CDS provides the CDS Settlement Recap to DTC. *Id.*

[39] Pursuant to Rule 30, Section 16(b), provides the definition of ''Collateral Monitor Conversion Rate'' as follows: ''If any computation has to be made requiring the conversion of an amount of CAD Funds into an amount of USD Funds for the purpose of calculating the Collateral Monitor of a Canadian-Link Participant pursuant to Section 9 of this Rule 30, the conversion rate for such purpose shall be a rate determined by a formula (taking into account exchange rate fluctuations) that shall be fixed by the Corporation and set forth in the Procedures (the ''Collateral Monitor Conversion Rate'').'' *Id.*

[40] Pursuant to Rule 30, Section 1(a)(4), the term ''Cross-Border CAD Funds Transactions'' is defined as the transfer of Canadian dollars between Participants of DTC and participants of CDS. *Id.*

[41] Pursuant to Rule 30, Section 1(a)(1), the term ''Cross-Border CAD Securities Transactions'' is defined as the settlement of valued transactions (A) in Securities that are Eligible Securities (as described in Section 1 of Rule 5) and in Securities that are not Eligible Securities (B) in Canadian dollars (C) between Participants of the Corporation and participants of CDS (''Cross-Border CAD Securities Transactions''). *Id.*

[42] Pursuant to Rule 30, Section 7(b), the term ''Cross-Border Net Additions'' is defined as any Cross-Border Securities credited to the DTC Omnibus Account. *Id.*

[43] Pursuant to Rule 30, Section 1(a)(2), the term ''Cross-Border USD Securities Transactions'' is defined as the settlement of valued transactions in (A) Securities that are not Eligible Securities (B) in US dollars (C) between Participants of DTC and participants of CDS. *Id.*

[44] Pursuant to Rule 30, Section 8(a), the term ''DTC Omnibus Account CAD Net Debit Cap'' is defined as a limit established by CDS on the negative CAD Funds balance that may, from time to time, be incurred in the DTC Omnibus Account in respect of Cross-Border Transactions processed for DTC through the facilities of CDS in CAD Funds. *Id.*

[45] *See supra* note 37.

[46] *Id.*

[47] Pursuant to Rule 30, Section 8(a), the terms ''DTC Omnibus Account CAD Net Debit Cap'' and ''DTC Omnibus Account USD Net Debit Cap'' are referred to, individually or collectively as the context may require, as the ''DTC Omnibus Account Net Debit Cap.'' *See* Rule 30, *supra* note 5.

[48] Pursuant to Rule 30, Section 12(a), the term ''DTC Omnibus Account Net Settlement Credit'' means the DTC Omnibus Account CAD Net Settlement Credit and DTC Omnibus Account USD Net Settlement Credit, individually or collectively as the context may require. *Id.*

[49] Pursuant to Rule 30, Section 12(a), the term ''DTC Omnibus Account Net Settlement Debit'' means the DTC Omnibus Account CAD Net Settlement Debit and DTC Omnibus Account USD Net Settlement Debit, individually or collectively as the context may require. *Id.*

[50] Pursuant to Rule 30, Section 8(a), the term ''DTC Omnibus Account USD Net Debit Cap'' is defined pursuant to the Rules and Procedures of CDS, as a limit established by CDS (i) on the negative USD Funds balance that may, from time to time, be incurred in the DTC Omnibus Account in respect of Cross-Border Transactions processed for the Corporation through the facilities of CDS in USD Funds. *Id.*

[51] *See supra* note 37.

[52] *Id.*

[53] Pursuant to Rule 30, Section 13(a), the term ''DTC Canadian Settlement Bank'' is defined as a Canadian bank acting on behalf of DTC for payments relating to CDS paying to DTC the amount of the DTC Omnibus Account CAD Net Settlement Credit, or DTC paying to CDS the amount of its DTC Omnibus Account CAD Net Settlement Debit, as specified in the CDS Settlement Recap. *See* Rule 30, *supra* note 5.

[54] Pursuant to Rule 30, Section 13(b), the term ''DTC Settlement Payment Deadline'' is defined as on each CDS Business Day, by a time set forth in the Procedures of the Corporation, each Canadian-Link Participant with a Canadian-Link CAD Net Settlement Debit shall pay to the Corporation the amount of its Canadian-Link CAD Net Settlement Debit, as specified in the DTC Settlement Recap. *See* Rule 30, *supra* note 5. The time when such payment must be made is referred to as the ''DTC Settlement Payment Deadline.'' *Id.*

[55] Pursuant to Rule 30, Section 12(b), the term ''DTC Settlement Recap'' is defined as described in the following: ''On each CDS Business Day, by a time set forth in the Procedures of the Corporation, the Corporation shall calculate and provide to each Canadian-Link Participant a settlement recap (a ''DTC Settlement Recap'') with (i) the net amount of CAD Funds payable by the Corporation to such Canadian-Link Participant (a ''Canadian-Link CAD Net Settlement Credit'') or by such Canadian-Link Participant to the Corporation (a ''Canadian-Link CAD Net Settlement Debit''), (ii) the net amount of USD Funds payable by the Corporation to such Canadian-Link Participant (a ''Canadian-Link USD Net Settlement Credit'') or by such Canadian-Link Participant to the Corporation (a ''Canadian-Link USD Net Settlement Debit'') and (iii) other information in respect of the Canadian-Link Transactions of such Canadian-Link Participant processed through the Canadian-Link Service on such CDS Business Day, including both Cross-Border Transactions with CDS Participants processed for such Participant through the DTC Omnibus Account and Intra-DTC Transactions with other Canadian-Link Participants processed for such Participant through Accounts with the Corporation.'' *Id.*

[56] Pursuant to Rule 30, Section 12(b), the term ''DTC Settlement Recap Time'' means the time when DTC provides the DTC Settlement Recap to Canadian-Link Participants. *Id.*

[57] Pursuant to Rule 30, Section 1(h)(5), the term ''Funds'' is defined as CAD Funds and USD Funds, individually or collectively as the context may require. *Id.*

[58] Pursuant to Rule 30, Section 1(a)(5), the term ''Intra-DTC CAD Funds Transactions'' is defined as the transfer of Canadian dollars between Participants of DTC and other Participants of DTC. *Id.*

[59] Pursuant to Rule 30, Section 1(a)(3), the term ''Intra-DTC CAD Securities Transactions'' is defined as the settlement of valued transactions (A) in Securities that are Eligible Securities (B) in Canadian dollars (C) between Participants of DTC and other Participants of DTC. *Id.*

[60] Pursuant to Rule 30, Section 13(d), the term ''Participant Canadian Settlement Bank'' is defined as a Canadian Bank acting on behalf of a Canadian bank to which all payments of CAD Funds to or by a Canadian-Link Participant shall be made. *Id.*

[61] Pursuant to Rule 30, Section 16 (c), ''Payment Default Conversion Rate'' is defined as follows: ''If any computation has to be made requiring the conversion of an amount of CAD Funds into an amount of USD Funds for the purpose of calculating the Gross Settlement Debit of a Canadian-Link Participant pursuant to Section 15 of this Rule 30, the conversion rate for such purpose shall be a rate determined by a formula (taking into account all factors incident to the default of such Participant in the payment of its Canadian-Link CAD Net Settlement Debit) that shall be fixed by the Corporation and set forth in the Procedures (the ''Payment Default Conversion Rate'').'' *Id.*

Default Exchange Rate[62] and USD Funds.[63]

Cross references to sections of Rule 30 for certain defined terms would be revised to reflect renumbering of the respective referenced sections, as more fully described below. The referenced section for the term (A) ''Canadian-Link Participants'' would be revised from Section 1(h)(1) to Section 1(e)(1), (B) ''Canadian-Link Securities'' from Section 1(h)(14) to Section 1(e)(8), (C) ''Canadian-Link Transactions'' from Section 1(h)(11) to Section 1(e)(5), ''CDS Business Day'' from Section 11(a) to Section 7(a), (D) ''CDS Participants'' from Section 1(h)(2) to Section 1(e)(2), (E) ''Cross-Border Securities'' from Section 1(h)(12) to Section 1(e)(6), (F) ''Cross-Border Transactions'' from Section 1(h)(9) to Section 1(e)(3), (G) ''DTC Business Day'' from Section 11(a) to Section 7(a), (I) ''Intra-DTC Securities'' from Section 1(h)(13) to Section 1(e)(7), and ''Intra-DTC Transactions'' from Section 1(h)(10) to Section 1(e)(4).

Section 1—Overview of Canadian Link Service

Section 1 of Rule 30 describes the scope of services offered by DTC relating to the Canadian-Link Service. Pursuant to the proposed rule change, Section 1 of Rule 30 would be revised to remove references to the processing of CAD Securities and CAD Funds transactions through the Canadian-Link service and provide only for processing of Free Deliveries through the link. These changes include:

(i) Consolidate subsection (a) of Section 1 by eliminating references to DTC processing of (1) Cross-Border CAD Securities Transactions, (2) Cross-Border USD Securities Transactions, (3) Intra-DTC CAD Securities Transactions, (4) Cross-Border CAD Funds Transactions and (5) Intra-DTC CAD Funds Transactions, and instead refer to processing of Free Deliveries only.

(ii) Subsection (b) of Section 1 which currently states, among other things, that DTC provides the Canadian-Link Service as a Securities Intermediary for its Participants, and all transactions in Securities and transfers of funds are subject to the Rules and Procedures of the Corporation, including this Rule 30 and the Procedures adopted pursuant to Rule 30, would be amended to delete the reference to ''and transfers of funds.'' This reference would be deleted as DTC would no longer offer the ability to process CAD Funds Transactions through the Canadian-Link Service. As indicated above, DTC notes that distributions such as principal, interest and dividend payments relating Securities held at CDS by DTC on behalf of Participants would continue to be processed through DTC's CAD Settling Bank to DTC Participants, pursuant to the applicable provisions of the OA. Processing of such distributions are conducted through DTC's asset servicing functions and are not part of the DVP functionality that DTC proposes to eliminate from its Rules and Procedures.

(iii) DTC would amend Subsection (c) of Section 1 to change references to ''seller'' and ''purchaser'' of Securities to ''Deliverer''[64] and ''Receiver,''[65] respectively, to harmonize the use of terms with DTC's rules related to settlement of Securities Deliveries and receives generally. DTC would also amend the text of this subsection to reflect the proposal that DVP transactions would no longer be processed through the Canadian-Link Service. In this regard, references to settlement in CAD would be deleted, and the text would refer to the crediting and debiting of Securities from a ''Deliverer'' to a ''Receiver.'' Also, Subsection (d) directly below Subsection (c), which refers to cross-border settlement of transactions in USD would be deleted in its entirety to reflect the elimination of DVP settlement through the service. Since Subsection (c), as described above, would be written to address the Deliveries and Receives of Securities, generally, Securities transactions previously covered under Subsection (d) would be covered under the proposed revisions to Subsection (c).

(iv) Subsection (e) of Section 1 describes the processing of CAD Securities Transactions between DTC Participants. DTC proposes to amend Subsection (e) of Section 1 to reflect the elimination of money settlement relating to transactions conducted through the Canadian-Link Service. In this regard, a sentence that describes the debiting and crediting of Securities between Participants and references the term ''Intra-DTC CAD Securities Transaction'' would be revised to refer to ''intra-DTC Securities transaction'' instead, to reflect that movements of Securities between Participants would continue to be permitted through the Canadian-Link Service, even though the ability to settle a Securities transaction in CAD would be eliminated. In addition, DTC would change references to ''seller'' and ''purchaser'' of Securities to ''Deliverer'' and ''Receiver,'' respectively, to harmonize the use of terms with DTC's rules related to settlement of Securities deliveries and receives generally. DTC would also revise Subsection (e) so that it would be renumbered as Subsection (d) to reflect the deletion of the current Subsection (d), described above.

(v) DTC would delete Subsection (f) of Section 1 which states: ''A Cross-Border CAD Funds Transaction between a Participant of the Corporation and a participant of CDS is processed through the facilities of CDS.'' In addition, DTC would delete Subsection (g) of Section 1 which states: ''An Intra-DTC CAD Funds Transaction between a Participant of the Corporation and another Participant of Corporation is processed though Canadian settlement banks acting for the Corporation and such Participants.'' Both subsections would be obsolete because of the elimination of CAD processing through the Canadian-Link Service.

(vi) Subsection (h) of Section 1 would be amended to delete explanations of certain definitions described above, including CAD Funds, USD Funds, Funds, Cross-Border Securities Transactions, Canadian-Link Securities Transactions, Canadian-Link Funds Transactions, and Canadian-Link CAD Money Settlement. Also the definitions of Intra-DTC Transactions, Cross-Border Securities, Cross-Border Transactions and Intra-DTC Securities would be amended to reflect the above-described elimination of money settlement in the Canadian-Link Service so that transactions are not referred to as involving DVP settlement or payment of funds. In this regard, references to the terms ''Cross-Border USD Securities Transactions'' and ''Cross-Border CAD Securities Transactions'' as elements of the definition of ''Cross-Border Transactions'' would be replaced with an undefined term ''Cross-border securities transactions'' to reflect that movements of Securities between Canadian-Link Participants and CDS

[62] Pursuant to Rule 30, Section 16(a), the term ''Payment Default Exchange Rate'' is defined as the exchange rate determined by a formula (taking into account all factors incident to the default of such Participant in the payment of its Canadian-Link CAD Net Settlement Debit) that shall be fixed by DTC and set forth in the Procedures. The exchange rate relates to any amount of USD Funds has to be exchanged for an amount of CAD Funds to pay (or re-fund) a DTC Omnibus Account CAD Net Settlement Debit to CDS in accordance with Section 13 of this Rule 30 because a Canadian-Link Participant failed to pay DTC the amount of its Canadian-Link CAD Net Settlement Debit. *Id.*

[63] Pursuant to Rule 30, Section 1(h)(4), the term ''USD Funds'' is defined as funds denominated in US dollars. *Id.*

[64] Pursuant to Rule 1, the term ''Deliverer,'' as used with respect to a Delivery of a Security, means the Person which Delivers the Security. *See* Rule 1, *supra* note 5.

[65] Pursuant to Rule 1, the term ''Receiver,'' as used with respect to a Delivery of a Security, means the Person which receives the Security. *Id.*

Participants would continue to be permitted through the Canadian-Link Service, even though the ability to settle a Securities transaction versus payment would be eliminated. Further, ''Intra-DTC CAD Securities Transactions'' and ''Intra-DTC CAD Funds Transactions'' as elements of the definition of ''Intra-DTC Transactions'' would be replaced with a reference ''Intra-DTC securities transactions,'' for the same reason as an identical change to current Subsection (e) of Section 1 (proposed to be renumbered as Subsection (d)), as described above. Also, ''Cross-Border CAD Securities Transactions'' and ''Cross-Border USD Securities Transactions'' used as elements of the description of ''Cross-Border Securities'' would be deleted and replaced with Cross-Border Transactions. Also, ''Intra-DTC CAD Securities Transactions,'' used as a descriptor relating to Securities underlying an element of the definition of ''Intra-DTC Securities,'' would be replaced with ''Intra-DTC Transactions,'' because (i) even though Intra-DTC CAD Securities Transactions would no longer be provided for under Rule 30, intra-DTC Securities transactions could still occur through the Canadian-Link Service, as described above and (ii) such transactions would defined as ''Intra-DTC Transactions,'' as described above. In addition, Subsection (h) would be renumbered as Subsection (e) to conform the numbering of this section with the elimination and renumbering of other subsections as described above. In this regard, the explanations of definitions in subsection (h) are currently set forth in an itemized list numbered from (1) to (15), with each item followed by a semicolon. As a result of the proposed revisions described above, in addition to changes to the text to reflect the substantive changes described above, item numbers (3), (4), (5), (6) (7), (8) and (15) would be deleted and items (9), (10), (11), (12), (13) and (14) would be renumbered respectively as (3), (4), (5), (6), (7) and (8). A semicolon and the word ''and'' would be deleted from the end of current (14) (to be renumbered as (8)) and replaced with a period because the deletion of (15) would make the newly renumbered (8) the last item of this list. The word ''and'' would be added to the end of current (13) (to be renumbered as 7) directly after an existing semicolon.

Section 2—CDS Documents

Section 2 of Rule 30 provides, among other things, that ''[E]ach Canadian-Link Participant shall observe and comply with the CDS Documents applicable to the Canadian-Link Service as if such Canadian-Link Participant were a CDS Participant and a direct party to the CDS Documents. Each Canadian-Link Participant acknowledges that the CDS Documents may include grants of security interests in and liens on Cross-Border Securities and CAD Funds in which such Canadian-Link Participant may have an interest. . . .''

Pursuant to the proposed rule change, DTC proposes to change ''CAD Funds'' in the preceding sentence to ''funds.'' As described herein, the term ''CAD Funds'' would be eliminated pursuant to the proposed rule change. However, CDS may continue to have a security interest in funds owed to DTC for dividends and interest paid on Securities held by DTC at CDS on behalf of Canadian-Link Participants.[66]

Section 4—Participants Eligible for Canadian-Link Service

Section 4 of Rule 30 provides, among other things that ''A Security that is an Eligible Security may or may not be a Canadian-Link Security and may or may not be the subject of Cross-Border CAD Securities Transactions, Cross-Border USD Securities Transactions and/or Intra-DTC Securities Transactions. A Security that is not an Eligible Security may be a Limited-Service Canadian-Link Security, but it may not be a Full-Service Canadian-Link Security and may not be the subject of Intra-DTC CAD Securities Transactions.'' Consistent with the proposed changes described above, DTC proposes to amend this section to eliminate references to CAD and USD-related transactions and refer to transactions without reference to Canadian or U.S. currency. In this regard, a reference to ''Intra-DTC CAD Securities Transactions'' would be revised to ''Intra-DTC Transactions'' in a sentence describing to the effect, among other things, that a Limited-Service Canadian-Link Security cannot be included in an intra-DTC Securities transaction.

Section 5—Canadian-Link Interface and DTC Omnibus Account

Section 5(a) of Rule 10 includes a description of ledgers and accounts that CDS maintains for DTC at CDS that relate to Securities and funds. The funds accounts are denominated in Canadian dollars and US dollars. While the DVP function of the Canadian-Link Service would be discontinued pursuant to the proposed rule change, DTC would continue to receive dividends and interest on Securities held by it at CDS and DTC may owe fees for services to CDS. As a result, DTC would continue to maintain funds accounts for these purposes. While the terms ''CAD Funds'' and ''USD Funds'' would be removed from Rule 30 as described herein, DTC proposes to replace these terms as used in Section 5(a) of Rule 30 with ''Canadian Dollar funds'' and ''US dollar funds,'' respectively.

Section 5(b) provides that DTC will make the DTC Omnibus Account available for the purpose of processing Cross-Border Transactions between Canadian-Link Participants and CDS Participants. This section states that DTC will act on behalf of Canadian-Link Participants and in accordance with their instructions, but DTC maintains, at all times, control over the Cross-Border Securities and Funds in the DTC Omnibus Account. As described herein, DTC would remove the defined term for ''Funds''. However, as described above, DTC would continue to receive funds into its account at CDS in the form of dividends and interest. Therefore, DTC would replace ''Funds'' as used in Section 5(b) with ''funds.''

Section 6—Canadian-Link Required Participants Fund Deposit

Section 6 of Rule 30 provides that a Participant must make a deposit that is deemed to be included in the Participants Fund with respect to DVP volume conducted by the Participant through the Canadian-Link Service. The section also provides for the investment of such deposits by DTC and the payment of interest for those investments to the applicable Participants. The Participants Fund provides liquidity for DTC to complete settlement in the event a Participant fails to meet its settlement obligation. Section 6 would be deleted in its entirety pursuant to the proposed rule change, because Participants would no longer have a settlement obligation in the Canadian-Link Service due to the elimination of money settlement for Securities transactions conducted through the service. In this regard, DTC would no longer have a settlement obligation with respect to CDS. As a result, there would no longer be a need to maintain such deposits with respect to Canadian-Link activity.

Section 7—Security for Canadian-Link Transactions

Section 7 of Rule 30 provides DTC with a security interest in Securities settled DVP through the Canadian-Link Service and allows DTC to use such Securities to secure loans for purposes of completing settlement in the event a Participant fails to satisfy its settlement obligation. This Section would be

[66] *See* Section 5.2.2 of CDS's rules, *available at https://www.cds.ca/resource/en/311.*

deleted in its entirety pursuant to the proposal, because since Participants would no longer be able to incur a settlement obligation with respect to activity within the Canadian-Link Service, it would no longer necessary for DTC to maintain a security interest in Securities that are the subject of Canadian-Link Transactions.

Section 8—Canadian-Link Net Debit Caps of Canadian-Link Participants

Section 8 of Rule 30 provides for a limit to be established by DTC (i) on the negative CAD Funds balance that may, from time to time, be incurred by a Canadian-Link Participant in respect of Canadian-Link Transactions processed for such Participant through the Canadian-Link Service in CAD Funds (each a ''Canadian-Link CAD Net Debit Cap'') and (ii) on the negative USD Funds balance that may, from time to time, be incurred by a Canadian-Link Participant in respect to Canadian-Link Transactions processed for such Participant through the Canadian-Link Service in USD Funds (each, a ''Canadian-Link USD Net Debit Cap''). The Canadian-Link CAD Net Debit Cap and Canadian-Link USD Net Debit Cap are referred to, individually or collectively as the context may require, as the ''Canadian-Link Net Debit Cap.'' This Section subjects all transactions processed though the Canadian-Link Service to be subject to the Canadian-Link Net Debit Cap. The section further provides that DTC shall not comply with any instruction from a Canadian-Link Participant in respect of any Canadian-Link Transaction that would cause DTC to exceed its DTC Omnibus Account Net Debit Cap or cause such Canadian-Link Participant to exceed its Canadian-Link Net Debit Cap but rather shall pend such Canadian-Link Transaction (subject to the Rules) until such Canadian-Link Transaction may be processed without causing DTC to exceed its DTC Omnibus Account Net Debit Cap or causing such Canadian-Link Participant to exceed its Canadian-Link Net Debit Cap.

Pursuant to the proposed rule change, DTC would delete Section 8 of Rule 30 in its entirety. The maintenance of a Canadian-Link Net Debit Cap would no longer be necessary as this limit applies to DVP transactions, and DVP transactions would no longer be processed through the Canadian-Link Service.

Section 9—Collateral Monitor of Canadian-Link Participants

In addition to the Net Debit Cap,[67] another tool DTC uses in managing credit risk is the Collateral Monitor.[68] These two controls work together to protect the DTC settlement system in the event of Participant default. The Collateral Monitor requires net debit settlement obligations, as they accrue intraday, to be fully collateralized. Meanwhile, the Net Debit Cap limits the amount of any Participant's net debit settlement obligation to the amount that can be satisfied with DTC liquidity resources. Section 9 of Rule 30 provides for activity conducted by a Participant through the Canadian-Link Service to be included in the Participant's Collateral Monitor. For the same reason as described above with respect to the elimination of Section 8, DTC would delete Section 9 in its entirety, because the elimination of DVP activity would eliminate any credit risk associated with transactions conducted through the Canadian-Link Service, and therefore DTC would no longer require the inclusion of Canadian-Link activity in the Collateral Monitor in managing its credit risk.

Section 10—Processing Canadian-Link Transactions

Section 10 of Rule 30 provides for the process by which Securities and funds are credited and debited to and from Canadian-Link Participants' accounts for activity instructed by Participants to be processed through the Canadian-Link Service. As described above, DTC would continue to process transfers of Securities through the Canadian-Link Service, but it would no longer process DVP and/or CAD Funds activity for transactions conducted through the service. Therefore, pursuant to the proposed rule change, DTC would amend Section 10 to reflect the elimination of processing of funds debits and credits as part of the processing of Canadian-Link Transactions. In this regard, DTC would also revise references in the text of this section to (a) ''Canadian-Link Securities Transaction'' to ''Canadian-Link Transaction,'' (b) ''Intra-DTC CAD Securities Transaction'' to ''Intra-DTC Transaction,'' and (c) ''Cross-Border Securities Transaction'' to ''Cross-Border Transaction,'' because the currently used terms would be deleted from Rule 30, as described above, and the elimination of the processing of funds debits and credits, as described above, would eliminate the need for the use of defined terms relating to transactions processed through the Canadian-Link that distinguish between Securities transactions from funds transactions. Further subsections (C) and (D) of Section 10(a)(1) and Item (iii) of Sections 10(a)(2)(A) and 10(a)(2)(B) would be deleted from Rule 30. Finally, this section would also be renumbered as Section 6 due to the deletion of the original Sections 6, 7, 8 and 9, as described above.

Section 11—CDS Business Days

Pursuant to the proposed rule change, Section 11 would be renumbered as Section 7.

Section 12—Settlement Recaps

Section 12 provides the process for the issuance of Settlement Recaps by DTC. Because the money settlement aspect of the Canadian-Link Service would be eliminated, there would no longer be a need for DTC to issue Settlement Recaps with respect to CAD activity. Therefore, DTC would eliminate Section 12 in its entirety because Settlement Recaps would no longer be issued by DTC, and this Section would become obsolete.

Section 13—Settlement Payments

Section 13 provides for the processing of settlement payments relating to DVP activity through the Canadian-Link Service. As described above, money settlement would be eliminated pursuant to the proposed rule change. Therefore, DTC would no longer provide for money settlement relating to transactions processed through the Canadian-Link. In this regard, DTC proposes to eliminate Section 13 in its entirety as it would become obsolete.

Section 14—End of Day Sweep

Section 14 provides for the timing of the movement of Securities between accounts used for the Canadian-Link Service. This section provides that such movements occur at the end of each CDS Business Day after the completion of money settlement. DTC would delete the provision requiring for the completion of money settlement prior to the ''sweeping'' of Securities in this regard as DTC would no longer be conducting money settlement for the Canadian-Link Service. Also, DTC would renumber this section as Section 8 to reflect the renumbering and deletion of previous sections as described above.

[67] *Id.*

[68] *Id.*

Section 15—Failure To Make Settlement Payments

Section 15 provides the process to be followed if a Participant fails to make payment with regards to Canadian-Link activity. As described above, DTC proposes to eliminate money settlement with respect to Canadian-Link activity. In this regard, DTC would delete Section 15 in its entirety as it would become obsolete due to the elimination of settlement payments through this service.

Section 16—Currency Conversion and Exchange

Section 16 provides the process for the conversion of USD Funds to CAD Funds as necessary for a Participant to complete settlement or satisfy its risk controls relating to the Canadian-Link Service. Since money settlement would no longer occur through this service, such conversions of currency would no longer occur, and this section would become obsolete. Therefore, pursuant to the proposed rule change, DTC would delete Section 16 in its entirety.

Section 17—Choice of Law and Submission to Jurisdiction

To conform the numbering of sections to reflect the deletion and renumbering of previous sections as described above, Section 17 would be renumbered as Section 9.

Section 18—Canadian Link Charges

Section 18 provides that Participants must pay to DTC any fees and charges relating to their use of the Canadian-Link Service. These charges include charges relating to the cost to DTC for maintaining liquidity resources to settle Canadian-Link Transactions. As mentioned above, money settlement under this service would be eliminated and therefore it would no longer necessary for DTC to maintain such liquidity resources with respect to activity processed through the Canadian-Link Service. Therefore, text referring to charges relating to the cost of maintaining liquidity resources with respect to the Canadian-Link Service would be obsolete and would be deleted. As a result of these proposed changes, to conform the numbering of the subsections to reflect the deletion of subsection (ii), the subsections following would be renumbered, (ii), (iii), (iv) and (v). Also, to conform the numbering of sections to reflect the deletion and renumbering of previous sections as described above, Section 18 would be renumbered as Section 10.

Elimination of the Canadian-Link Service Guide

DTC proposes to eliminate the full text of the Guide. The Guide relates to Procedures necessary for the DVP settlement of Canadian-Link Transactions. These Procedures cover all operational aspects of the service as it relates to DVP activity, including DVP transaction processing, risk controls and tracking established to control for failed DVP transactions in the processing of end-of-day sweeps. Due to the elimination of money settlement through the Canadian-Link Service, this Guide would become obsolete.

Proposed Changes to the OA

The OA sets forth requirements that a Security must meet to become and remain eligible for DTC services and provides for the orderly processing of such Securities and timely payments to Participants.

Proposed Changes to Text of the OA Relating to Eligibility Requirements/ Non-U.S. Denominated Securities

Section I.C.5. of the OA contains provisions relating to the eligibility of Securities denominated in a non-U.S. currencies and processing of distribution payments in non-U.S. currencies. This section currently contains references to CAD settlement through the Canadian-Link Service. To reflect the proposed elimination of money settlement in the Canadian-Link Service, DTC proposes to amend this section to remove references to the availability of Canadian dollar settlement. Since, as described above, DTC would continue to process distributions in CAD, this section would continue to provide for such distributions in CAD. The proposed rule change would make a grammatical change that does not affect the substance of the section.

Proposed Changes to Dividend and Income Payment Notification Procedures

Section IV of the OA sets forth Dividend and Income Payment Notification Procedures. Subsection B of this section describes currency provisions relating to dividend and income payments, and specifically refers to such payments made in CAD. The text includes mentions of CAD settlement performed through the Canadian-Link Service. It also refers to the service generally as ''Canadian dollar settlement.'' In order to reflect the proposed elimination of CAD settlement through the Canadian-Link Service, DTC would (i) revise this section to delete provisions referring to or describing CAD settlement and (ii) modify a statement relating to Securities eligible to receive payments in CAD from referencing Securities eligible for Canadian dollar settlement to Securities eligible for the Canadian-Link Service.

Also, the proposed rule change in this regard would cause a defined term for CDS to be deleted as it falls within a paragraph that describes CAD settlement. The proposed rule change moves the defining term for CDS to a sentence that would not be eliminated by the proposal.

Effective Date

The proposed rule change would become effective upon filing with the Commission.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of Securities transactions.[69] DTC believes that the proposed rule change is consistent with this provision because it would provide enhanced clarity and transparency for participants with respect to services offered by DTC by updating the Rules to remove the ability to access services that Canadian-Link Participants have not recently utilized and are unlikely to utilize in the future.

Therefore, by providing enhanced clarity and transparency in the Rules regarding the services provided by DTC, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of Securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition. Participants have not used the Canadian-Link Service for DVP Securities and/or CAD Funds transactions in several years. Also, based on discussions DTC has had with Participants regarding their use of the Canadian-Link Service, DTC believes Participants are unlikely to use the service for this purpose in the future. Therefore, DTC believes that the proposed rule change should have no effect on Participants, other than to remove references to the ability for Participants to conduct DVP transactions through the Canadian-Link Service from the Rules and Procedures, which transactions are unlikely to be conducted by Participants.

[69] 15 U.S.C. 78q–1(b)(3)(F).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [70] of the Act and paragraph (f) [71] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2021–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2021–012. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2021–012 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15345 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[70] 15 U.S.C. 78s(b)(3)(A).

[71] 17 CFR 240.19b–4(f).

[72] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92405; File No. SR–NYSEArca–2021–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Listing Fee Schedule

July 14, 2021.

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 June 30, 2021, NYSE Arca, Inc. (''NYSE Arca'' 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 the NYSE Arca Equities listing fee schedule to modify the initial listing fees for equity securities and warrants and adopt fee provisions specific to groups of three or more listed REITs under common control. 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

Initial Listing Fees

NYSE Arca charges initial listing fees for the listing of common stock, preferred stock and warrants of operating companies based on the number of shares of the issuer outstanding at the time of initial listing (or, in the case of listed foreign private issuers, the number of shares outstanding in the United States), based on the following current schedule:

Up to and including 30 million shares outstanding—$100,000

More than 30 million shares outstanding up to and including 50 million shares outstanding—$125,000

More than 50 million shares outstanding—$150,000

The Exchange proposes to reduce the initial fee levels to the following:

Up to and including 30 million shares outstanding—$55,000

More than 30 million shares outstanding up to and including 50 million shares outstanding—$60,000

More than 50 million shares outstanding—$75,000

The Exchange believes that these proposed fee levels are more consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

with its actual costs in processing listing applications than those charged under the current fee schedule.

REIT Group Fee Discount

The Exchange proposes to provide group discounts for listings of common stock, preferred stock and warrants where three or more real estate investment trusts (''REITs'') are listed on the Exchange and are externally managed by the same entity or entities under common control.

Initial Listing Fee Discount: As proposed, if substantially all of the operations of three or more REITs that list in the same calendar year are externally managed by the same entity or by entities under common control, the initial listing fees payable by such REITs will be capped at an aggregate of $165,000 (the ''REIT Group Cap''), to be divided among such issuers in proportion to the shares they list at the time of initial listing. The applicability of the REIT Group Cap to REITs listed during a calendar year will be determined at the end of such calendar year. If a REIT is entitled to a reduced listing fee under the REIT Group Cap, such REIT will be entitled to receive a credit against the following calendar year's annual fee and, where applicable, annual fees payable in subsequent calendar years.

Annual Fee Discount: As proposed, if substantially all of the operations of each of a group of three or more listed REITs are externally managed by the same entity or by entities under common control, each REIT in the group will receive a 50% discount on the applicable Annual Fees in relation to any year or portion of a year for which the common management relationship continues in existence.[4]

A limited number of publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. Typically, the REIT itself does not have any direct employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees and the reimbursement of expenses as set forth in the management agreement. In a limited number of cases, a single entity or affiliated entities may externally manage more than one REIT. As an incentive for all the REITs in such a group to list on the Exchange and to reflect the efficiencies described below, the Exchange believes that it is appropriate to offer a group discount on initial listing fees and annual fees when there are at least three REITs under common management.

The Exchange believes that the proposed initial and annual fee discounts for a group of three or more REITs that are under common control is equitable and is not unfairly discriminatory, as there are meaningful efficiencies for the Exchange in dealing with the same external management team for multiple REITs. The resources the Exchange expects to expend when dealing with a single external manager in processing the new listing of multiple REITs in a single calendar year or with respect to the ongoing client service and compliance review of multiple REITS under common control are significantly less than would be the case for a REIT that is not part of such a group, so the Exchange believes the proposed discount is appropriate.

The Exchange notes that the New York Stock Exchange provides an annual fee discount for REITs that are externally managed by the same entity or by entities under common control.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4)[7] 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,[8] 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 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.

The Exchange believes that the proposed modification to the initial listing fee schedule is equitable and is not unfairly discriminatory as it will be applied to all listing applicants in a consistent and transparent manner and is being proposed for the purpose of aligning initial listing fees more closely with the Exchange's actual costs in processing new listings.

The Exchange believes that the proposed initial and annual fee discounts for a group of three or more REITs that are under common control is equitable and is not unfairly discriminatory, as there are meaningful efficiencies for the Exchange in dealing with the same external management team for multiple REITs. The resources the Exchange expects to expend when dealing with a single external manager in processing the new listing multiple REITs in a single calendar year or with respect to the ongoing client service and compliance review of multiple REITS under common control are significantly less than would be the case for a REIT that is not part of such a group, so the Exchange believes the proposed discount is appropriate.

The Exchange does not expect the proposed rule changes would affect the Exchange's commitment of resources to its regulatory programs.

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: All operating companies listing on the Exchange will be eligible to avail themselves of the proposed modified initial fee schedule. Therefore, the Exchange does not believe that the proposed changes to the initial listing fee schedule will have any meaningful effect on the competition among issuers listed on the Exchange. The purpose of the proposed group discount for REITs under common external management is

[4] The following is the Annual Fee schedule for common stock and preferred stock:

Up to and including 10 million shares—$30,000

More than 10 million shares up to and including 100 million shares—$30,000 plus $0.000375 per share above 10 million

More than 100 million shares—$85,0000

[5] See Section 902.03A of the NYSE Listed Company Manual.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

recognize the significant efficiencies the Exchange experiences in dealing with a common manager for multiple issuers. As only a small percentage of listed companies are expected to qualify for the proposed discount, the Exchange does not believe that it 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 changes 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) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] 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) [11] 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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2021–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. NYSEArca–2021–56. 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 No. NYSEArca–2021–56, and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15340 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 22, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 15, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–15472 Filed 7–16–21; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92401; File No. SR–NYSENAT–2021–14]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

July 14, 2021.

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 July 1, 2021, NYSE National, Inc. (''NYSE National'' 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 its Schedule of Fees and Rebates (''Fee Schedule'') to modify the requirements to qualify for Adding Tier 2 and Removing Tier 1. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to modify the requirements to qualify for Adding Tier 2 and Removing Tier 1.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional adding and removing liquidity to the Exchange.

The Exchange proposes to implement the rule change on July 1, 2021.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself has recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 2%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products, in response to fee changes. While it is not possible to know a firm's reason for moving order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees can vary from month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking (or removing) liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes the following changes to its Fee Schedule designed to provide order flow providers with additional incentives to route order flow to the Exchange. As described above, ETP Holders have a choice of where to send their order flow.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

Proposed Change to Adding Tier 2

Under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that have at least 0.13% or more of Adding ADV as a percentage of US CADV or at least 16 million Adding ADV are charged a fee of $0.0022 per share for adding displayed orders in Tape A, B, and C securities. The Exchange proposes to revise requirements to qualify for Adding Tier 2 as follows: ETP Holders would qualify for the current rebate [sic] by having at least 0.11% or more Adding ADV as a percentage of US CADV or at least 13 million shares or more of Adding ADV. The Exchange does not propose any changes to the Adding Rate for Adding Tier 2.

The Exchange believes that lowering the ADV requirements to qualify for Adding Tier 2 as proposed above will allow greater numbers of ETP Holders to potentially qualify for the tier, and therefore will incentivize more ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional ETP Holders could qualify for Adding Tier 2 under the revised qualification criteria if they choose to direct order flow to the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Adding Tier 2 rate.

Proposed Changes to Removing Tier 1

Under current Removing Tier 1, the Exchange provides a rebate of $0.0030 per share to ETP Holders that remove liquidity from the Exchange in securities with a per share price of $1.00 or more and that have at least 250,000 Adding ADV and a combined Adding ADV and Removing ADV of at least (i) 0.18% as a percentage of US CADV, or (ii) 21.5 million shares ADV.

The Exchange proposes to revise Removing Tier 1 by adopting an alternative qualification basis for the tier. As proposed, ETP Holders would qualify for the current rebate either by meeting the current requirements above, or by meeting the alternative qualification basis, as follows: Adding ADV of at least (i) 0.11% as a percentage of US CADV or (ii) 13 million shares ADV *and* Adding ADV and Removing ADV combined of at least (i) 0.16% as a percentage of US CADV or (ii) 19 million shares ADV. The Exchange does not propose any changes to the Removing Rate for orders that remove liquidity that qualify for Removing Tier 1.

The Exchange believes that providing an alternative way for ETP Holders to qualify for Removing Tier 1 as proposed above will allow greater numbers of ETP Holders to qualify for the tier, and will incentivize more ETP Holders to route liquidity-removing order flow to the Exchange in order to qualify for the tier. This is turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that as a result of the proposed change to Removing Tier 1, more ETP Holders will choose to route their order flow to the Exchange in order to qualify for the credits for removing liquidity associated with Removing Tier 1 given that there is an alternative way to qualify.

As noted, the Exchange operates in a competitive environment. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of firms generally, the Exchange believes that additional ETP Holders could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to the Exchange. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Removing Tier 1 rate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12] While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [13]

Given the current competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that the proposed revisions to the requirements to qualify for Adding Tier 2 and Removing Tier 1 by lowering or providing alternative requirements are reasonable because

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) & (5).

[12] *See* Regulation NMS, *supra* note 4, at 37499.

[13] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

they would promote execution opportunities for more ETP Holders routing order flow to the Exchange.

The Exchange believes that the proposal as a whole represents a reasonable effort to promote price discovery and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that modifying the requirements to qualify for Adding Tier 2 and Removing Tier 1 would encourage the submission of additional adding and removing liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the additional amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees and credits because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised fees would apply equally to all similarly situated ETP Holders.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same modified requirements to qualify for Adding Tier 2 and Removing Tier 1. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

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

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [15]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-providing and liquidity-removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed revised requirements for the tiered rebates and fees would be available to all similarly-situated market participants, and thus, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] 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

[14] 15 U.S.C. 78f(b)(8).

[15] Regulation NMS, 70 FR at 37498–99.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

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) [18] 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–NYSENAT–2021–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2021–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2021–14, and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15336 Filed 7–19–21; 8:45 am]

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[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92403; File No. SR–FINRA–2021–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Technical and Other Non-Substantive Changes Within FINRA Rules

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make technical and other non-substantive changes within FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to the By-Laws of the Corporation

* * * * *

IM–Section 4(b)(1) and (e) Exemption From Certain Registration and Membership Application Fees for Certain NYSE and NYSE [Alternext US]*American* LLC Member Organizations

NYSE and NYSE [Alternext US]*American* LLC member organizations that become members of FINRA pursuant to IM–1013–1 and IM–1013–2, respectively, shall not be assessed the fee set forth in Section 4(b)(1) to Schedule A of the FINRA By-Laws for the initial Form U4 filed by firms for the registration of any representative or principal associated with the member organization at the time a firm submits its application for FINRA membership. Such firms also shall not be assessed the membership application fee set forth in Section 4(e) to Schedule A of the FINRA By-Laws. However, those firms will otherwise remain subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A.

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FINRA Rules

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1000. Member Application and Associated Person Registration

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IM–1011–1. Safe Harbor for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain FINRA's approval of the expansion. This safe harbor applies to: (1) Firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

* * * * *

The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, ''disciplinary history'' means a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6). 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. FINRA has satisfied this requirement.

regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: Violations of the types enumerated in Section 15(b)(4)(E) and Section 15(c) of the Exchange Act; Section 17(a) of the Securities Act; SEA Rules 10b–5 and 15g–1 through 15g–9; FINRA Rules 2010 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, frontrunning, trading ahead of research reports or excessive markups), 2020, 2111, *2121*, 2150, 4330, 3110 (failure to supervise only), 5210, and 5230; and MSRB Rules G–19, G–30, and G–37(b) and (c), and all predecessor NASD rules to such FINRA rules.

* * * * *

1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) through (k) No Change.

(l) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph ([h]*i*)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(m) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 26, 2020, the Commission approved amendments to Rule 1017, among other rules, as part of FINRA's efforts to help further address the issue of customer recovery of unpaid arbitration awards.[4] Before the amendments to Rule 1017, paragraph (h)(1) related to FINRA's decision on an application for continuing FINRA membership, and specified some factors that create a presumption to deny an application. File No. SR–FINRA–2019–030 renumbered that paragraph to paragraph (i)(1). Currently, Rule 1017(l) cross-references to paragraph (h)(1), which, as a result of SR–FINRA–2019–030, requires an applicant for continuing FINRA membership to promptly provide FINRA written notification of any arbitration claim involving the applicant or its associated persons that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the applicant. In File No. SR–FINRA–2019–030, FINRA did not propose a change to Rule 1017(l) to reflect the rule cross-reference change from paragraph (h)(1) to paragraph (i)(1). With this proposed rule change, FINRA is proposing to make this corrective non-substantive, technical change to Rule 1017(l).[5]

On April 10, 2019, the Commission announced the immediate effectiveness of the adoption of the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA–NYSE Member Rules Series.[6] Among these legacy NASD rules was then NASD Interpretative Material (''IM'')–1011–1 (Safe Harbor for Business Expansions). In general, this rule created a safe harbor for specified categories of business expansions, subject to certain thresholds and conditions, that a member may undergo without filing an application for continuing membership with FINRA, but this safe harbor was unavailable to a member with a defined ''disciplinary history.'' Under NASD IM–1011–1, the term ''disciplinary history'' meant a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more specified provisions that included NASD Rule 2440 (Fair Prices and Commissions), the predecessor rule to FINRA Rule 2121 (Fair Prices and Commissions).[7] Through File No. SR–FINRA–2019–009, FINRA adopted NASD IM–1011–1 as FINRA IM–1011–1 with the intention of replacing therein all references to an NASD rule with its corresponding FINRA rule. The reference to NASD Rule 2440, or ''2440'' as written in NASD IM–1011–1, was inadvertently omitted from the rule text presented in Exhibit 4 and Exhibit 5 to File No. SR–FINRA–2019–009 and as a result, the list of rules for ''disciplinary history'' as they currently appear in FINRA IM–1011–1 omits the reference to FINRA Rule 2121. With this proposed rule change, FINRA is proposing to correct this technical error by including a reference to ''2121'' to the sequence of FINRA rules defining ''disciplinary history'' under FINRA IM–1011–1.

Finally, the proposed rule change would change the references to ''NYSE Alternext US'' in IM-Section 4(b)(1) and (e) of Schedule A to the FINRA By-Laws to ''NYSE American.''[8]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will make corrective non-substantive, technical updates that

[4] *See* Securities Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR–FINRA–2019–030, as Modified by Amendment No. 1). FINRA announced September 14, 2020 as the effective date of the rule change in *Regulatory Notice* 20–15 (May 2020).

[5] FINRA notes that the proposed rule change would impact all members, including members that have elected to be treated as capital acquisition brokers (''CABs'') and are subject to CAB rules. CAB Rule 116 (Application for Approval of Change in Ownership, Control, or Business Operations) incorporates by reference Rule 1017.

[6] *See* Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–009).

[7] In 2014, FINRA adopted NASD Rule 2440 and its IMs, without material change, as FINRA Rule 2121. *See* Securities Exchange Act Release No. 72208 (May 21, 2014), 79 FR 30675 (May 28, 2014) (Notice of filing and Immediate Effectiveness of File No. SR–FINRA–2014–023).

[8] NYSE Alternext US LLC is a predecessor entity to NYSE American LLC. *See* Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSEMKT–2017–14).

[9] 15 U.S.C. 78*o*–3(b)(6).

FINRA believes will provide greater clarity to FINRA rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2021–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–018 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15338 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92407; File No. SR–CboeBYX–2021–016]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt a new Step-Up Tier under footnote 2 of the Fee Schedule, effective July 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.00020 per share for orders that remove liquidity and assesses a fee of $0.00200 per share for orders that add liquidity. For orders priced below $1.00, the Exchange does not assess a fee or provide a rebate for orders that add liquidity and assesses a fee of 0.10% of total dollar value for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Add/Remove Volume Tiers under footnote 1 of the Fee Schedule, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds.

The Exchange now proposes to adopt a new Step-Up Tier under footnote 2 of the Fee Schedule, which offers a reduced fee to Members that increase their relative add volume order flow each month over a predetermined baseline as well as add liquidity over an established threshold. Specifically, the new Step-Up Tier provides Members an opportunity to qualify for a reduced fee of $0.0014 on their qualifying orders that yield B, V, and Y,[4] where a Member 1) adds a Step-Up ADAV[5] from June 2021 greater than or equal to 0.05% of TCV[6] or adds a Step-Up ADAV from June 2021 greater than or equal to 2,000,000, and 2) has a total add ADAV greater than or equal to 0.25% of TCV. The proposed Step-Up Tier is designed to encourage Members that provide displayed liquidity on the Exchange to increase their overall add volume order flow, which would benefit all Members by providing greater execution opportunities on the Exchange and to contribute to a deeper, more liquid market, to the benefit of all investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Also, as described above, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[10] including the Exchange,[11] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed Step-Up Tier is a

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 29, 2021), available at *https://markets.cboe.com/us/equities/market_statistics/*.

[4] Orders yielding Fee Code B are displayed orders that add liquidity to BYX (Tape B), Orders yielding Fee Code V are displayed orders that add liquidity to BYX (Tape A), and orders yielding Fee Code Y are displayed orders that add liquidity to BYX (Tape C). Each is assessed a standard fee of $0.00200.

[5] ''ADAV'' means average daily volume calculated as the number of shares added per day and is calculated on a monthly basis. ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[6] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f.(b)(5).

[10] *See generally* NYSE Price List, Transaction Fees; Nasdaq Equity 7, Section 118(a)(1), Fees for Execution and Routing of Orders in Nasdaq-Listed Securities; *and* BZX Equities Fee Schedule, Footnote 2, Step-Up Tiers.

[11] *See* BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

reasonable means to encourage Members to increase their relative add liquidity on the Exchange each month over a predetermined baseline as well as over a set threshold by offering Members an additional opportunity to meet criteria to receive a reduced fee. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes signals an increase in activity from other market participants. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

Further, the Exchange believes that the proposed Step-Up Tier is reasonable as it does not represent a significant departure from the criteria or corresponding rates currently offered under in the Fee Schedule, and that the proposed reduced fee is commensurate with the new criteria. For example, Remove Volume Tier 7 under footnote 1 of the Fee Schedule provides an enhanced rebate of $0.0016 per share for qualifying orders, where a Member increases certain order flow on the Exchange each month over a predetermined baseline as well as over a set threshold. The Exchange notes that this enhanced rebate ($0.0016) over the standard rebate ($0.00020) is essentially equivalent to the proposed $0.0014 reduced fee offer in the new Step-Up Tier.

The Exchange also believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the new Step-Up Tier and have the opportunity to meet the tier's criteria and receive the proposed reduced fee if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least three Members will be able to satisfy the criteria proposed under the new tier. The Exchange also notes that the proposed tier will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding proposed reduced fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed new Step-Up Tier applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed change to adopt a new Step-Up Tier burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by adopting an additional pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[12] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[14] Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[12] *See supra* note 3.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2021–016 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–CboeBYX–2021–016. 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–CboeBYX–2021–016 and should be submitted on or before August 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15342 Filed 7–19–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11469]

Designation of Ousmane Illiassou Djibo as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Ousmane Illiassou Djibo, also known as Ousmane Illassou Kounou, also known as Halid Illiasou Djibo, also known as Djibbo Illiassou, also known as Aboubacar Chapori, also known as Petit Chapori, also known as Petit Tchapori, also known as Petit Chappori, also known as Petit Chaffori, is a leader of ISIS in the Greater Sahara (ISIS–GS), a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Authority: E.O. 13224. 66 FR 49079, 3 CFR, 2001 Comp., p. 786.

Dated: June 16, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–15419 Filed 7–19–21; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11467]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Afterlives: Recovering the Lost Stories of Looted Art" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Afterlives: Recovering the Lost Stories of Looted Art'' at The Jewish Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of

Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15393 Filed 7–19–21; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 805X)]

CSX Transportation, Inc.—Abandonment Exemption—in Davidson County, Tenn.

On June 30, 2021, CSX Transportation, Inc. (CSXT) filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 2,262-foot rail line between milepost Val Sta. 2403+77 and milepost Val Sta. 2426+39 on its Nashville Division, Nashville Terminal Subdivision, in Davidson County, Tenn. (the Line). The Line traverses U.S. Postal Service Zip Code 37207.

According to CSXT, in the last two years, there were two shippers on the Line, Cherokee Marine Terminals and Kenwal Steel Corporation. (Pet. 3.) CSXT states that the property on which both shippers were located has been purchased by Monroe Infrastructure, LLC (Monroe), (*id.*), that both shippers are no longer located on the Line, (*id.* at 5), and that there are no current customers on the Line, (*id.*). Moreover, CSXT represents that Monroe intends to redevelop the land adjacent to the Line for non-rail purposes—specifically retail, residential, and office space—and that the City has rezoned the adjacent land for residential and commercial use. (*Id.* at 4–5.) Thus, CSXT asserts, there are no prospects for future shippers on the Line. (*Id.* at 5.) CSXT seeks to abandon its interest in the Line and sell the property to Monroe to facilitate the redevelopment of the adjacent property. (*Id.* at 4.)

CSXT states that, based on the information in its possession, the Line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 18, 2021.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by July 30, 2021, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than August 9, 2021.[1]

All pleadings referring to Docket No. AB 55 (Sub-No. 805X) should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on CSXT's representative, Melanie B. Yasbin, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before August 9, 2021.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

A Draft Environmental Assessment (Draft EA) (or Draft Environmental Impact Statement (Draft EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the Draft EA (or Draft EIS). Draft EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the Draft EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: July 14, 2021.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021–15328 Filed 7–19–21; 8:45 am]

BILLING CODE 4915–01–P

[1] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2004–18885; FMCSA–2006–25246; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2008–0340; FMCSA–2008–0398; FMCSA–2009–0086; FMCSA–2009–0321; FMCSA–2010–0201; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2012–0278; FMCSA–2012–0279; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2012–0339; FMCSA–2013–0024; FMCSA–2013–0027; FMCSA–2014–0004; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2016–0029; FMCSA–2016–0207; FMCSA–2016–0209; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2018–0006; FMCSA–2018–0013; FMCSA–2018–0017; FMCSA–2018–0018; FMCSA–2019–0004; FMCSA–2019–0008; FMCSA–2019–0009]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 67 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2000–7363, FMCSA–2000–7918, FMCSA–2001–9258, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14504, FMCSA–2004–18885, FMCSA–2006–25246, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2008–0292, FMCSA–2008–0340, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0321, FMCSA–2010–0201, FMCSA–2010–0354, FMCSA–2011–0024, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2012–0278, FMCSA–2012–0279, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2012–0339, FMCSA–2013–0024, FMCSA–2013–0027, FMCSA–2014–0004, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0304, FMCSA–2015–0048, FMCSA–2015–0052, FMCSA–2016–0029, FMCSA–2016–0207, FMCSA–2016–0209, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2016–0377, FMCSA–2017–0014, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2018–0006, FMCSA–2018–0013, FMCSA–2018–0017, FMCSA–2018–0018, FMCSA–2019–0004, FMCSA–2019–0008, or FMCSA–2019–0009 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On June 3, 2021, FMCSA published a notice announcing its decision to renew exemptions for 67 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (86 FR 29877). The public comment period ended on July 6, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 67 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of July and are discussed below. As of July 22, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 65 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 45817, 65 FR 66286, 65 FR 77066, 66 FR 13825, 66 FR 17743, 66 FR 33990, 67 FR 68719, 67 FR 71610, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10300, 68 FR 19598, 68 FR 33570, 68 FR 35772, 69 FR 53493, 69 FR 62742, 69 FR 64810, 69 FR 71100, 70 FR 7545, 70 FR 7546, 70 FR 25878, 70 FR 33937, 71 FR 62148, 71 FR 66217, 72 FR 180, 72 FR 1054, 72 FR 7111, 72 FR 7812, 72 FR 9397, 72 FR 21313, 72 FR 28093, 72 FR 32703, 72 FR 32705, 72 FR 39879, 72 FR 52419, 73 FR 35194, 73 FR 51689, 73 FR 61922, 73 FR 61925, 73 FR 63047, 73 FR 63047, 73 FR 74565, 73 FR 75803, 74 FR 980, 74 FR 6209, 74 FR 6211, 74 FR 6212, 74 FR 6689, 74 FR 7097, 74 FR 15584, 74 FR 19267, 74 FR 20253, 74 FR 23472, 74 FR 26464, 74 FR 28094, 74 FR 41971, 75 FR 1835, 75 FR 9482, 75 FR 54958, 75 FR 59327, 75 FR 64396, 75 FR 64396, 75 FR 70078, 75 FR 72863, 75 FR 77949, 76 FR 2190, 76 FR 4413, 76 FR 4414, 76 FR 9859, 76 FR 9861, 76 FR 9865, 76 FR 17481, 76 FR 18824, 76 FR 21796, 76 FR 25766, 76 FR 28125, 76 FR 29022, 76 FR 29024, 76 FR 29026, 76 FR 32016, 76 FR 32017, 76 FR 34135, 76 FR 37885, 76 FR 44082, 76 FR 54530, 77 FR 10606, 77 FR 59248, 77 FR 60008, 77 FR 64582, 77 FR 64583, 77 FR 68200, 77 FR 68202, 77 FR 70534, 77 FR 71669, 77 FR 71671, 77 FR 74273, 77 FR 74731, 78 FR 798, 78 FR 1919, 78 FR 8689, 78 FR 9772, 78 FR 10250, 78 FR 11731, 78 FR 12811, 78 FR 12817, 78 FR 12822, 78 FR 16912, 78 FR 22596, 78 FR 24300, 78 FR 29431, 78 FR 30954, 78 FR 32703, 78 FR 32708, 78 FR 34140, 78 FR 37270, 78 FR 51268, 78 FR 78477, 79 FR 14328, 79 FR 18392, 79 FR 24298, 79 29498, 79 FR 56104, 79 FR 56117, 79 FR 59357, 79 FR 65759, 79 FR 73686, 79 FR 73687, 80 FR 603, 80 FR 2473, 80 FR 3308, 80 FR 3723, 80 FR 6162, 80 FR 767, 80 FR 5615, 80 FR 7679, 80 FR 8751, 80 FR 14223, 80 FR 15859, 80 FR 16502, 80 FR 18693, 80 FR 18696, 80 FR 20558, 80 FR 20559, 80 FR 20562, 80 FR 25766, 80 FR 25768, 80 FR 26139, 80 FR 29154, 80 FR 31635, 80 FR 31640, 80 FR 33009, 80 FR 33011, 80 FR 36398, 80 FR 48409, 81 FR 20433, 81 FR 42054, 81 FR 66722, 81 FR 70248, 81 FR 70251, 81 FR 71173, 81 FR 80161, 81 FR 90046, 81 FR 96165, 81 FR 96178, 81 FR 96180, 82 FR 12678, 82 FR 13043, 82 FR 13045, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 17736, 82 FR 18949, 82 FR 18956, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 26224, 82 FR 33542, 82 FR 35050, 82 FR 37499, 83 FR 6694, 83 FR 24571, 83 FR 28325, 83 FR 28335, 83 FR 34661, 83 FR 40648, 83 FR 45750, 83 FR 53724, 83 FR 53727, 83 FR 56137, 83 FR 56902, 84 FR 2311, 84 FR 2314, 84 FR 2326, 84 FR 2328, 84 FR 5550, 84 FR 12665, 84 FR 16320, 84 FR 16327, 84 FR 16333, 84 FR 21397, 84 FR 21401, 84 FR

23629, 84 FR 27688, 84 FR 47047, 84 FR 47057):

Charles H. Akers, Jr. (VA)
Sava A. Andjelich (IN)
Thomas J. Boss (IL)
Daniel M. Cannon (OR)
Toby L. Carson (TN)
John P. Catalano (NJ)
Jose S. Chavez (AZ)
Brett L. Condon (MD)
Stephen L. Cornish (MN)
Michael S. Crawford (IL)
Jose G. Cruz Romero (TX)
Stephen M. Currie (TX)
Dudley G. Diebold (CT)
Wayne L. Dorbert (PA)
Irvin L. Eaddy (SC)
Douglas Eamens (NY)
Matthew T. Eggers (IA)
Marc Enderson (ND)
Kelly L. Ewing (PA)
Breck L. Falcon (LA)
Jevont D. Fells (AL)
Raymundo Flores (TX)
Jeremy L. Fricke (ND)
James P. Gapinski (MN)
Dolan A. Gonzalez, Jr. (FL)
Peter D. Gouge (IA)
Michael D. Greene (VT)
Donald L. Hamrick (KS)
Zane G. Harvey, Jr. (VA)
Billy R. Holdman (IL)
James S. Hummel (PA)
Ronald D. Jackman II (NV)
Alan L. Johnston (IL)
Damian Klyza (NJ)
Alfred R. Knotts (PA)
Kevin R. Lambert (NC)
James W. Lappan (KS)
Thomas M. Leonard (PA)
Terry L. Lipscomb (AL)
Collin C. Longacre (PA)
Kenny Y. Louie (CA)
Phillip L. Mangen (OH)
Kenton D. McCullough (VA)
Anthony R. Melton (SC)
Joshua G. Millican (OH)
Stuart W. Penner (KS)
Patrick A. Piekkola (WY)
Daniel A. Rau (NJ)
Donald G. Reed (FL)
Richard S. Rehbein (MN)
Menno H. Reiff (PA)
Jeffrey Ridenhour (AR)
Patrick W. Shea (MA)
Ranjodh Singh (CA)
Jeremichael Steele (NC)
Dustin N. Sullivan (MD)
Randall S. Surber (WV)
Thomas R. Test (VA)
Francisco J. Torres (PA)
Kevin W. Van Arsdol (CO)
Christopher A. Weidner (CT)
Gerald L. Wheeler (FL)
Don S. Williams (AL)
Michael T. Wimber (MT)
Rick L. Wood (PA)

The drivers were included in docket numbers FMCSA–2000–7363, FMCSA–2000–7918, FMCSA–2001–9258, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14504, FMCSA–2004–18885, FMCSA–2006–25246, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2008–0292, FMCSA–2008–0340, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0321, FMCSA–2010–0201, FMCSA–2010–0354, FMCSA–2011–0024, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2012–0278, FMCSA–2012–0279, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2012–0339, FMCSA–2013–0024, FMCSA–2014–0004, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0304, FMCSA–2015–0048, FMCSA–2016–0029, FMCSA–2016–0207, FMCSA–2016–0209, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2016–0377, FMCSA–2017–0014, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2018–0006, FMCSA–2018–0013, FMCSA–2018–0017, FMCSA–2018–0018, FMCSA–2019–0004, FMCSA–2019–0008, and FMCSA–2019–0009. Their exemptions are applicable as of July 22, 2021 and will expire on July 22, 2023.

As of July 23, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Bradley J. Kearl (UT) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 35699, 80 FR 48404, 82 FR 33542, 84 FR 47057).

This driver was included in docket number FMCSA–2015–0052. The exemption is applicable as of July 23, 2021 and will expire on July 23, 2023.

As of July 31, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Edward Swaggerty, Jr. (OH) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 24798, 78 FR 46407, 80 FR 36395, 82 FR 33542, 84 FR 47057).

This driver was included in docket number FMCSA–2013–0027. The exemption is applicable as of July 31, 2021 and will expire on July 31, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2021–15376 Filed 7–19–21; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0104; FMCSA–2018–0137; FMCSA–2018–0138]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on July 12, 2021. The exemptions expire on July 12, 2023. Comments must be received on or before August 19, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0104, Docket No. FMCSA–2018–0137, or Docket No. FMCSA–2018–0138 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2014–0104, FMCSA–2018–0137, or FMCSA–2018–0138 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the

''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0104, Docket No. FMCSA–2018–0137, or Docket No. FMCSA–2018–0138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2014–0104, FMCSA–2018–0137, or FMCSA–2018–0138 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2014–0104, FMCSA–2018–0137, or FMCSA–2018–0138 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The three individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the three applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The three drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of July 12, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Jason Clark (MO); Stephen DiGiovanna (PA); and Jacob Hamilton (IN).

The drivers were included in docket number FMCSA–2014–0104, FMCSA–2018–0137, or FMCSA–2018–0138. Their exemptions are applicable as of July 12, 2021 and will expire on July 12, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the three exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–15379 Filed 7–19–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0006]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seven individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on June 8, 2021. The exemptions expire on June 8, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0006, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On May 6, 2021, FMCSA published a notice announcing receipt of applications from seven individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (86 FR 24436). The public comment period ended on June 7, 2021, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. The Minnesota Department of Public Safety submitted a comment in support of the Agency's decision to grant an exemption to Troy T. Driscoll.

John Fontano submitted a comment requesting assistance related to the vision exemption program. FMCSA has contacted the individual to provide assistance.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 6, 2021, **Federal Register** notice (86 FR 24436) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The seven exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, chorioretinal scarring, iris coloboma, and prosthesis. In most cases, their eye conditions did not develop recently. All of the applicants were either born with their vision impairments or have had them since childhood. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 42 years. In the past 3 years, one driver was involved in a crash, and two drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the seven exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Ned Adkins (GA)
Troy T. Driscoll (MN)
William G. Gamble (IN)
Viktor V. Goluda (SC)
Mark Patricola (NJ)
William C. Pinson (TX)
Faron D. Seaman (TX)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

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