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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–15–0012; NOP–15–06]

RIN 0581–AD75

National Organic Program (NOP); Organic Livestock and Poultry Practices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: This final rule withdraws the Organic Livestock and Poultry Practices final rule published in the **Federal Register** on January 19, 2017, by the U.S. Department of Agriculture's Agricultural Marketing Service. The existing organic livestock and poultry regulations remain effective.

DATES: Effective May 13, 2018, the final rule published January 19, 2017, at 82 FR 7042, delayed February 9, 2017, at 82 FR 9967, further delayed May 10, 2017, at 82 FR 21677, and further delayed November 14, 2017, at 82 FR 52643, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 720–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6522), authorizes the United States Department of Agriculture (USDA or Department) to establish national standards governing the marketing of certain agricultural products as organically produced to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically produced. USDA's Agricultural Marketing Service (AMS) administers the National Organic Program (NOP) under 7 CFR part 205.

II. Overview of Agency Action

USDA is withdrawing the OLPP rule based on its current interpretation of 7 U.S.C. 6905, under which the OLPP final rule would exceed USDA's statutory authority. Withdrawal of the OLPP rule also is independently justified based upon USDA's revised assessments of its benefits and burdens and USDA's view of sound regulatory policy. This is considered a deregulatory action under Executive Order 13771. The organic livestock and poultry regulations now published at 7 CFR part 205 remain effective.

III. Related Documents

Documents related to this final rule include: OFPA (7 U.S.C. 6501–6524) and its implementing regulations (7 CFR part 205); the OLPP proposed rule published in the **Federal Register** on April 13, 2016 (81 FR 21956); the OLPP final rule published in the **Federal Register** on January 19, 2017 (82 FR 7042); the final rule delaying the OLPP final rule's effective date until May 19, 2017, published in the **Federal Register** on February 9, 2017 (82 FR 9967); the final rule delaying the OLPP final rule's effective date until November 14, 2017, published in the **Federal Register** on May 10, 2017 (82 FR 21677); a second proposed rule presenting the four options for agency action listed in Section I, *supra,* published in the **Federal Register** on May 10, 2017 (82 FR 21742); a final rule further delaying the OLPP final rule's effective date until May 14, 2018, published in the **Federal Register** on November 14, 2017 (82 FR 52643); and a proposed rule explaining AMS' intent to withdraw the OLPP final rule, published in the **Federal Register** on December 18, 2017 (82 FR 59988).

IV. Public Comments

AMS received approximately 72,000 comments on the proposal to withdraw the OLPP final rule. The majority of comments, over 63,000, opposed the withdrawal of that final rule. This included over 56,000 comments submitted as form letters. Approximately fifty comments supported withdrawal of the OLPP final rule. This included five comments submitted as form letters. The remaining comments, about 7,800, did not state a clear opinion about the proposed withdrawal of the rule.

Commenters opposing withdrawal included consumers, organic farmers, organic handlers, organizations representing animal welfare, environmental, or farming interests, trade associations, certifying agents and inspectors, and retailers. These commenters expressed the view that the OFPA provides AMS the legal authority to implement the OLPP final rule and that withdrawal violates the Administrative Procedure Act and/or the OFPA, because AMS did not consult with the National Organic Standards Board. These commenters asserted that the organic sector requested the OLPP regulation and the rulemaking reflects consensus within the organic sector and a working public-private partnership with years of input from stakeholders. A number of commenters also opposed withdrawal because of potential negative impacts for the welfare of farm animals.

Some commenters opposing the withdrawal also challenged the Preliminary Regulatory Impact Analysis (PRIA, published December 18, 2017 at *https://www.regulations.gov/document?D=AMS-NOP-15-0012-6687*) for the withdrawal of the OLPP final rule. These commenters claimed that (1) organic certification is voluntary and, therefore, there are no costs associated with the OLPP final rule, (2) economic considerations are not a legally permissible basis for withdrawing the OLPP final rule and are irrelevant because OFPA is not a cost-benefit statute, and (3) the PRIA failed to consider qualitative benefits.

Some comments objected to AMS' conclusion that there is no significant market failure to justify this rulemaking and stated that consumer deception caused by inconsistent application of outdoor access requirements for poultry is the market failure that OFPA prevents by compelling AMS to develop consistent standards. These commenters argued that withdrawal of the OLPP final rule would erode consumer confidence and trust in the organic label. Commenters also requested an extension of the public comment period, from 30 to 90 days, specifically noting they needed more time to study the revisions discussed in the Preliminary Regulatory Impact Analysis (PRIA) and develop meaningful comments.

Commenters supporting withdrawal of the OLPP final rule included organic farmers, state departments of agriculture, and trade associations. These commenters agreed that the OLPP final rule exceeded the scope of authority granted to AMS through OFPA to regulate specific animal health care practices. These commenters stated that withdrawing the OLPP final rule would prevent increased costs to producers and consumers from costly structural changes and higher prices for organic eggs, respectively. Some commenters also supported the withdrawal because of concerns that the outdoor access requirements for organic poultry would heighten disease risk and interfere with biosecurity practices and Food and Drug Administration (FDA) requirements.

V. Rationale for Withdrawing Organic Livestock and Poultry Practices Final Rule

A. Statutory Authority

In the notice of proposed rulemaking (NPRM), AMS proposed to withdraw the OLPP Rule due to a lack of statutory authority and to maintain consistency with USDA regulatory policy principles. The proposal stated that ''the relevant language and context suggests OFPA's reference to additional regulatory standards 'for the care' of organically produced livestock should be limited to health care practices similar to those specified by Congress in the statute, rather than expanded to encompass stand-alone animal welfare concerns. 7 U.S.C. 6509(d)(2).'' The NPRM included a detailed analysis of the relevant legal authorities leading to the proposed action. (82 FR 59989–90).

AMS received approximately fifteen comments directly addressing AMS' proposed interpretation, of which three agreed with AMS' interpretation that OFPA does not provide statutory authority for the OLPP final rule. After reviewing these comments, AMS maintains its interpretation that OFPA does not provide authority for the OLPP final rule and has decided to withdraw it. Consequently, the existing organic livestock and poultry regulations now published at 7 CFR part 205 remain effective.

1. Analysis of Its Authority Under the OFPA To Issue Stand-Alone Animal Welfare Regulations

The OLPP final rule consisted, in large part, of rules clarifying how producers and handlers participating in the National Organic Program must treat livestock and poultry to ensure their wellbeing (82 FR 7042). AMS is withdrawing the OLPP final rule because it now believes OFPA does not authorize the animal welfare provisions of the OLPP final rule. Rather, the agency's current reading of the statute, given the relevant language and context, is that OFPA's reference in 7 U.S.C. 6509(d)(2) to additional regulatory standards ''for the care'' of organically produced livestock does not encompass stand-alone concerns about animal welfare, but rather is limited to practices that are similar to those specified by Congress in the statute and necessary to meet congressional objectives outlined in 7 U.S.C. 6501.

USDA believes that the Department's power to act and how it may act are authoritatively prescribed by statutory language and context; USDA believes that it may not lawfully regulate outside the boundaries of legislative text.[1] Therefore, in considering the scope of its lawful authority, USDA believes the threshold question should be whether Congress has authorized the proposed action. If a statute is silent or ambiguous with respect to a specific issue, then USDA believes that its interpretation is entitled to deference and the question becomes simply whether USDA's action is based on a permissible statutory construction.[2]

The OLPP final rule is a broadly prescriptive animal welfare regulation (82 FR 7042, 7074, 7082). USDA's general OFPA implementing authority was used as justification for the OLPP final rule, which cited 7 U.S.C. 6509(g) as ''convey(ing) the intent for the USDA to develop more specific standards. . . .'' (82 FR 7043), and 7 U.S.C. 6509(d)(2) as authorizing regulations for animal ''wellbeing'' and the ''care of livestock.'' (82 FR 7042, 7074, 7082).

But nothing in section 6509 authorizes the broadly prescriptive, stand-alone animal welfare regulations contained in the OLPP final rule. Rather, section 6509 outlines discrete aspects of animal production practices and materials relevant to organic certification: sources of breeder stock, livestock feed, use of hormones and growth promoters, animal health care, and record-keeping. While subsection 6509(d)(2) authorizes promulgation of additional standards for the ''care'' of livestock, that provision is not free-standing authority for AMS to adopt any regulation conceivably related to animal ''care''; rather, standards promulgated under that authority must be relevant to ''ensur[ing] that [organic] livestock is *organically produced*.'' 7 U.S.C. 6509(d)(2). Similarly, section 6509(g) is not open-ended authority to regulate any and all aspects of livestock production; rather, it authorizes AMS to promulgate regulations to ''guide the implementation of the standards for livestock products *provided under this section*'' (emphasis added); in other words, standards relevant to and necessitated by the expressed purposes of Congress in enacting the OFPA. Thus, standards promulgated pursuant to section 6509(d)(2) and section 6509(g) must be relevant to ensuring that livestock is ''organically produced.''

Although Congress did not define the term ''organically produced'' in the OFPA, the Cambridge Dictionary defines ''organic'' as ''not using artificial chemicals in the growing of plans and animals for food and other products.'' Merriam-Webster defines ''organic'' as ''of, relating to, yielding, or involving the use of food produced with the use of feed or fertilizer of plant or animal origin *without employment of chemically formulated fertilizers, growth stimulants, antibiotics, or pesticides*'' (emphasis added). *https://www.merriam-webster.com/dictionary/organic.* The surrounding provisions in section 6509 demonstrate that Congress had a similar understanding of the term ''organic.'' For example, subsection 6509(d)(2)'s authority for promulgation of additional standards governing animal ''care'' is contained within a subsection entitled ''Health care'' and follows a list of three specifically prohibited health care practices that each relate to ingestion or administration of chemical, synthetic, or non-naturally-occurring substances: Use of subtherapeutic doses of antibiotics; routine use of synthetic internal parasiticides; and administration of medication, other than vaccines, absent illness. AMS believes these prohibited practices—all of which relate to ingestion of chemical, artificial, or non-organic substances—are representative of the types of practices and standards that Congress intended to limit exposure of animals to non-organic substances and thus ''ensure that [organic] livestock is organically produced.'' Thus, the authority provided by section 6509(d)(2) does not extend to any and all aspects of animal ''care''; it is limited to those aspects of animal care that are similar to the examples provided in the statue and relate to ingestion or administration of non-organic substances, thus tracking the purposes of the OFPA.

Reading this language in context, AMS now believes that the authority granted in section 6509(d)(2) and

[1] *City of Arlington* v. *FCC,* 133 S. Ct. 1863, 1868 (2013).

[2] *See Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984); *City of Arlington*, 133 S. Ct. at 1871.

section 6509(g) for the Secretary to issue additional regulations fairly extends only to those aspects of animal care that are similar to those described in section 6509(d)(1)—*i.e.,* relate to the ingestion or administration of non-organic substances, thus tracking the purposes of the OFPA—*and* that are shown to be necessary to meet the congressional objectives specified in 7 U.S.C. 6501.

AMS finds that its rulemaking authority in section 6509(d)(2) should not be construed in isolation, but rather should be interpreted in light of section 6509(d)(1) and section 6509(g). Furthermore, AMS believes that a decision to withdraw the OLPP final rule based on § 6509's language, titles, and position within Chapter 94 of Title 7 of the United States Code; [3] controlling Supreme Court authorities; and general USDA regulatory policy, would be a permissible statutory construction.

2. Public Comments on AMS' Analysis

a. One commenter said that ''Agency reconsideration of a rule . . . [previously] approved by the agency and the Office of Management and Budget under a previous administration is arbitrary, capricious, and an abuse of discretion.'' Others suggested that the agency's prior consideration of ''animal welfare'' was binding and dispositive. However, AMS has broad discretion to reconsider a regulation at any time. *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017). Furthermore, AMS' interpretation of OFPA ''is not instantly carved in stone,'' but may be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). This is true when, as is the case here, the agency's review is undertaken in response to a change in administrations. *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services,* 545 U.S. 967, 981 (2005).

b. AMS sought comment on the proposed construction of its rulemaking authority, suggesting that the relevant OFPA text did not authorize the broadly prescriptive, stand-alone animal welfare regulations in the OLPP final rule, and noting that, even if OFPA were deemed to be silent or ambiguous with respect to the authority issue, a decision to withdraw the OLPP final rule based on section 6509's language, titles, and position within Chapter 94 of Title 7 of the United States Code; relevant legal authorities; and general USDA regulatory policy, would be a permissible statutory construction. AMS was led to this position by the Supreme Court's admonition that it may properly exercise discretion only in the interstices created by statutory silence or ambiguity and that it must always give effect to the unambiguously expressed intent of Congress.[4]

The U.S. Supreme Court established the legal standard for review for an agency's interpretation of a statute that it administers in *Chevron,* 467 U.S. at 842–43:

> First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Several commenters challenged the proposed action based on an expansive construction of the statutory term ''care'' largely divorced from the surrounding context of the OFPA. This interpretation would suggest that Congress delegated the Secretary virtually un-cabined regulatory authority over organic livestock producers.

Under *City of Arlington* v. *FCC,* 569 U.S. 290 (2013), the Supreme Court held that the *Chevron* framework applies to an agency's interpretation of ambiguous statutory language concerning the scope of its authority. *Id.* at 302 (''[W]e have consistently held 'that *Chevron* applies to cases in which an agency adopts a construction of a jurisdictional provision of a statute it administers.' 1 R. Pierce, Administrative Law Treatise § 3.5, p. 187 (2010).''). While the regulations in *City of Arlington* were based on an expansive construction of statutory authority, AMS is aware of no reason, and commenters cited none, suggesting deference is limited to interpretations of expansive authority. Rather, the *City of Arlington* decision is not a one-way ratchet; and an agency would also be entitled to deference when it interprets the scope of its authority narrowly.

Some commenters also stated that certain parts of the OLPP Rule do relate to animal health care, such as provisions concerning physical alterations. OFPA does not define the terms ''care,'' ''health care,'' ''welfare,'' or ''wellbeing.'' Accordingly, some commenters rejected the contextual construction adopted by AMS to argue that the reference in section 6509(d)(2) to additional standards ''for the care of livestock to ensure that such livestock is organically produced'' necessarily encompasses the statutory authority to issue stand-alone animal welfare regulations because animal health and welfare are ''inextricably linked.'' This requires an expansive interpretation of the direction to the National Organic Standards Board (NOSB) to ''recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock'' in 7 U.S.C. 6509(d)(2) to encompass stand-alone animal welfare standards. However, the regulatory authority conferred by subparagraph (d)(2) does not extend to all aspects of animal care, but rather is limited to those necessary to ''ensure that such livestock is organically produced.''

Moreover, subparagraph (d)(2) specifically refers back to subparagraph (d)(1) when calling for standards of livestock care in addition to the prohibitions set forth in subparagraph (d)(1). This demonstrates that any additional standards promulgated pursuant to section (d)(2) are to be similar to those set forth in section (d)(1), all of which are related to ensuring that organic livestock is raised with minimal administration of chemical and synthetic substances. That subparagraph's reference to ''care for livestock'' cannot be read more expansively than the previous references to animal health care found in section 6509 generally. Thus, even if some aspects of the OLPP Rule—such as certain provisions pertaining to physical alterations—can be characterized as relating to ''health care,'' AMS finds that they are not related to the OFPA's overarching purpose of regulating the use of chemical and synthetic substances in organic farming. Therefore, section 6509 does not provide authority for those provisions. AMS notes that some commenters agree with this interpretation of section 6509(d).

c. Several commenters also cited certain passages from OFPA's legislative history that they claim demonstrate Congress' intention to give the Secretary authority to regulate the stand-alone welfare of organic livestock, but they either misinterpret or selectively quote the legislative history. Specifically, the commenters noted that Senate Report 101–357, which accompanied S. 2830, the Food, Agriculture, Conservation, and Trade Act of 1990, states, ''[t]he Committee expects that, after due consideration and the reception of public comment, the [National Organic

[4] *See generally Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S. Ct. 2427, 2441, 2445–46 (2014) (citations omitted).

Standards Board or NOSB] will best determine the necessary balance between the goal of restricting livestock medications and the need to provide humane conditions for livestock rearing.'' The commenters suggest that this reference to ''the need to provide humane conditions for livestock rearing'' is proof that OFPA authorizes USDA to promulgate wide-ranging animal welfare regulations for organic livestock to ensure ''humane conditions for livestock rearing.''

However, this statement actually states that the NOSB is to weigh the fact that administering certain livestock medications to livestock may disqualify said livestock from claiming organic status against the fact that withholding these medications in order to claim organic status may in fact be inhumane; it does not direct or authorize the Secretary to issue regulations to promote animal welfare by ensuring that organic livestock are reared humanely. In other words, the Senate Report does not equate organic production with humane treatment; to the contrary, it conveys an understanding that organic production may be *in tension with* humane rearing. To the extent that is so, the Senate Report suggests that AMS may relax organic objectives in order to accommodate countervailing principles of humane treatment. But the Senate Report in no way suggests that AMS is permitted to regulate animal welfare as a stand-alone objective. Furthermore, the commenters were selectively quoting from the Senate Report; the full statement reads as follows:

> The Committee felt strongly that organically produced feed should be required for livestock. However, on the issue of livestock medication, the Committee felt that this required further consideration by the National Organic Standards Board. Livestock parasiticides and medications must be on the National List in order to be used but in no case shall livestock be given subtherapeutic doses of antibiotics, synthetic internal parasiticides on a routine basis, or be administered medication other than vaccinations in the absence of illness. The Committee expects that, after due consideration and the reception of public comment, the Board will best determine the necessary balance between the goal of restricting livestock medications and the need to provide humane conditions for livestock rearing.
>
> 1990 U.S.C.C.A.N. 4656, 4956.

The language preceding that cited by the commenters strengthens, rather than refutes, USDA's belief that section 6509(d)(2) authorizes AMS only to establish additional medical standards for the care of livestock to ensure that these livestock are organically produced. This legislative history supports an interpretation that the Secretary does not have the authority to promulgate stand-alone animal welfare organic requirements.

Several commenters also noted that the Senate Report and the House Conference Report 101–916 on the Food, Agriculture, Conservation, and Trade Act of 1990 make references to the expectation that USDA would promulgate regulations regarding livestock standards. However, this legislative history does not specify that the referenced livestock standards go beyond the specific types of practices referenced in the statute to include animal welfare. Rather, they are general statements that do not change the statutory plain meaning or AMS's permissible interpretation of the scope of its statutory authority.

d. Several commenters argued that AMS may not withdraw the OLPP final rule because it did not consult with the NOSB prior to proposing the withdrawal. Additionally, they stated that withdrawal would be improper because it is contrary to the NOSB's recommendations.[5]

OFPA requires USDA to consult with the NOSB on certain matters and to receive recommendations from it, but nothing in OFPA requires AMS to consult the NOSB at every phase of the rule making process or makes the NOSB's recommendations binding on the Secretary, nor could it.[6]

e. Several commenters argued that 7 U.S.C. 6506(a)(11)[7] and 6512[8] provided additional statutory authority for the OLPP final rule. Sections 6506(a)(11) and 6512 do not convey to the Secretary limitless and unfettered discretion to require whatever terms and conditions he or she may want. Rather, the exercise of discretion under those sections must be grounded in the statutory authority for the organic production. As discussed above for § 6509, the authority for care of organic livestock is to ensure that organic livestock is raised with minimal administration of chemical and synthetic substances. Additionally, to the extent that section 6506(a)(11) may provide authority for livestock care regulations, it does so only if the Secretary determines that they are necessary, which the OLPP final rule is not.

f. Certain commenters noted that NOSB made recommendations concerning animal welfare standards and living conditions over a period of nearly two decades, a situation that has caused a majority of small- and medium-sized operations to have significant reliance interests in animal welfare standards under NOP rules in general, including the OLPP final rule. They further asserted that, under *Encino Motorcars* v. *Navarro,* 136 S. Ct. 2117 (2016), AMS is required to address any disruption of long standing policies upon which the industry may have relied but has failed to do so. As proof of such reliance, some commenters asserted that they have made capital expenditures based on the 2002 NOP policy statement on outdoor access and 7 CFR 205.239.

The subject matter of *Encino Motorcars* is distinguishable from this rule. The Court in *Encino Motorcars* was concerned with the Department of Labor's decision to reverse an established rule that had governed the regulated industry for over 30 years, thereby upsetting a longstanding, and therefore, settled reliance interest (''[I]n explaining its changed position, an agency must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account (emphasis added)'').[9] The commenters who claimed that USDA should consider their ''reliance interests'' acknowledged that they relied on a history of NOSB recommendations (which do not constitute official USDA policy) and the NOP policies and regulations that are already in effect,

[5] These commenters offer a constitutionally troubling construction of the OFPA. To comply with the Appointments Clause of the U.S. Constitution, National Organic Standards Board members must serve at the pleasure of the Secretary and be subordinate to him or her. The Secretary must be free to accept, reject, or revise the recommendations of an advisory committee such as the NOSB.

[6] OFPA requires AMS to consult with the NOSB only under limited circumstances: In developing the organic certification program (section 6503(c)), exemption for certain processed food (section 6505(c)), and certification and labeling of wild seafood (section 6506(c)). Thus, OFPA does not require AMS to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule. Additionally, requiring USDA to consult NOSB on every action that it takes with respect to organic standards and practices would be impractical. The NOSB meets only twice a year and is not available for consultation on the many steps involved in a significant rulemaking. Regardless, AMS did present to the NOSB an update concerning the status of the proposed withdrawal of the OLPP final rule. AMS participated in the NOSB's meeting in the April 2017, during which NOSB discussed the delayed effective date of the OLPP final rule and unanimously voted to ''urge[ ] the Secretary to allow the [OLPP] Rule to become effective on May 19, 2017 without further delay.''

[7] ''[R]equire such other terms and conditions as may be determined by the Secretary to be necessary.''

[8] ''If a production or handling practice is not prohibited or otherwise restricted under this chapter, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program.''

[9] *Encino Motorcars,* 136 S. Ct. at 2020.

rather than the OLPP final rule. Indeed, they could not have relied (and did not assert specific reliance upon) the OLPP final rule because AMS published that rule in the **Federal Register** in January 2017 and it never went into effect. Accordingly, any capital investments or other activities that the regulated industry made in order to comply with the OLPP rule prior to its effective date were not made pursuant to that rule, but in accordance with existing NOP policies and regulations governing animal welfare standards. USDA is not proposing to withdraw existing organic animal welfare standards or the 2002 NOP policy statement on outdoor access, and they remain in effect. Therefore, withdrawal of the OLPP final rule is not a reversal of a longstanding agency policy.

g. Finally, several commenters disagreed with USDA's current interpretation of OFPA by noting that USDA previously promulgated 7 CFR 205.238, 205.239, and 205.240, which they interpret to address the wellbeing of organic livestock. They cited those regulations as proof that USDA has authority to promulgate stand-alone animal welfare standards. In the alternative, they noted that some of these standards address animal health and they question why the OLPP final rule cannot be promulgated on the same ground.

AMS notes that the validity of §§ 205.238, 205.239, and 205.240 is not before it in the present rulemaking. As such, a detailed consideration of whether those regulations accord with AMS' statutory interpretation is not within the scope of this rulemaking. Thus, even if AMS were to decide that it does not have authority to promulgate those regulations under OFPA, it could not withdraw them through this final rule because the NPRM did not provide notice that this action was under consideration. As part of the regulatory reform review, however, AMS may seek comment in the future regarding whether the cited regulations are in accordance with AMS' statutory authority.

B. Impact of OLPP Final Rule on Producers and Lack of Market Failure

Executive Orders 12866 and 13563 require agencies to assess the costs and benefits of economically significant regulatory actions. Executive Order 12866 also generally requires that the agency ''propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs,'' and further, that the agency ''shall tailor its regulations to impose the least burden on society . . .'' Executive Order 12866 also states that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling need, such as material failures of private markets . . .'' While participation in the NOP is technically voluntary, this fact does not neutralize the impacts of changes to the USDA organic regulations because Executive Order 12866 does not exempt regulations of voluntary programs from this evaluation. Changes to the regulations could affect voluntary participation and would have real costs.

The Office of Management and Budget (OMB) has designated OLPP as an economically significant rule. Under Executive Order 12866, AMS is obligated to consider whether the potential impacts of the OLPP rule meet the principles of Executive Order 12866 and demonstrate a need for regulation. AMS did not identify a market failure in the OLPP final rule RIA and therefore AMS has now concluded that regulation is unwarranted. In fact, several organic producers and organizations that oppose withdrawal of the OLPP rule, including a few that argued that there was market failure necessitating the OLPP final rule, purchased a full-page advertisement in a newpaper about this rulemaking. In it they recognized that ''[o]rganic farmers have pioneered new practices to enhance animal welfare because consumers demand it and because it makes farms resilient and profitable.'' [10] If this is true, it is additional evidence from those involved in organic production that supports AMS' conclusion that the market is working and that additional regulation is unwarranted.

Further, AMS maintains that the costs of the OLPP final rule outweigh potential benefits. After publication of the OLPP final rule, AMS discovered a mathematical error in the calculation of benefits. The error was related to the formula used to calculate the 7 percent and 3 percent discount rates. In addition, AMS determined that there was a more suitable willingness-to-pay estimate for outdoor access than the range used to estimated benefits in the OLPP final rule. Although there was another error correction that moved the results in the opposite direction, the estimated benefits declined overall when AMS recalculated those values based on the above findings. In summary, given the high degree of uncertainty and subjectivity in evaluating the benefits of the OLPP final rule, and the lack of any market failure to justify intervention, and the clear potential for additional regulation to distort the market or drive away consumers, even if the comparison of costs and benefits was a close call, AMS would choose not to regulate as a policy matter.

Several commenters opined that AMS did not properly account for qualitative benefits to farm animals and producers in determining that there are net costs for the OLPP final rule. AMS finds that the qualitative benefits are speculative because it is uncertain that organic farmers and consumers would see positive impacts from implementation of the OLPP rule. The assertion that the OLPP final rule would result in economic benefits from healthier animals is not supported by information or research linking outdoor access on pasture or vegetation to improved economic outcomes for producers. AMS did not use the potential outcome of healthier animals as justification for the OLPP final rule. The withdrawal of the OLPP final rule does not prevent organic producers from providing outdoor access on pasture or vegetation, communicating that to consumers, and receiving any potential benefits from those practices.

AMS concludes that the costs to consumers of implementing the OLPP final rule would outweigh any potential benefits to consumers because it anticipates that a significant portion (50 percent) of current organic egg producers would exit the organic market following implementation, resulting in supply shortages and price increases for organic eggs. The OLPP final rule RIA estimated that organic egg prices could increase by a mean of $1.25 per dozen (assuming a demand elasticity of 1.0) as a result of that rule, which exceeded the RIA's estimate of consumers' willingness to pay for the costs of implementing the OLPP final rule. Furthermore, as AMS explained in the PRIA issued in connection with this final rule on withdrawal, the initial consumer willingness-to-pay estimates for eggs from hens with outdoor access were likely overstated in the RIA for the OLPP final rule and should be lower (initial range: $0.21 to $0.49 per dozen versus revised range: $0.16 to $0.25 per dozen). Therefore, the estimated benefits in the RIA for the OLPP final rule were inflated, and there are no clear net benefits for producers or consumers from implementation of the OLPP final rule.

Ultimately, the reduction of potential qualitative benefits, as a result of recalculations due to mathematical errors, the absence of a market failure,

[10] *The Washington Post,* January 16, 2018, Page A7.

and tenuous qualitative benefits leaves net costs that would be overly burdensome to organic producers and consumers.

Some commenters have stated that withdrawal of the rule would undermine public trust and consumer confidence in the organic label. AMS believes, based on data and experience, that this outcome will not be realized. First, the withdrawal of the OLPP final rule maintains the current organic regulations for livestock that cover health care practices and living conditions, including the requirement for year-round outdoor access. This rule does not withdraw any requirements that are currently codified in the USDA organic regulations for livestock. AMS anticipates that consumer confidence in the organic label will be preserved and that certified organic livestock producers will continue to use that label to differentiate their products in the marketplace.

Further, market data suggests that consumer perception of the USDA organic regulations, which will remain in effect upon withdrawal of the OLPP final rule, is positive. Under the current regulations, sales of organic products have increased annually. From 2007 to 2016, the number of organic layers has increased by 12.7% annually. The Organic Trade Association (OTA) 2017 Organic Industry Survey reports, ''2016 was a tremendous year for organic meat and poultry, with sales growing 17.2%.'' That survey further states, ''Consumers have moved from conventional to natural to hormone-free or grass-fed, and now finally to organic or organic grass-fed as they understand all that organic encompasses.'' Regarding organic eggs, the OTA 2017 Organic Industry Survey predicted that the organic egg market will ''stabilize'' by the latter half of 2017, after the supply of organic eggs spiked in response to the 2015 outbreak of Avian Influenza and the drop in demand for organic eggs in 2016 due to the wide price gap between organic and conventional.

These market data do not support commenters' assertions that the withdrawal of the OLPP final rule and maintenance of current regulations will damage consumer confidence and trust in organic products. The industry has continued to expand under the current regulations and the outlook for continued growth in the organic sector has not been predicated upon the implementation of the OLPP final rule. Further, the OTA survey indicates that consumers are choosing organic meat and poultry, demonstrating consumer validation of the sufficiency of the existing regulations; plainly, the organic label is an effective means for product differentiation in the marketplace.

A number of commenters mentioned that withdrawal of the rule contradicts the ''consensus'' favoring new, broadly prescriptive regulations and that considerations for animal welfare should override potential costs. Commenters urged implementation of the OLPP final rule because the organic industry requested that regulation.

AMS will not regulate when statutory authority is insufficient and potential costs do not justify potential benefits, whether there is a pro-regulatory ''consensus'' or not. As a matter of USDA regulatory policy, AMS should not regulate simply because some industry players believe that more regulations will help their competitive position. Furthermore, AMS believes the very notion of a ''consensus'' is at odds with prior public comments and some data on consumer behavior around organic purchases. In response to the April 2016 OLPP proposed rule, AMS received a number of comments representing consumer and organic farmer interests that stated that the current USDA organic regulations are adequate and enforceable and new regulations are not necessary or preferable. In the 2017 OTA U.S. Families' Organic Attitudes and Behavior survey, respondents were asked to rank the importance of several ''true'' statements about organic products. The statement, ''Animals used in the production of organic food are treated humanely, fed an organic diet and are not rasied in confinement,'' was ranked fourth out of fourteen.[11] This data, plus the reports of increased sales in organic livestock products, shows consumer trust in the current practices and requirements for organic livestock products.

Moreover, the mere fact that some organic consumers care about animal welfare does not mean that the term ''organic'' should be equated with animal welfare assurances.

The current USDA organic regulations, which will remain in effect, have standards for livestock healthcare, feed, and living conditions. A central premise of these regulations, which producers must uphold and certifying agents must enforce, is for year-round living conditions that accommodate the health and natural behavior of the animals. Moreover, AMS has estimated that a sizeable portion of organic livestock producers already meet the requirements in the OLPP final rule. In the RIA for the OLPP final rule, AMS stated that the mammalian livestock provisions of the OLPP final rule largely codify existing industry practices. In addition, AMS estimated that the majority of organic egg producers and about half of organic egg production meet the outdoor access requirements in the OLPP final rule. The withdrawal of the OLPP final rule would not compel changes in organic livestock production for these producers, who can continue to cater to consumers willing to pay a premium for animal welfare guarantees if they choose. Finally, the withdrawal of the OLPP final rule does not restrict organic producers from using private certification labels to communicate additional information to consumers about production practices or product attributes.

Some commenters asserted that the voluntary nature of the organic program mitigates the potential costs of implementing the OLPP final rule. The bases for evaluating the potential costs of compliance are the requirements of Executive Order 12866 and the final rule establishing the NOP in 2002 (65 FR 80548). The 2002 final rule quantified costs of complying with that rule, *e.g.,* voluntarily obtaining or maintaining organic certification. AMS cannot negate the costs of the OLPP final rule on the basis that obtaining organic certification is voluntary because some producers that are in compliance with current regulations would incur costs to either change practices or to exit organic production. AMS notes that participation in many regulated markets is technically voluntary, but participants nevertheless invest substantial resources in and frequently stake their livelihoods on such participation. Moreover, the voluntary nature of the market is not an answer for consumers that would like to purchase organic products but cannot afford the premium that will result from the cost of implementing the OLPP rule. These consumers could be excluded from the organic market despite their preference to participate.

A number of commenters also addressed biosecurity and disease risk, stating that some of the outdoor access requirements, such as the presence of vegetation and no roofs, conflict with FDA requirements and biosecurity practices. These comments were also submitted in response to the April 2016 OLPP proposed rule and were addressed in the OLPP final rule (p. 7068–7070;

[11] The question provided a list and asked, ''All of the following statements are true with regards to products certified as organic by the USDA. From this list, what is or would be most important to you, if any, when deciding whether or not to purchase organic foods specifically? The statement, ''Animals used in the production of organic foods are treated humanely, fed an organic diet and not raised in confinement,'' ranked 4 out of 14.

7072). Existing USDA organic regulations allow for the temporary confinement of animals for conditions under which the health, safety, or well-being of the animal could be jeopardized. AMS acknowledges that the existing requirements for outdoor access and the provisions for temporary confinement provide organic producers with the flexibility to mitigate biosecurity and disease risks.

A comment noted that AMS must assess the impact of withdrawing the OLPP final rule on the equivalency arrangements with the European Union and Canada and the economic impacts of the potential dissolution of those agreements as a result of this action. In the OLPP final rule, AMS responded to comments concerning potential impacts on trade agreements (p. 7080). AMS' responses to these comments remains the same.

AMS provided a 30-day public comment period in order to consider the public comments received on the proposed withdrawal and make a final decision on the OLPP final rule by the current effective date of May 14, 2018. AMS did not grant requests for extension of the public comment period because interested parties had the opportunity to comment on the underlying OLPP final rule in 2016 as well as the rulemaking in 2017 that culminated in the delay of the effective of the OLPP final rule until May 14, 2018. Moreover, commenters were on notice of the proposal since November 14, 2017, when it was discussed in a final rule published on that date. Furthermore, and in light of this backdrop, the December 18, 2017 proposed rule presented discrete issues that interested parties should have been able to address within the 30-day comment period. Additionally, extending the comment period would have prevented AMS from resolving the status of the OLPP rulemaking by May 14, 2018.

For the reasons described above, AMS maintains that the OLPP final rule exceeds AMS' scope of authority under OFPA and would be overly burdensome for organic poultry producers. Therefore, AMS is withdrawing the OLPP final rule.

VI. Executive Orders 12866/13563 Review

This section provides an Executive Summary of the Regulatory Impact Analysis (RIA) for this final rule on withdrawal. A full analysis is posted on the *Regulations.gov* website. This rulemaking has been designated as an ''economically significant regulatory action'' under Executive Order 12866, and, therefore, has been reviewed by OMB. This RIA on withdrawal remains unchanged from the PRIA because AMS did not receive new information via public comments on the December 18, 2017 proposed rule that would have altered the RIA.

Executive Orders 12866, 13563, and 13771 control regulatory review. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 directs Agencies to identify at least two existing regulations to be repealed for every new regulation unless prohibited by law. The total incremental cost of all regulations issued in a given fiscal year must have costs within the amount of incremental costs allowed by the Director of OMB, unless otherwise required by law or approved in writing by the Director of OMB. This rule is an Executive Order 13771 deregulatory action. AMS estimates that withdrawal of the OLPP final rule will result in cost savings of $10.2 million to $32.6 million per year, discounted at 7 percent over 15 years. When factored over perpetuity and extended to account for future years, the estimated cost savings become, on an annualized basis, $8.5 million to $34.9 million. Details on the estimated cost savings of this rule over 15 years can be found in the RIA, posted separately and summarized below.

The estimated costs of implementing the OLPP final rule were based on three potential scenarios of how organic egg producers would respond. First, AMS estimated that if all organic livestock and poultry producers came into compliance, the costs would be $28.7 to $31 million each year. Second, if 50 percent of the organic egg producers moved to the cage-free egg market and the organic industry continues to grow at historical rates, the estimated costs are $11.7–$12.0 million. Plus, AMS estimated transfers in the amount of $79.5 million to $86.3 million per year for producers that move from the organic to the cage-free market and lose the organic price premium. Third, if 50 percent of the organic egg producers moved to the cage-free egg market and there were no new entrants that could not already comply, the estimated costs are $8.2 million. For this scenario, AMS estimated transfers to be $43.7 million to $47.4 million per year. These costs do not include an additional $1.95–$3.9 million associated with the estimated paperwork burden. Withdrawing the OLPP final rule prevents these potential costs from taking effect, resulting in substantial organic poultry producer cost savings.

The estimated benefits of implementing the OLPP final rule were calculated for the three scenarios above and were based on consumer willingness-to-pay for outdoor access for laying hens. If all organic livestock and poultry producers came into compliance, AMS estimated the benefits would be $13.0–$31.6 million. Second, if 50 percent of the organic egg producers moved to the cage-free egg market and the organic industry continues to grow at historical rates, the estimated benefits are $3.6–$8.7 million. Third, if 50 percent of the organic egg producers moved to the cage-free egg market and there were no new entrants that could not already comply, the estimated benefits are $3.3–$8.0 million.

For all scenarios described above, the midpoint of the cost estimates, including the estimated paperwork burden, exceeds the midpoint of the estimated benefits.

The OLPP final rule estimated the benefits from the rule's implementation as $4.1 to $49.5 million annually. The estimated benefits spanned a wider range than the estimated costs and were based on research that measured consumers' willingness-to-pay for outdoor access for laying hens. The OLPP final rule acknowledged that the benefits were difficult to quantify.

In reviewing the OLPP final rule, AMS found that the calculation of benefits contained mathematical errors in calculating the discount rates of 7% and 3%. The error resulted in overstating the value of the benefits. Using the correct discounting formula, the estimated costs and paperwork burden for the OLPP final rule exceed the estimated benefits for all producer response scenarios. AMS also found the estimated benefits over time were handled differently than were the estimated costs over time. Specifically, costs were constant over time while benefits declined by an equal amount each year corresponding to the depreciation of poultry housing. In addition, AMS determined that the range used for estimating the benefit interval should be replaced with more suitable estimates. The estimate used in the benefits calculations for the OLPP final rule were based on consumers' willingness-to-pay for eggs produced by chickens raised in a cage-free

environment without induced moulting and with outdoor access. Because the first two practices are already required in organic production, AMS determined that a narrower range for the willingness-to-pay for outdoor access estimate was more precise and appropriate. The revised calculations of benefits are presented in the accompanying RIA.

As a result of reviewing the calculation of estimated benefits, AMS reassessed the economic basis for the rulemaking as well as the validity of the estimated benefits. On the basis of that reassessment, AMS finds little, if any, economic justification for the OLPP final rule.

The RIA for the OLPP final rule did not identify a significant market failure to justify the need for rule. The RIA for the OLPP final rule noted that there is wide variance in production practices within the organic egg sector and asserted that ''as more consumers become aware of this disparity, they will either seek specific brands of organic eggs or seek animal welfare labels in addition to the USDA organic seal.'' OLPP final rule RIA at 14. AMS also found the ''majority of organic producers also participate in private, third-party verified animal welfare certification programs.'' *Id.* Variance in production practices and participation in private, third-party certification programs, however, do not constitute evidence of significant market failure or weigh against withdrawal of the OLPP rule.

First, while AMS recognizes that the purpose of the OFPA is to assure consumers that organically produced products meet a consistent standard, that purpose does not imply that there can be no variation in organic production practices. Rather, a variety of production methods may be employed to meet the same standard. Some may be more labor intensive and others more capital intensive, and some may be appropriate for small operations while others are appropriate for large operations. Importantly, producers will adopt different production methods over time as technology evolves and enables operations to meet the same standard more efficiently. Moreover, producers may follow different standards with respect to aspects of production that are not relevant to organic certification or otherwise subject to regulation. Thus, variation in production practices is expected and does not stand as an indicator of a significant market failure.

Second, private, third-party certification programs are common in the dynamic food sector. That organic suppliers participate in such programs does not indicate a market failure with respect to the standards promulgated under the USDA NOP. Rather, the use of third-party certifications in addition to the USDA organic seal merely indicates that participants in the food sector seek ways to differentiate their products from those of their competitors. That some aspects of a private certification may overlap with the requirements underlying the USDA organic seal demonstrates that food producers, manufacturers, and retailers use multiple methods to communicate with consumers about the attributes of the foods that they produce and sell. Private, third-party certifications reflect attributes that food sellers wish to emphasize, and the existence of such certifications on organic products provides no evidence of a significant market failure relating to USDA organic standards. Nor is it clear that implementation of the OLPP final rule would reduce participation in third-party certification programs; instead, third-party certification programs may simply evolve as producers find new ways to distinguish their products.

Finally, the accompanying RIA explains several calculation errors associated with the OLPP final rule RIA. The RIA also provides additional information regarding the estimated benefits and explains why they likely were overstated in the original OLPP final rule RIA. In any case, withdrawing the OLPP final rule would prevent the negative cost impacts from taking effect, resulting in substantial organic poultry producer cost savings of $8.2 to $31 million annually, plus additional cost savings of $1.95–$3.9 million from paperwork reduction.

Consideration of Alternatives

AMS considered three alternatives in developing this rule to withdraw the OLPP final rule. The first alternative was to implement the OLPP final rule on May 14, 2018, which is the current effective date. The second alternative was to further delay the final rule. The third alternative, which is the selected alternative, was to withdraw the final rule.

For the first alternative, if the OLPP final rule were to become effective on May 14, 2018, the costs and transfers described in the RIA would be expected to occur, resulting in requirements with substantial costs not supported by evidence of significant market failure.

The second alternative was to further delay the OLPP final rule. This alternative, however, would defer the decision on whether to implement or withdraw to a future date, despite the agency having performed its review and received comments from the public. This alternative fails to achieve USDA's goal of reducing regulatory uncertainty.

AMS has selected the third alternative, to withdraw the OLPP final rule, as the preferred alternative. This alternative estimates cost savings for poultry producers of $8.2 to $31 million per year (based on 15-year costs). In addition, $1.95–$3.9 million in annual paperwork burden would not be incurred. As described in the RIA, the range of benefits could be expected to be lower than projected in the OLPP final rule RIA. Moreover, *a priori,* the benefits associated with any government intervention in the absence of an identifiable market failure will be lower than the required costs of imposing such an intervention. Given the unclear nature of the market failure being addressed by the OLPP final rule, AMS would give clear preference to the lower end of the benefit range, which consistently falls below the costs associated with the OLPP final rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

Data suggest nearly all organic egg producers qualify as small businesses. OLPP final rule RIA at 140–141. Small egg producers are listed under North American Industry Classification System (NAICS) code 112310 (Chicken Egg Production) as grossing less than $15,000,000 per year, and AMS estimates that out of 722 operations reporting sales of organic eggs, only four are not small businesses. Thus, the OLPP final rule RIA found that some small egg producers and small chicken (broiler) producers would be affected by the poultry outdoor access and space provisions. *See* OLPP final rule RIA at 136–138, 142, 145–146. Furthermore, the RIA of the OLPP final rule noted that some small producers were particularly concerned about limited land availability for outdoor access requirements and the potential for increased mortality attendant to the new regulatory demands. These concerns were identified as sources of burdensome costs and/or major obstacles to compliance for some small businesses. *See id.* at 26–28. Based on surveys of organic egg producers, AMS believes approximately fifty percent of layer production will not be able to

acquire additional land needed to comply with the OLPP final rule and some of this burden will be borne by small entities. *Id.* at 142. Also, certain existing certified organic slaughter facilities could surrender their organic certification as a result of the OLPP final rule and certain businesses currently providing livestock transport services for certified organic producers or slaughter facilities may be unwilling to meet and/or document compliance with the livestock transit requirements. *Id.* at 149.

Withdrawing the OLPP final rule avoids these economic impacts without introducing any incremental burdens or erecting barriers that would restrict the ability of small entities to compete in the market. This conclusion is supported by the historic growth of the organic industry without the regulatory amendments.

This rule relieves producers of the costs of complying with the OLPP final rule. The effects of withdrawal will be beneficial and not defined as significant for the specific purposes of the Regulatory Flexibility Act. Some small entities may experience time and money savings as a result of not having to change practices to comply with the OLPP final rule. Affected small entities would include organic egg and organic broiler producers. This rule will provide measurable, savings for small entities. However, for the definitional purposes of the RFA, these savings are not considered a ''significant'' economic impact on a substantial number of small entities.

Under these circumstances, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and certifies as such.

VIII. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system.

Pursuant to section 6519(f) of OFPA, this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136(y)).

IX. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by withdrawing the OLPP final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), Chapter 35. Withdrawing the OLPP final rule will avoid an estimated $1.95-$3.9 million in costs for increased paperwork burden associated with that final rule.

X. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

XI. Civil Rights Impact Analysis

AMS has reviewed this final rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. AMS has determined that withdrawing the OLPP final rule has no potential for affecting producers in protected groups differently than the general population of producers.

XII. Conclusion

In compliance with OFPA and consistent with the regulatory policies of Executive Orders 12866 and 13563, AMS is withdrawing the OLPP final rule.

Dated: March 8, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2018–05029 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AE77

Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; correction.

SUMMARY: On February 23, 2018, the NCUA Board (Board) issued a final rule adopting amendments to its share insurance requirements rule to provide stakeholders with greater transparency regarding the calculation of each eligible financial institution's pro rata share of a declared equity distribution from the National Credit Union Share Insurance Fund (NCUSIF). A clerical error appeared which confuses what CFR unit is being amended. This document corrects that error.

DATES: This correction is effective March 26, 2018.

FOR FURTHER INFORMATION CONTACT: Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, at (703) 518–6540; or Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance, at (703) 518–6360. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SUPPLEMENTARY INFORMATION: On February 23, 2018, at 83 FR 7954, the Board issued a final rule adopting amendments to 12 CFR part 741. In amendments to appendices A, B, and C to part 741, incorrect headings appeared above amendatory instructions 4 and 5 on page 7964 identifying the wrong CFR part. Instruction 5 omitted the part number.

Therefore, FR Rule Doc. No. 2018–03622, published on February 23, 2018, beginning on page 7954, is corrected as follows:

■ 1. On page 7964, in the center column, the heading above amendatory instruction 4 is corrected to read as follows:

Appendix A to Part 741 [Removed]

■ 2. On page 7964, in the center column, the heading above amendatory instruction 5 and amendatory instruction 5 are corrected to read as follows:

Appendices B and C to Part 741 [Redesignated as Appendices A and B to Part 741]

■ 5. Redesignate appendix B and appendix C to part 741 as appendix A and appendix B to part 741, respectively.

By the National Credit Union Administration Board on March 7, 2018.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2018–05056 Filed 3–12–18; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2018–0103; Airspace Docket No. 18–ASO–1]

Amendment of Restricted Areas R–2907C, R–2910B, R–2910C, and R–2910E; Pinecastle, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action updates the controlling agency information for restricted areas R–2907C, R–2910B, R–2910C, and R–2910E; Pinecastle, FL. This is an administrative change to reflect the current organizations tasked with controlling agency responsibilities for the restricted areas. It does not affect the boundaries, designated altitudes, time of designation or activities conducted within the restricted areas.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the controlling agency for restricted areas R–2907C, R–2910B, R–2910C and R–2910E; Pinecastle, FL, to reflect the current responsible organizations.

The Rule

This rule amends title 14 Code of Federal Regulations (14 CFR) part 73 by updating the controlling agency name for restricted areas R–2907C, R–2910B, R–2910C, and R–2910E; Pinecastle, FL. The controlling agency for R–2907C and R–2910E is changed from ''FAA, Jacksonville ARTCC,'' to ''FAA, Jacksonville TRACON.'' The controlling agency for R–2910B and R–2910C is changed from ''FAA, Jacksonville ARTCC,'' to ''FAA, Central Florida TRACON.'' This action is necessary in order to assign controlling agency responsibilities to the air traffic control facilities having jurisdiction over the affected airspace.

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

Regulatory Notices and Analyses

The FAA has determined that this action 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 so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of updating the agency information for restricted areas R–2907C, R–2910B, R–2910C and R–2910E; Pinecastle, FL, qualifies for categorical exclusion under the National Environmental Policy Act, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5.d, ''Modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors).'' This airspace action is an administrative change to the description of restricted areas R–2907C, R–2910B, R–2910C and R–2910E; Pinecastle, FL, to update the controlling agency names. It does not alter the dimensions, altitudes, time of designation, or use of the airspace. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.29 [Amended]

■ 2. Section 73.29 is amended as follows:

* * * * *

R–2907C Pinecastle, FL [Amended]

By removing the words ''Controlling agency. FAA, Jacksonville ARTCC,'' and adding in their place the words ''Controlling agency. FAA, Jacksonville TRACON.''

R–2910B Pinecastle, FL [Amended]

By removing ''Controlling agency. FAA, Jacksonville ARTCC,'' and adding in its place ''Controlling agency. FAA, Central Florida TRACON.''

R–2910C Pinecastle, FL [Amended]

By removing ''Controlling agency. FAA, Jacksonville ARTCC,'' and adding in its place ''Controlling agency. FAA, Central Florida TRACON.''

R–2910E Pinecastle, FL [Amended]

By removing ''Controlling agency. FAA, Jacksonville ARTCC,'' and adding in its place ''Controlling agency. FAA, Jacksonville TRACON.''

Issued in Washington, DC, on March 6, 2018.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2018–05041 Filed 3–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9588]

RIN 1545–BL87

Allocation of Mortgage Insurance Premiums; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9588) that were published in the **Federal Register** on Monday, May 7, 2012. The final regulations are related to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each taxable year.

DATES: This correction is effective on March 13, 2018 and is applicable on or after May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Regina Johnson, (202) 317–5177 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9588) that are the subject of this correction are issued under section 163 of the Internal Revenue Code.

Need for Correction

As published May 7, 2012 (77 FR 26698), the final regulations (TD 9588) contain an error that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Par. 1.** The authority citation for part 1 is amended by removing the sectional authority for § 1.163–11T, and the general authority continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2018–05011 Filed 3–12–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0067]

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the South Park highway bridge, across the Duwamish Waterway mile 3.8, at Seattle, WA. This deviation will test a change to the drawbridge operation schedule, to determine whether a permanent change to the schedule is appropriate. This deviation will allow the bridge to open during nighttime hours after receiving a 12 hour advance notice.

DATES: This deviation is effective from 6 a.m. on March 22, 2018 to 6 a.m. on September 17, 2018.

Comments and related material must reach the Coast Guard on or before August 30, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0067 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Chief Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Due to infrequent drawbridge opening requests between 11 p.m. to 7 a.m., King County (the bridge owner), has requested to open the South Park highway bridge with 12 hours advances notice between the hours of 11p.m. and 7 a.m. In addition, King County requested between the hours of 11 p.m. and 7 a.m. vessels engaged in sea-trials or waterway dredging activities may request a standby drawtender, to open the bridge on demand during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the drawtender. The 2017 drawbridge log book reflects the infrequent requests for drawbridge opening of the South Park highway bridge. Of the 524 openings in 2017 only 24 occurred between the hours of 11.00 p.m. and 7 a.m., this is approximately 4.5 percent. Opening from 11 p.m. to 7 a.m. for 2014, 2015, 2016 ranged from 5% to 10% of all openings. The South Park highway bridge operates per 33 CFR 117.1041(a)(2).

Vessels operating on the Duwamish Waterway range from small recreational, sailboats, tribal fishing boats, mega yachts and commercial tug and tow vessels. No navigational impacts are expected due to few vessels operating on this waterway at the stated hours. King County has discussed this test deviation and coordinating with all known waterway users. Vessels able to pass through the subject bridge with the span in the closed-to-navigation position may do so at any time.

The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the subject bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation. Duwamish Waterway does not have an immediate alternate route for vessels to pass. Therefore, in the event of an emergency requiring a bridge opening any day between 11 p.m. and 7 a.m., the standby bridge operator at the Fremont Bridge will respond to an opening request and have the South Park Bridge open within 45 minutes from initial notification.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation

from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

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

Dated: March 7, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–04966 Filed 3–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0006]

RIN 1625–AA00

Safety Zone; Tennessee River, Huntsville, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tennessee River from mile marker (MM) 322.0 to MM 325.0. The safety zone is necessary to provide for the safety of life and vessels during cargo transfer operations taking place at Redstone Arsenal. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from March 13, 2018 through March 16, 2018, or until the cargo operation ceases, whichever comes first. For the purposes of enforcement, actual notice will be used from March 5, 2018 through March 13, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0006 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 Petty Officer Vera Max, MSD Nashville, U.S. Coast Guard; telephone 615–736–5421, email *MSDNashville@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
LNM Local Notice to Mariners
FR Federal Register
MM Mile marker
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 it is impracticable. We must establish this safety zone by March 5, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 and contrary to the public interest because the event will take place before the 30 days and this rule is necessary to provide for public safety against the potential hazards associated with this cargo transfer operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with a cargo transfer operation taking place at Redstone Arsenal during the period from March 5, 2018 through March 16, 2018 will be a safety concern for all navigable waters of the Tennessee River between mile markers (MMs) 322.0 and 325.0. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary safety zone before, during, and after the cargo transfer operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from March 5, 2018 through March 16, 2018, or until the cargo operation is completed, whichever comes first. The temporary safety zone will cover all navigable waters of the Tennessee River between MMs 322.0 and 325.0. Transit into and through this area is prohibited during periods of enforcement. The periods of enforcement will be prior to, during, and 30 minutes after any vessel movement and cargo transfer operations at Redstone Arsenal. The Coast Guard was informed that the operations will take place during daylight hours over approximately two days. Safety zone enforcement times will be announced via Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), or through other means of public notice and at least 1 hour notice will be provided before each enforcement period.

The duration of the temporary safety zone is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the cargo transfer operations taking place at Redstone Arsenal. All vessels intending to transit the Tennessee River between MMs 322.0 and 325.0 from March 5, 2018 through March 16, 2018 must contact the COTP or a designated representative to request permission to transit at a time when critical operations

are not taking place. Entry into this safety zone is prohibited unless specifically authorized by the COTP or a designated representative. Entry requests will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1–800–253–7465 or can be reached by VHF–FM channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the temporary safety zone. This safety zone prohibits transit on a three mile stretch of the Tennessee River only during critical cargo transfer operations at Redstone Arsenal over approximately two days, during a time of year that experiences lower than normal traffic. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of the safety zone enforcement periods through BNM, LNM, and other means of public notice so that they may plan accordingly for each enforcement period restricting transit. Vessel traffic must request permission from the COTP or a designated representative to enter the restricted 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 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that would prohibit entry to vessels during cargo transfer operations at Redstone Arsenal. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T08–0006 to read as follows:

§ 165.T08–0006 Safety zone; Tennessee River, Huntsville, AL.

(a) *Location.* The following area is a temporary safety zone area: all navigable waters of the Tennessee River between Mile Marker (MM) 322.0 and MM 325.0, Huntsville, AL.

(b) *Effective date.* This section is effective from March 5, 2018 through March 16, 2018 or until the cargo operation is completed, whichever comes first.

(c) *Periods of enforcement.* This section will be enforced prior to and 30 minutes after all vessel movement and cargo transfer operations taking place at Redstone Arsenal. The Captain of the Port Sector Ohio Valley (COTP) or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), or through other means of public notice at least 1 hour in advance of each enforcement period.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted by telephone at 1–800–253–7465 or on VHF–FM radio channel 16.

(2) Persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: March 5, 2018.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–04968 Filed 3–12–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0544; FRL–9975–37–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Regulatory Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions (Revision C16 and Revision I16) formally submitted by the Commonwealth of Virginia (Virginia). The revisions pertain to amendments made to the definition of ''volatile organic compound'' (VOC) in the Virginia Administrative Code to conform with EPA's regulatory definition of VOC. Specifically, these amendments remove the record keeping and reporting requirements for t-butyl acetate (also known as tertiary butyl acetate or TBAC); Chemical Abstracts Service [CAS] number: 540–88–5) and add 1,1,2,2,-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2; CAS number: 406–78–0) as a compound excluded from the regulatory definition of VOC, which match actions EPA has taken. EPA is approving these revisions to update the definition of VOC in the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 12, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0544. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814–2043, or by email at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO_X) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for regulatory purposes. It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound is of negligible reactivity. Compounds that are less or equally reactive as ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented subsequently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On September 30, 1999, EPA proposed to revise the regulatory definition of VOC in 40 CFR 51.100(s) to exclude TBAC as a VOC (64 FR 52731). In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. However, EPA's final rule excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC (69 FR 69298, November 29, 2004) (2004 Final Rule). This was primarily due to EPA's conclusion in the 2004 Final Rule that ''negligibly reactive'' compounds may contribute significantly to ozone formation if present in sufficient quantities and that emissions of these compounds need to be represented accurately in photochemical modeling analyses. Per EPA's 2004 Final Rule, Virginia partially excluded TBAC from the regulatory definition of VOC, which was approved into Virginia's SIP on August 18, 2006 (71 FR 47742).

When EPA exempted TBAC from the VOC definition for purposes of control requirements in the 2004 Final Rule, EPA created a new category of compounds and a new reporting requirement that required that emissions of TBAC be reported separately by states and, in turn, by industry. However, EPA did not issue any guidance on how TBAC emissions should be tracked and reported. Therefore, the data that was reported as result of these requirements was incomplete and inconsistent. Also, in the 2004 Final Rule, EPA stated that the primary objective of the recordkeeping and reporting requirements for TBAC was to address the cumulative impacts of ''negligibly reactive'' compounds and suggested that future exempt compounds may also be subject to such requirements. However, such requirements were not included in any other proposed or final VOC exemptions.

Because having high quality data on TBAC emissions alone was unlikely to be useful in assessing the cumulative impacts of ''negligibly reactive'' compounds on ozone formation, EPA subsequently concluded that the recordkeeping and reporting requirements for TBAC were not achieving their primary objective of informing more accurate photochemical modeling in support of SIP submissions. Also, there was no evidence that TBAC was being used at levels that would cause concern for ozone formation and that the requirements were providing sufficient information to evaluate the cumulative impacts of exempted compounds. Therefore, because the requirements were not addressing EPA's concerns as they were intended, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (February 25, 2016, 81 FR 9339).

On August 1, 2016, EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC (81 FR 50330). This action was based on EPA's consideration of the compound's negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. EPA's rationale for this action is explained in more detail in the final rule for this action. *See* 81 FR 50330 (August 1, 2016).

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), the Virginia State Air Pollution Control Board amended the definition of VOC in 9VAC5–10–20 to remove the recordkeeping and reporting requirements for TBAC and add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC. On July 31, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), formally submitted these amendments as two requested revisions (Revision C16 and Revision I16) to the Virginia SIP. Revision C16 requested that the definition of VOC be updated in the Virginia SIP to conform with EPA's February 25, 2016 (81 FR 9339) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC. Revision I16 requested that the definition of VOC be updated in the Virginia SIP to conform with EPA's August 1, 2016 (81 FR 50330) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds excluded from EPA's regulatory definition of VOC.

Virginia's amendments to the definition of VOC in 9VAC5–10–20 are in accordance with EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are therefore approvable for inclusion in the Virginia SIP in accordance with CAA section 110. Also, because EPA has made the determination that TBAC and HFE-347pcf2 are of negligible reactivity and therefore have low contributions to ozone as well as low likelihood of risk to human health or the environment, removing these chemicals from the definition of VOC in the Virginia SIP as well as the recordkeeping and reporting requirements for these chemicals will not interfere with attainment of any NAAQS, reasonable further progress, or any other requirement of the CAA. Thus, the removal of the recordkeeping and reporting requirements for TBAC and the addition of HFR-347pcf2 to the list of compounds excluded from the regulatory definition of VOC is in accordance with CAA section 110(l).

On December 27, 2017 (82 FR 61200), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of Revision C16, which updated the definition of VOC in the Virginia SIP to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC, and Revision I16, which updated the definition of VOC in the Virginia SIP by adding HFE-347pcf2 to the list of compounds excluded from EPA's regulatory definition of VOC. No public comments were received on the NPR.

III. Final Action

EPA is approving both Revision C16 and Revision I16, submitted on July 31, 2017 by VADEQ, as revisions to the Virginia SIP, as the submissions meet the requirements of CAA section 110. Revision C16 updates the regulatory definition of VOC in the Virginia SIP by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC. Revision I16 updates the regulatory definition of VOC in the Virginia SIP to add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative

burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . . '' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to the definition of VOC in 9VAC5–10–20 of the Virginia Administrative Code discussed in Section II of this preamble. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

[1] 62 FR 27968 (May 22, 1997).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action updating the definition of VOC in the Virginia SIP by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC and adding HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 26, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding two entries for ''Section 5–10–20'' after the entry for ''Section 5–10–20'' (with the State effective date of 7/30/15) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
9 VAC 5, Chapter 10 General Definitions [Part I]				
*	*	*	*	* * *
5–10–20	Terms Defined	12/15/16	3/13/18, [Insert **Federal Register** citation].	Definition of ''volatile organic compound'' is revised by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate or TBAC) as a VOC.
5–10–20	Terms Defined	5/19/17	3/13/18, [Insert **Federal Register** citation].	Definition of ''volatile organic compound'' is revised by adding 1,1,2,2,-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2) to the list of compounds excluded from the regulatory definition of VOC.
*	*	*	*	* * *

* * * * *

[FR Doc. 2018–04937 Filed 3–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0215; FRL–9975–32–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Clean Air Interstate Rule (CAIR) Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). The revision requests EPA remove from the Virginia SIP regulations from the Virginia Administrative Code that established trading programs under the Clean Air Interstate Rule (CAIR). The EPA-administered trading programs under CAIR were discontinued on December 31, 2014, upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal trading programs for sources in multiple states, including Virginia, that replace the CAIR state and federal trading programs. The submitted SIP revision requests removal of state regulations that implemented the CAIR annual nitrogen oxides (NO_X), ozone season NO_X, and annual sulfur dioxide (SO_2) trading programs from the Virginia SIP (as CSAPR has replaced CAIR). EPA is approving the SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 12, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2017–0215. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814–2043, or by email at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 2005, EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states' nonattainment and interfered with maintenance of the 1997 ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). CAIR required 28 states, including Virginia, to revise their SIPs to reduce emissions of NO_X and SO_2, precursors to the formation of ambient ozone and $PM_{2.5}$. Under CAIR, EPA provided model state rules for separate cap-and-trade programs for annual NO_X, ozone season NO_X, and annual SO_2. The annual NO_X and annual SO_2 trading programs were designed to address transported $PM_{2.5}$ pollution, while the ozone season NO_X trading program was designed to address transported ozone pollution. EPA also promulgated CAIR federal implementation plans (FIPs) with CAIR federal trading programs that would address each state's CAIR requirements in the event that a CAIR SIP for the state was not submitted or approved (71 FR 25328, April 28, 2006). Generally, both the model state rules and the federal trading program rules applied only to electric generating units (EGUs), but in the case of the model state rule and federal trading program for ozone season NO_X emissions, each state had the option to submit a CAIR SIP revision that expanded applicability to include certain non-EGUs [1] that formerly participated in the NO_X Budget Trading Program under the NO_X SIP Call.[2] Virginia submitted, and EPA approved, a CAIR SIP revision based on the model state rules establishing CAIR state trading programs for annual SO_2, annual NO_X, and ozone season NO_X emissions, with certain non-EGUs included in the state's CAIR ozone season NO_X trading program. *See* 72 FR 73602 (December 28, 2007). Because Virginia's NO_X ozone season trading program under CAIR included non-EGUs that previously participated in the NO_X budget trading program under the NO_X SIP Call, this CAIR program satisfied Virginia's obligations under the NO_X SIP Call as to both EGUs and non-EGUs. However, even though the NO_X SIP Call requirements were being met by the CAIR program, Virginia's state NO_X Budget Trading Program rule also remains part of the state's approved SIP. *See* 76 FR 68638 (November 7, 2011).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina* v. *EPA,* 531 F.3d 896, *modified,* 550 F.3d 1176 (2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR in order to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR required EGUs in affected states, including Virginia, to participate in federal trading programs to reduce annual SO_2, annual NO_X, and/or ozone season NO_X emissions. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. CSAPR was intended to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation and ordered EPA to continue administering CAIR on an interim basis. On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's *vacatur* of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the Supreme Court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects but remanded certain state emissions budgets, including Virginia's Phase 2 budget for ozone season NO_X emissions. *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* 795 F.3d 118, 138 (D.C. Cir. 2015).

Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR. Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested delay, by three years, of all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015, and delayed the implementation of CSAPR Phase I to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, EPA stopped administering the CAIR state and federal trading programs with respect to emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.[3]

In October 2016, EPA promulgated the CSAPR Update (81 FR 74504, October 26, 2016) to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that established or updated ozone season NO_X budgets for 22 states,

[1] These non-EGUs are generally defined in the NO_X SIP Call as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr).

[2] In October 1998, EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the NO_X SIP Call. *See* 63 FR 57356 (October 27, 1998).

[3] EPA solicited comment on the interim final rule and subsequently issued a final rule affirming the amended compliance schedule after consideration of comments received. 81 FR 13275 (March 14, 2016).

including Virginia. Starting in January 2017, the CSAPR Update budgets were implemented via modifications to the CSAPR NO_X ozone season allowance trading program that was established under the original CSAPR.

As noted above, starting in January 2015, the CSAPR federal trading programs for annual NO_X, ozone season NO_X, and annual SO_2 were applicable in Virginia. Thus, since January 1, 2015, EPA has not administered the CAIR state trading programs for annual NO_X, ozone season NO_X, or annual SO_2 emissions established by the Virginia regulations.

On January 5, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), formally submitted a SIP revision (Revision D16) that requests removal from its SIP of Virginia Administrative Code regulations including 9 VAC 5 Chapter 140: Part II—NO_X Annual Trading Program; Part III—NO_X Ozone Season Trading Program; and Part IV—SO_2 Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs in Virginia.[4]

On September 28, 2017, EPA simultaneously published a notice of proposed rulemaking (NPR) (82 FR 45241) and a direct final rule (DFR) (82 FR 45187) for Virginia approving, as a SIP revision, the removal of the regulations under 9 VAC 5 Chapter 140: Part II—NO_X Annual Trading Program; Part III—NO_X Ozone Season Trading Program; and Part IV—SO_2 Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs in Virginia, from the Virginia SIP. EPA received adverse comments on the rulemaking and withdrew the DFR prior to the effective date of November 27, 2017. *See* 82 FR 55052 (November 20, 2017). In the NPR, EPA had proposed to approve the SIP revision, which would remove from the Virginia SIP the regulations under 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs. In this final rulemaking, EPA is responding to the comments submitted on the proposed revision to the Virginia SIP and is approving, as a SIP revision, the removal of these regulations from the Virginia SIP.

II. Summary of SIP Revision and EPA Analysis

VADEQ's January 5, 2017 SIP revision requests the removal of regulations from the Virginia SIP under 9 VAC 5 Chapter 140: Part II—NO_X Annual Trading Program, Part III—NO_X Ozone Season Trading Program, and Part IV—SO_2 Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the state's CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs. EPA has not administered the trading programs established by these regulations since January 1, 2015, when the CSAPR trading programs replaced the CAIR programs, and the state CAIR regulations have been repealed in their entirety from the Virginia Administrative Code. The amendments removing these regulations were adopted by the State Air Pollution Control Board on September 9, 2016, and were effective as of November 16, 2016.

As noted previously, the CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs addressed interstate transport of emissions under the 1997 $PM_{2.5}$ NAAQS and the 1997 ozone NAAQS. The D.C. Circuit remanded CAIR to EPA for replacement, and in response EPA promulgated CSAPR which, among other things, fully addresses Virginia's interstate transport obligation under the 1997 $PM_{2.5}$ NAAQS. *See* 76 FR at 48210. EPA stopped administering the CAIR trading programs after 2014 and instead began implementing the CSAPR trading programs in 2015. EPA had also determined that CSAPR would fully address Virginia's interstate transport obligation under the 1997 ozone NAAQS, *id.,* but the D.C. Circuit later remanded Virginia's CSAPR Phase 2 budget for ozone season NO_X, finding that the CSAPR rulemaking record did not support EPA's determination of a transport obligation under the 1997 ozone NAAQS for Virginia in CSAPR Phase 2, *EME Homer City II,* 795 F.3d at 129–30, and in response to the Court's decision EPA withdrew Virginia's remanded budget.[5] Thus, none of Virginia's three CAIR state rules still plays any role in addressing the transport obligations that the state initially adopted the rules to address: The CAIR trading programs are no longer being administered; the state's transport obligation under the 1997 $PM_{2.5}$ NAAQS is now being addressed by the CSAPR trading programs for annual NO_X and SO_2; and the state no longer has a transport obligation under the 1997 ozone NAAQS.

Virginia's CAIR trading programs for annual NO_X and SO_2 were adopted only to address Virginia's transport obligation under the 1997 $PM_{2.5}$ NAAQS, one of the two NAAQS underlying EPA's CAIR rules. In contrast, Virginia's CAIR trading program for ozone season NO_X was adopted to address not only Virginia's transport obligation under the 1997 ozone NAAQS (the other NAAQS underlying EPA's CAIR rules), but also Virginia's ongoing obligations under the NO_X SIP Call.[6] Specifically, under the NO_X SIP Call the Virginia SIP, first, must include enforceable control measures for large EGUs and large non-EGUs and, second, must require those sources to monitor and report ozone season NO_X emissions in accordance with 40 CFR part 75. *See* 40 CFR 51.121(f)(2) and (i)(4). Virginia's EGUs are currently subject to requirements under the federal CSAPR trading program for ozone season NO_X that address the purpose of these NO_X SIP Call requirements as to EGUs, but because Virginia's non-EGUs are not subject to that CSAPR trading program, the state must meet these requirements for non-EGUs through other SIP provisions.

With respect to the NO_X SIP Call requirement for the SIP to include part 75 monitoring requirements, Virginia's SIP still includes the state's NO_X Budget Trading Program rules, and those rules continue to require non-EGUs to monitor and report ozone season NO_X emissions under part 75 even though EPA is no longer administering the trading program provisions of the state's rules. Thus, removal of the state's CAIR rules for ozone season NO_X emissions from Virginia's SIP will not eliminate the required SIP provisions for part 75 monitoring by non-EGUs under the NO_X SIP Call because the SIP will still include the equivalent provisions in the state's NO_X Budget Trading Program rules.

With respect to the NO_X SIP Call requirement for the SIP to include enforceable control measures for non-EGUs, Virginia formerly met the requirement by including these sources

[4] EPA notes that Virginia's January 5, 2017 SIP revision does not request removal of the regulations under 9 VAC 5 Chapter 140: Part I—NO_X Budget Trading Program, which include regulations addressing the continuous emission monitoring requirements of 40 CFR part 75 for non-EGUs covered by the NO_X SIP Call (Part 75 rule). Therefore, this rulemaking action does not apply to regulations under 9 VAC 5 Chapter 140: Part I—NO_X Budget Trading Program, including those related to the part 75 rule.

[5] The replacement ozone season NO_X budget established for Virginia in the CSAPR Update addresses (in part) the state's transport obligation under the 2008 ozone NAAQS rather than the 1997 ozone NAAQS.

[6] The NO_X SIP Call addresses states' transport obligations under the 1979 ozone NAAQS.

in the state's CAIR trading program for ozone season NO_X emissions. When EPA initially replaced the CAIR trading programs with the CSAPR trading programs in 2015, the CSAPR regulations did not provide an option for states to expand trading program applicability to include these non-EGUs. In the CSAPR Update, EPA restored the option to include these EGUs in the current CSAPR trading program for ozone season NO_X starting in 2019, but Virginia has not elected this option. Accordingly, since January 1, 2015, when the CSAPR federal trading program became effective in Virginia and EPA stopped administering the CAIR trading programs, the Virginia SIP has not contained an effective regulation addressing the NO_X SIP Call requirement for enforceable control measures for non-EGUs that formerly participated in the state's NO_X Budget Trading Program. However, Virginia's request in its January 5, 2017 SIP seeking removal from its SIP of 9 VAC 5 Chapter 140: Part III—NO_X Ozone Season Trading Program and EPA's action to approve the January 5, 2017 submittal did not create this gap in coverage under the Virginia SIP. Rather, as described above, the gap predates the SIP submittal at issue in this action, and approval of the SIP submittal will not exacerbate or otherwise affect the gap. According to Virginia, the Commonwealth is in the process of drafting a regulation to address the Commonwealth's obligations under the NO_X SIP Call (including its obligation to address these non-EGUs which formerly participated in the state's CAIR trading program for ozone season NO_X emissions). In remedying its provisions to address the NO_X SIP Call, Virginia must satisfy the requirements of 40 CFR 51.121(f)(2) for the SIP to include enforceable control measures for non-EGUs that are stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 MMBtu/hr. EPA expects Virginia will submit such provisions to EPA to be included in Virginia's SIP, and EPA will review and act on any such SIP submittal from Virginia addressing the Commonwealth's NO_X SIP Call obligations in a separate rulemaking.

In summary, Virginia's CAIR rules at 9 VAC 5, Chapter 140: Part II–NO_X Annual Trading Program, Part III—NO_X Ozone Season Trading Program, and Part IV—SO_2 Annual Trading Program (sections 5–140–1010 through 5–140–3880) no longer play any role in addressing the transport obligations that the rules were adopted to address, and removal of the rules from the SIP will not introduce any new gaps with respect to the additional purposes that the rules served with respect to addressing the state's ongoing obligations under the NO_X SIP Call. EPA therefore finds Virginia's January 5, 2017 SIP revision requesting removal of these CAIR rules from the SIP approvable in accordance with section 110 of the CAA. The public comments received on the NPR are discussed in Section III of this rulemaking action.

III. Public Comments and EPA's Response

EPA received two public comments on our September 28, 2017 action to approve Virginia's January 5, 2017 SIP submittal that requests the removal of the regulations under 9 VAC 5 Chapter 140: Part II—NO_X Annual Trading Program; Part III—NO_X Ozone Season Trading Program; and Part IV—SO_2 Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the state's CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs, from the Virginia SIP. The comment submitted on October 7, 2017 was not specific to this rulemaking action and will not be addressed here.

Comment: The commenter stated that ''EPA needs to ensure that the NO_X SIP call sources'' are addressed in the Virginia SIP. The commenter also requested that EPA not remove CAIR in Virginia, citing its public health benefits.

EPA Response to Comment: As discussed in Section II, the CAIR trading programs are no longer being administered, and for that reason removing Virginia's CAIR rules from the state's SIP will have no consequences for any source's operations or emissions or for public health. EPA also notes that removal of the state's CAIR rules from the state's SIP does not eliminate requirements for the state's EGUs and non-EGUs to monitor and report their ozone season NO_X emissions in accordance with 40 CFR part 75 as required under the NO_X SIP Call. The EGUs continue to be subject to part 75 requirements under the current CSAPR trading program rules, and the non-EGUs continue to be subject to part 75 requirements under the state's NO_X Budget Trading Program rules, which are still included in the state's SIP.

EPA agrees that under the NO_X SIP Call, the Virginia SIP must include enforceable control measures for ozone season NO_X emissions from non-EGUs, such as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 MMBtu/hr, that formerly participated in the state's NO_X SIP Call trading program and CAIR trading program for ozone season NO_X emission. This requirement for the SIP to include enforceable control measures was formerly met by the SIP provisions requiring these sources to participate in the state's NO_X Budget Trading Program and then the state's CAIR trading program for ozone season NO_X emissions. However, since 2015, when EPA began implementing the CSAPR trading programs and stopped administering the CAIR trading programs in response to the D.C. Circuit's remand of CAIR, Virginia's SIP has not included enforceable control measures for NO_X emissions from these non-EGUs. This gap in SIP coverage was caused by the discontinuation of the CAIR trading programs and predates the SIP submittal at issue in this action. Removing the state's CAIR rules from the SIP at this time will not exacerbate or otherwise affect this pre-existing lack of enforceable control measures in the SIP. As stated above in Section II, according to Virginia, the Commonwealth is in the process of drafting a regulation to address the Commonwealth's obligation under the NO_X SIP Call with respect to NO_X emissions from these non-EGUs, which includes the requirement for enforceable control measures. EPA expects Virginia will submit such provisions to EPA to be included in Virginia's SIP, and EPA will review and act on any such SIP submittal from Virginia addressing the Commonwealth's NO_X SIP Call obligations in a separate rulemaking.

IV. Final Action

EPA is approving the Virginia SIP revision submitted on January 5, 2017 that sought removal from the Virginia SIP of regulations under 9 VAC 5 Chapter 140: Part II—NO_X Annual Trading Program; Part III—NO_X Ozone Season Trading Program; and Part IV—SO_2 Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the state's CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs. Removal of these regulations from the Virginia SIP is in accordance with section 110 of the CAA. This rule, which responds to the adverse comments received, finalizes our proposed approval of Virginia's January 5, 2017 SIP submittal.

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain

conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by May 14, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action removing from the Virginia SIP regulations under Sections 5–140–1010 through 5–140–3880 of 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_X, ozone season NO_X, and annual SO_2 trading programs may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 23, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

§ 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (c) is amended by:

■ a. Removing the table heading ''Part II—NO_X Annual Trading Program''; the table subheading ''Article 1 CAIR NO_X Annual Trading Program General Provisions'' and the entries ''5–140–1010'' through ''5–140–1080''; the table subheading ''Article 2 CAIR-designated Representative for CAIR NO_X Sources'' and the entries ''5–140–1100'' through ''5–140–1150''; the table subheading ''Article 3 Permits'' and the entries ''5–140–1200'' through ''5–140–1240''; the table subheading ''Article 5 CAIR NO_X Allowance Allocations'' and the entries ''5–140–1400'' through ''5–140–1430''; the table subheading ''Article 6 CAIR NO_X Allowance Tracking System'' and the entries ''5–140–1510'' through ''5–140–1570''; the table subheading ''Article 7 CAIR NO_X Allowance Transfers'' and the entries ''5–140–1600'' through ''5–140–1620''; the table subheading ''Article 8 Monitoring and Reporting'' and the entries ''5–140–1700'' through ''5–140–1750''; the table subheading ''Article 9 CAIR NO_X Opt-in Units'' and the entries ''5–140–1800'' through ''5–140–1880''.

■ b. Removing the table heading ''Part III NO_X Ozone Season Trading Program''; the table subheading ''Article 1 CAIR NO_X Ozone Season Trading Program General Provisions'' and the entries ''5–140–2010'' through ''5–140–2080''; the table subheading ''Article 2 CAIR-Designated Representative for CAIR NO_X Ozone Season Sources'' and the entries ''5–140–2100'' through ''5–140–2150''; the table subheading ''Article 3 Permits'' and the entries ''5–140–2200'' through ''5–140–2240''; the table subheading ''Article 5 CAIR NO_X Ozone Season Allowance Allocations'' and the entries ''5–140–2400'' through ''5–140–2430''; the table subheading ''Article 6 CAIR NO_X Ozone Season Allowance Tracking System'' and the entries ''5–140–2510'' through ''5–140–2570''; the table subheading ''Article 7 CAIR NO_X Ozone Season Allowance Transfers'' and the entries ''5–140–2600'' through ''5–140–2620''; the table subheading ''Article 8 Monitoring and Reporting'' and the entries ''5–140–2700'' through ''5–140–2750''; the table subheading ''Article 9 CAIR NO_X Ozone Season Opt-in Units'' and the entries ''5–140–2800'' through ''5–140–2880''.

■ c. Removing the table heading ''Part IV—SO_2 Annual Trading Program''; the table subheading ''Article 1 CAIR SO_2 Trading Program General Provisions'' and the entries ''5–140–3010'' through ''5–140–3080''; the table subheading ''Article 2 CAIR-designated Representative for CAIR SO_2 Sources'' and the entries ''5–140–3100'' through ''5–140–3150''; the table subheading ''Article 3 Permits'' and the entries ''5–140–3200'' through ''5–140–3240''; the table subheading ''Article 5 CAIR SO_2 Allowance Allocations'' and the entries ''5–140–3400'' through ''5–140–3420''; the table subheading ''Article 6 CAIR SO_2 Allowance Tracking System'' and the entries ''5–140–3510'' through ''5–140–3570''; the table subheading ''Article 7 CAIR SO_2 Allowance Transfers'' and the entries ''5–140–3600'' through ''5–140–3620''; the table subheading ''Article 8 Monitoring and Reporting'' and the entries ''5–140–3700'' through ''5–140–3750''; the table subheading ''Article 9 CAIR SO_2 Opt-in Units'' and the entries ''5–140–3800'' through ''5–140–3880''.

[FR Doc. 2018–04935 Filed 3–12–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2017–0256; FRL–9975–46–Region 5]

Air Plan Approval; Ohio; Redesignation of the Delta, Ohio Area to Attainment of the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Ohio's request to redesignate the portion of Fulton County, Ohio known as the Delta nonattainment area (Delta area) to attainment of the 2008 National Ambient Air Quality Standards (NAAQS or standard) for lead. EPA is also approving, as meeting Clean Air Act (CAA) requirements, the maintenance plan and related elements of the redesignation, reasonably available control measure (RACM)/reasonably available control technology (RACT) measures and a comprehensive emissions inventory. EPA is taking these actions in accordance with the CAA and EPA's implementation regulations regarding the 2008 lead NAAQS.

DATES: This final rule is effective on March 13, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0256. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection

Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background?
II. What are EPA's responses to the comments?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews
V. Judicial Review

I. What is the background?

On November 12, 2008 (73 FR 66964), EPA established the 2008 primary and secondary lead NAAQS at 0.15 micrograms per cubic meter ($\mu g/m^3$) based on a maximum arithmetic three-month mean concentration for a three-year period. 40 CFR 50.16.

On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data for calendar years 2007–2009. These designations became effective on December 31, 2010. The Delta area portion of Fulton County was designated as nonattainment for lead, specifically portions of Swan Creek and York Townships. 40 CFR 81.336. On May 26, 2015 (80 FR 29964), EPA issued a Clean Data Determination, which determined that the Delta area attained the 2008 lead NAAQS prior to its attainment date of December 31, 2015.

On April 27, 2017, Ohio requested EPA to redesignate the Delta area to attainment of the 2008 lead NAAQS and provided documentation in support of its request. On October 18, 2017 (82 FR 48442), EPA issued a direct final rule approving Ohio's request to redesignate the Delta area to attainment. However, since EPA received relevant adverse comments on this action within the prescribed period, EPA withdrew the direct final rule. EPA had also proposed to approve the request to redesignate the Delta area to attainment of the 2008 lead NAAQS on October 18, 2017 (82 FR 48474). This action is a final rule based on the October 18, 2017 proposal.

The requirements for redesignating an area from nonattainment to attainment are found in CAA section 107 (d)(3)(E). There are five criteria for redesignating an area. First, the Administrator must determine that the area has attained the applicable NAAQS based on current air quality data. Second, the Administrator must have fully approved the applicable SIP for the area under CAA section 110(k). The third criterion is for the Administrator to determine that the air quality improvement is the result of permanent and enforceable emission reductions. Fourth, the Administrator must have fully approved a maintenance plan meeting the CAA section 175A requirements. The fifth criterion is that the state has met all of the applicable requirements of CAA section 110 and part D.

The direct final rule published on October 18, 2017 (82 FR 48442) details how the Delta area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In summary, EPA's approval of the RACM/RACT measures satisfies section 172 (c)(1) of the CAA. EPA is approving Ohio's 2013 emissions inventories for the Delta area as meeting the requirement of section 172(c)(3) of the CAA. EPA finds that the other requirements of CAA section 172(c) are not applicable because the Delta area has monitored attainment of the 2008 lead NAAQS. Further, EPA is approving Ohio's maintenance plan as it adequately addresses the requirements of section 175A of the CAA.

II. What are EPA's responses to the comments?

EPA received an anonymous comment on November 16, 2017. The comment is discussed below along with a response from EPA.

Comment: The commenter stated, ''In 2009 the areas [*sic*] design value for lead was 0.18 and dropped significantly to 0.09 in 2012, but in 2014 the design value increased significantly back up to 0.12. This shows that the area hasn't maintained a consistent level that shows attainment below 0.15.'' The commenter further stated that, ''EPA shouldn't approve the re-designation request until the Fulton area shows better improvement in the monitored lead design values. EPA should wait until the lead levels become steady without increasing.'' The commenter further states, ''EPA needs to take lead violations seriously.''

Response: EPA disagrees with the commenter that the variability in the area's design value prohibits a redesignation to attainment. The statute does not require an area's design value to ''maintain a consistent level'' at its lowest recorded value or ''become steady without increasing,'' but rather requires that the air quality in the area is attaining the standard. In this case, though there was a fluctuation in the area's design values. Those values have remained below the level of the 2008 NAAQS for the relevant period, and, contrary to commenter's suggestion, has not violated the standard. Since the Bunting Bearing Company's Delta, Ohio facility (Bunting), identified by Ohio as the only point source of lead emissions in the nonattainment area, improved its lead emission controls in 2012 by adding required inspections, leak detection systems, corrective actions, and recordkeeping, the area has been consistently attaining the standard. Those controls are permanent and federally enforceable. Thus EPA has reasonably determined that, in accordance with the statute, the area is attaining and that the attainment is due to permanent and enforceable measures.

Comment: The commenter also asked, ''what happens if the area's lead levels increase another 0.03?''

Response: An increase from the 2014–2016 design value of 0.12 $\mu g/m^3$ to 0.15 $\mu g/m^3$ would mean that the area would still be in attainment of the 2008 lead NAAQS and public health would remain protected. More importantly, Ohio's maintenance plan for the Delta area has contingency measures that help prevent NAAQS violations and that address violations if they occur. As part of its contingency measures, the state has committed that a ''warning'' level response is triggered if the lead concentration reaches 0.135 $\mu g/m^3$ on a three-month rolling average. If a warning level response is triggered, Ohio will conduct a study to determine whether the lead values indicate a trend toward exceeding the standard and what control measures would be necessary to reverse the trend within 12 months of the conclusion of the calendar year. An ''action'' level response is triggered if the lead concentration reaches a level at or above 0.143 $\mu g/m^3$ on a three-month rolling average. The action level response will require Ohio to work with the entity found to be responsible for the ambient concentration to evaluate and implement the needed control measures to bring the area into attainment within 18 months of the conclusion of the calendar year that triggered the response. Should the 2008 lead NAAQS be violated during the maintenance period, Ohio will implement one or more contingency measures. The contingency measures will be considered based on the cause of the elevated lead levels. Potential measures include improvements to existing control devices, the addition of a secondary control device, and improvements to housekeeping and maintenance. EPA has determined that the contingency measures are adequate to promptly correct a violation of the ambient lead NAAQS.

III. What action is EPA taking?

EPA is approving the request from Ohio to change the legal designation of

the Delta area from nonattainment to attainment for the 2008 lead NAAQS. EPA is approving Ohio's maintenance plan for the Delta area as a revision to the Ohio SIP because we have determined that the plan meets the requirements of section 175A of the CAA. EPA is approving the emission controls in Air Pollution Permits-to-Install and Operate P0108083, P0121822, P0120836, and P0121942 all issued to Bunting as meeting the RACM/RACT requirements of CAA section 172(c)(1).

Specifically, EPA is approving the necessary elements from the permits, emission limits and Preventive Maintenance Plan conditions, into the Ohio SIP rather than the entirety of the permits. The emission limits are for units controlled with Baghouse A: 0.150 pounds per hour combined limit, Baghouse B: 0.150 pounds per hour combined limit, and Baghouse C: 0.075 pounds per hour combined limit. The approved specific required elements of the Preventive Maintenance Plan are detailed on pages 24 to 26 of Ohio's ''Redesignation Request and Maintenance Plan for the Partial Fulton County, OH Annual Lead Nonattainment Area,'' submitted in April 2017. In summary, the required elements are five elements of inspections, three elements of fabric filter leak detection systems, three elements of corrective actions, and five elements of records.

EPA is approving the 2013 emissions inventory as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. EPA is taking these actions in accordance with the CAA and EPA's implementation regulations regarding the 2008 lead NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the state of planning requirements for this lead nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(1) and (3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: February 27, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (e) is amended by adding the entry ''Lead (2008)'' after the entry ''Lead (2008)'' (with the State date of 6/29/2016) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	* * *
Summary of Criteria Pollutant Maintenance Plan				
*	*	*	*	* * *
Lead (2008)	Delta (partial Fulton County).	4/27/2017	3/13/2018, [insert **Federal Register** citation].	Includes approval of the 2013 lead base year emissions inventory and Preventative Maintenance Plan as RACM/RACT for the Bunting Bearing LLC Delta facility.
*	*	*	*	* * *

■ 3. Section 52.1893 is amended by adding paragraphs (f), (g), and (h) to read as follows:

§ 52.1893 Control strategy: Lead (Pb).

* * * * *

(f) Ohio's 2013 lead emissions inventory for the Delta area, submitted on April 27, 2017, to meet the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Delta area.

(g) Approval—The 2008 lead maintenance plan for the Delta, Ohio nonattainment area, submitted on April 27, 2017.

(h) Existing controls and maintenance provisions in the Air Pollution Permits-to-Install and Operate P0108083, P0121822, P0120836, and P0121942 for the Bunting Bearing LLC Delta facility including the preventative maintenance plan as fulfilling the RACM/RACT 172(c)(1) requirement. Permits P0120836, P0121822, and P0121942, all issued February 28, 2017, require a combined limit of 0.150 pounds lead per hour for units P006 to P011, P013, P020 to P025, P029 to P032, P035, and P036. Permit P0108083, issued October 29, 2012, requires a combined limit of 0.150 pounds lead per hour for units P014 to P019 and P028 and a combined limit of 0.075 pounds lead per hour for unit P005.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.336 is amended by revising the entry ''Delta, OH:'' in the table entitled ''Ohio—2008 Lead NAAQS'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
* * * * * * *		
Delta, OH:	3/13/2018	Attainment.
Fulton County (part).		
The portions of Fulton County that are bounded by: sections 12 and 13 of York Township and sections 7 and 18 of Swan Creek Township.		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2018–05057 Filed 3–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[PS Docket No. 15–91; PS Docket No. 15–94; FCC 18–4]

Wireless Emergency Alerts; Emergency Alert System; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** of February 28, 2018, concerning revisions to Wireless Emergency Alert (WEA) rules to improve utility of WEA as a life-saving tool. The document contained an incorrect compliance date.

DATES: This correction is effective April 30, 2018.

FOR FURTHER INFORMATION CONTACT: James Wiley, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at 202–418–2410.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 28, 2018, in FR Doc. 2018–03990, on page 8619, in the third column, correct the **DATES** caption to read:

DATES: *Effective dates:* The amendments to §§ 10.10 and 10.210 are effective April 30, 2018. The amendments to §§ 10.450 and 10.500 are effective November 30, 2019. The amendment to § 10.240 contains new or modified information collection requirements and will not be effective until those information collection requirements are approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the section.

Compliance dates: Participating CMS Providers must comply with the new point of sale disclosure rules by November 30, 2019, or as specified by publication in the **Federal Register** of a document announcing approval by the Office of Management and Budget (OMB) and the relevant effective date, whichever is later. CMS Providers are required to update their WEA election status within 120 days from the date of publication in the **Federal Register** of a document announcing approval by the Office of Management and Budget of the modified information collection requirements.

Applicability date: The requirement to support Spanish language Alert Messages in § 10.480 is applicable beginning May 1, 2019.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04969 Filed 3–12–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 14–54 and 16–64]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund Phase II auction (CAF–II auction) contained in the Commission's *Connect America Fund Orders,* FCC 14–54 and FCC 16–64. This document is consistent with the *Connect America Fund Orders,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendment to § 54.310(e) published at 79 FR 39164, July 9, 2014, is effective March 13, 2018.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted new information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on December 12, 2017, which were approved by the OMB on March 5, 2018. The information collection requirements are contained in the Commission's *Connect America Fund Orders,* FCC 14–54, published at 79 FR 39164, July 9, 2014 and FCC 16–64, published at 81 FR 44414, July 7, 2016. The OMB Control Number is 3060–1252. The Commission publishes this document as an announcement of the effective date of the rules published July 9, 2014. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1252, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on March 5, 2018, for the information collection requirements contained in 47 CFR 54.310(e) and 54.315(a), published at 79 FR 39164, July 9, 2014 and 81 FR 44414, July 7, 2016. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1252.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1252.

OMB Approval Date: March 5, 2018.

OMB Expiration Date: March 31, 2021.

Title: Application to Participate in Connect America Fund Phase II Auction, FCC Form 183.

Form No.: FCC Form 183.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 500 respondents; 500 responses.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 214, 254, and 303(r).

Total Annual Burden: 3,500 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: Although most information collected in FCC Form 183 will be made available for public inspection, the Commission will withhold certain information collected in FCC Form 183 from routine public inspection. Specifically, the Commission will treat certain technical information submitted in FCC Form 183 as confidential and as though the applicant has requested that this information be treated as confidential trade secrets and/or commercial information. In addition, an applicant may use the abbreviated process under 47 CFR 0.459(a)(4) to request confidential treatment of certain financial information contained in its FCC Form 183 application. However, if a request for public inspection for this technical or financial information is made under 47 CFR 0.461, and the applicant has any objections to disclosure, the applicant will be notified and will be required to justify continued confidential treatment of its request. To the extent that a respondent seeks to have other information collected in FCC Form 183 withheld from public inspection, the respondent may request confidential treatment pursuant to 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will use the information collected to determine whether applicants are eligible to participate in the CAF–II auction. In its *USF/ICC Transformation Order and Further Notice of Proposed Rulemaking,* 76 FR 78385 (Dec. 16, 2011), WC Docket No. 10–90 et al., FCC 11–161, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund to focus support on networks capable of providing voice and broadband services. The Commission created the Connect America Fund and concluded that support in price cap areas would be provided through a combination of ''a new forward-looking model of the cost of constructing modern multi-purpose networks'' and a competitive bidding process (the CAF–II auction). The Commission also sought comment on proposed rules governing the CAF–II auction, including options regarding basic auction design and the application process.

In the CAF–II auction, service providers will compete to receive support of up to $1.98 billion over 10 years to offer voice and broadband service in unserved high-cost areas. To implement reform and conduct the CAF–II auction, the Commission adopted new rules for the CAF–II auction which include new information collections. In its *April 2014 Connect America Order,* WC Docket No. 10–90 et al., FCC 14–54, the Commission adopted certain rules regarding participation in the CAF–II auction, the term of support, and the ETC designation process. In its *Phase II Auction Order,* WC Docket No. 10–90 et al., FCC 16–64, the Commission adopted rules to implement the CAF–II auction, including the adoption of a two-stage application process. Based on the Commission's experience with auctions and consistent with the record, this two-stage collection of information balances the need to collect information essential to conduct a successful auction with administrative efficiency.

Under this information collection, the Commission will collect information that will be used to determine whether an applicant is legally qualified to participate in an auction for Connect America Fund Phase II support. To aid in collecting this information, the Commission has created FCC Form 183, which the public will use to provide the necessary information and certifications. Commission staff will review the information collected on FCC Form 183 as part of the pre-auction process, prior to the start of the auction, and determine whether each applicant satisfies the Commission's requirements to participate in an auction for CAF–II support. Without the information collected on FCC Form 183, the Commission will not be able to determine if an applicant is legally qualified to participate in the auction and has complied with the various applicable regulatory and statutory auction requirements for such participation. This approach provides an appropriate screen to ensure serious participation without being unduly burdensome.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04945 Filed 3–12–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 828

RIN 2900–AP82

Revise and Streamline VA Acquisition Regulation To Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014–V002); Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: On February 21, 2018, the Department of Veterans Affairs (VA) published a final rule prescribing five new Economic Price Adjustment clauses for firm-fixed-price contracts, identifying VA's task-order and delivery-order ombudsman, clarifying the nature and use of consignment agreements, adding policy coverage on bond premium adjustments and insurance under fixed-price contracts, and providing for indemnification of contractors for medical research or development contracts. It contained an erroneous amendatory instruction citing the wrong CFR section. This document corrects that error.

DATES: This correction is effective on March 23, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Ricky Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 632–5276 (this is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: In the final rule published February 21, 2018, at 83 FR 7401, effective March 23, 2018, an amendatory instruction intended for 48 CFR 828.306 cited incorrectly 38 CFR 816.306.

Therefore, in FR Rule Doc. No. 2018–03164, on page 7404, at the top of the third column, correct amendatory instruction 12 to read as follows:

■ 12. Section 828.306 is amended by revising paragraph (a) to read as follows:

Dated: March 8, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–04985 Filed 3–12–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170605543–7999–02]

RIN 0648–XG021

Atlantic Highly Migratory Species; Commercial Blacktip Sharks, Aggregated Large Coastal Sharks, and Hammerhead Sharks in the Western Gulf of Mexico Sub-Region; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial fishery for blacktip sharks, aggregated large coastal sharks (LCS), and hammerhead shark management groups in the western Gulf of Mexico sub-region. This action is necessary because the commercial landings of sharks in the aggregated LCS management group in the western Gulf of Mexico sub-region for the 2018 fishing season has reached 80 percent of the available commercial quota as of March 8, 2018, and the aggregated LCS and hammerhead shark management groups are quota-linked under the regulations. The blacktip shark fishery in the western Gulf of Mexico sub-region will be closed to help minimize regulatory discards of sharks in the aggregated LCS management group in the western Gulf of Mexico sub-region, since LCS are often caught in conjunction with blacktip sharks in the commercial shark fisheries. This closure will affect anyone commercially fishing for sharks in the western Gulf of Mexico sub-region.

DATES: The commercial fishery for blacktip sharks and for the aggregated LCS and hammerhead shark management groups in the western Gulf of Mexico sub-region are closed effective 11:30 p.m. local time March 13, 2018 until the end of the 2018 fishing season on December 31, 2018, or until and if NMFS announces via a notice in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford or Karyl Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), dealers must electronically submit reports on sharks that are first received from a vessel on a weekly basis through a NMFS-approved electronic reporting system. Reports must be received by no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Under § 635.28(b)(4), the quotas of certain species and/or management groups are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). The quotas for aggregated LCS and the hammerhead shark management groups in the western Gulf of Mexico sub-region are linked (§ 635.28(b)(4)(iii)). The blacktip shark quota in the western Gulf of Mexico sub-region is not linked to the aggregated LCS or hammerhead shark quotas.

Under § 635.28(b)(2) and (3), when NMFS calculates that the landings for any species and/or management group of either a non-linked or a linked group have reached or are projected to reach a threshold of 80 percent of the available quota, NMFS will file for publication, with the Office of the Federal Register, a notice of closure for all of the species and/or management groups of either a non-linked or linked group that will be effective no fewer than five days from date of filing. For blacktip sharks, under § 635.28(b)(5), NMFS may close the regional or sub-regional Gulf of Mexico blacktip shark management group(s) before landings reach, or are expected to reach, 80 percent of the quota, after considering specified regulatory criteria and other relevant factors.

From the effective date and time of the closure until and if NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups and specified non-linked species and/or management groups are closed, even across fishing years.

On November 22, 2017 (82 FR 55512), NMFS announced that for 2018, the commercial western Gulf of Mexico blacktip shark sub-regional quota was 347.2 metric tons (mt) dressed weight (dw) (765,392 lb dw), the western Gulf of Mexico aggregated LCS sub-regional quota was 72.0 mt dw (158,724 lb dw), and the western Gulf of Mexico hammerhead shark sub-regional quota was 11.9 mt dw (26,301 lb dw). Dealer reports received through March 8, 2018, indicate that 86 percent (61.7 mt dw) of the available western Gulf of Mexico aggregated LCS management group sub-regional quota has been landed and that 57 percent (6.8 mt dw) of the available western Gulf of Mexico hammerhead shark sub-regional quota has been landed. Based on these dealer reports, the western Gulf of Mexico aggregated LCS management group sub-regional quota has exceeded 80 percent and meets the closure threshold. While the western Gulf of Mexico hammerhead shark sub-regional quota has reached 57 percent of the available quota, it is linked to the aggregated LCS fishery and therefore closes when the aggregated LCS management groups in the western Gulf of Mexico sub-region closes. Accordingly, NMFS is closing the commercial aggregated LCS and hammerhead management groups in the western Gulf of Mexico sub-region as of 11:30 p.m. local time March 13, 2018.

Dealer reports received through March 8, 2018, indicate that 77 percent (265.9 mt dw) of the available western Gulf of Mexico blacktip shark sub-regional quota has been landed. Regulations at § 635.28(b)(5)(i)–(v) authorize the closure of the blacktip shark fishery before landings reach, or are expected to reach, 80 percent of the quota if warranted after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. NMFS has considered these criteria with respect to blacktip sharks in the western Gulf of Mexico sub-region, and in particular, considered sub-regional distribution and abundance (§ 635.28(b)(5)(ii)) and sub-regional catch rates (§ 635.28(b)(5)(v)) in determining that a closure is warranted at this time.

The directed shark fisheries in the western Gulf of Mexico sub-region exhibit a mixed species composition, with a high abundance and distribution of aggregated LCS caught in conjunction with blacktip sharks. As a result, closing

the aggregated LCS and hammerhead shark management groups while leaving only the blacktip shark fishery open in the western Gulf of Mexico sub-region could cause large numbers of regulatory discards of aggregated LCS species. Such discards could hinder the management goals and interfere with accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.28(b)(5)(iii)), which include preventing overfishing while achieving on a continuing basis optimum yield and rebuilding overfished shark stocks. Such discards would also be contrary to National Standard 9, which requires that management measures minimize bycatch and bycatch mortality, particularly if the discards are dead and are of overfished species. A single closure for the blacktip, aggregated LCS, and hammerhead management groups in the western Gulf of Mexico sub-region would minimize regulatory discards, and help prevent overfishing, of aggregated LCS in the western Gulf of Mexico sub-region, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the criteria at § 635.28(b)(5). Accordingly, NMFS is closing the commercial blacktip shark fishery in the western Gulf of Mexico sub-region as of 11:30 p.m. local time March 13, 2018.

All other shark species or management groups in the western Gulf of Mexico sub-region that are currently open will remain open, including the commercial Gulf of Mexico non-blacknose small coastal sharks (SCS), blue sharks, smoothhound sharks, and pelagic sharks other than porbeagle or blue sharks.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88° 00′ W. long (§ 635.27(b)(1)(ii)). Persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4 may still retain blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the eastern Gulf of Mexico sub-region (east of 88° 00′ W. long).

During the closure, retention of blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the western Gulf of Mexico sub-region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4. However, persons aboard a commercially permitted vessel that is also properly permitted to operate as a charter vessel or headboat for HMS, has a shark endorsement, and is engaged in a for-hire trip could fish under the recreational retention limits for sharks and ''no sale'' provisions (§ 635.22 (c)). Similarly, persons aboard a commercially permitted vessel that possesses a valid shark research permit under § 635.32 and has a NMFS-approved observer onboard may continue to harvest and sell blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region pursuant to the terms and conditions of the shark research permit.

During this closure, a shark dealer issued a permit pursuant to § 635.4 may not purchase or receive blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region from a vessel issued an Atlantic shark limited access permit (LAP), except that a permitted shark dealer or processor may possess blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region that were harvested, off-loaded, and sold, traded, or bartered prior to the effective date of the closure and were held in storage consistent with § 635.28(b)(6). Additionally, a permitted shark dealer or processor may possess blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region that were harvested by a vessel issued a valid shark research fishery permit per § 635.32 with a NMFS-approved observer onboard during the trip the sharks were taken on as long as the LCS research fishery quota remains open. Similarly, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with relevant state regulations, purchase or receive blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway and any delay in this action would result in overharvest of the quotas for these species and management groups and thus would be inconsistent with fishery management requirements and objectives. The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of availability on the fishing grounds, the migratory nature of the species, and the regional variations. NMFS is not able to give notice sooner nor would sooner notice be practicable given the structure of the regulations, which close the fisheries under specified regulatory criteria or thresholds, and closure determinations need to be based on near real-time data to balance fishing opportunities against the management goal of preventing quota overharvests. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if a quota is exceeded, the stock may be negatively affected and fishermen ultimately could experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(3) and § 635.28(b)(5) and is exempt from review under Executive Order 12866.

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

Dated: March 8, 2018

Emily H. Menashes,

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

[FR Doc. 2018–05058 Filed 3–8–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160229159–8236–02]

RIN 0648–BF85

Fisheries of the Northeastern United States; Framework 2 to the Tilefish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This final rule implements the management measures contained in Framework Adjustment 2 to the Tilefish Fishery Management Plan and adjusts the 2018 specifications for this fishery. The Mid-Atlantic Fishery Management Council developed Framework Adjustment 2 to improve and simplify the administration of the golden tilefish fishery. These changes include removing an outdated reporting requirement, proscribing allowed gear for the recreational fishery, modifying the commercial incidental possession limit, requiring commercial golden tilefish be landed with the head and fins attached, and revising how assumed discards are accounted for when setting harvest limits. Based on new regulations implemented by this rule, this action updates previously published specifications for the commercial golden tilefish fishery for 2018 and projected specifications for 2019 and 2020.

DATES: This rule is effective April 12, 2018, except for the amendment to § 648.7(b)(2)(ii), which is effective March 13, 2018.

ADDRESSES: Copies of Framework 2 and the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) and the Regulatory Impact Review (RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

This action implements Framework Adjustment 2 to the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this framework to improve and simplify management measures for the golden tilefish fishery in Federal waters north of the Virginia/North Carolina border, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). We published a proposed rule for this action on October 23, 2017 (82 FR 48967), with a comment period through November 7, 2017. See Comments and Responses section for more information.

Framework Adjustment 2 Measures

Interactive Voice Response System (IVR) Reporting Requirement Removal

Commercial fishing vessels that land golden tilefish under the individual fishing quota (IFQ) system are currently required to report each trip within 48 hours of landing through our IVR system. The Council originally created this reporting requirement when the fishery was managed under three permit categories, each with a sector-specific annual landing limit. The IVR system provided timely landing reports to track quota use and allowed managers to close a permit category if the annual landing cap was reached. When the Council changed the management of the fishery to an IFQ system, it retained the IVR system to allow additional monitoring of landings. Improvements in electronic dealer-reported landings and other data streams have rendered this IVR report redundant, and the data are no longer used to monitor quotas. This action eliminates this unnecessary reporting requirement.

Recreational Fishing Gear Limit

In recent years, the Council has received reports of recreational fishermen using ''mini-longline'' gear with a large number of hooks to target tilefish. The Council is concerned the use of this gear could result in increased dead discards of tilefish if fishermen catch more than the eight-fish per person bag limit using this type of gear. The Magnuson-Stevens Act list of authorized gear types at 50 CFR 600.75(v) already restricts the recreational fishery to rod and reel and spear gear. However, to avoid any potential confusion and clarify the amount of gear allowed, this action codifies that rod and reel with a maximum of five hooks per rod is the only authorized recreational tilefish gear for use in the Mid-Atlantic. Anglers could use either a manual or an electric reel.

Commercial Golden Tilefish Landing Condition

The commercial tilefish fishery typically lands fish in a head-on, gutted condition. However, quotas and possession limits are in whole (round) weight. This requires the fishing industry to use a conversion factor to change landed weight to whole weight to comply with incidental possession limits and IFQ allocations. This action requires commercially-caught golden tilefish to be landed with the head and fins attached, although they could be gutted. By requiring this, we can more reliably specify and monitor landing limits and quotas in landed weight, eliminating the need to use a conversion factor. This will simplify catch accounting and improve compliance for individuals participating in the commercial tilefish fishery.

Commercial Golden Tilefish Possession Limit

When the Council created the tilefish IFQ system, it allocated a separate quota and commercial possession limit of 500 lb (227 kg) to allow small landings of tilefish caught by non-IFQ vessels targeting other species. In recent years, there have been increasing reports of non-IFQ vessels specifically targeting golden tilefish to land the maximum commercial incidental possession limit. In an effort to ensure that the incidental fishery functions as originally intended, this action modifies the commercial possession limit to ensure that vessels are targeting other species, and only incidentally catching golden tilefish. This action adjusts the commercial golden tilefish landing limit to: 500 lb (227 kg) or 50 percent, by weight, of all fish, including the golden tilefish, on board the vessel, whichever is less.

Individual Fishing Quota Authorized Vessels

Tilefish IFQ allocation holders may authorize one or more vessels to land tilefish under their allocation. All golden tilefish landed by those vessels are then deducted from that allocation. We do not currently have a mechanism for a vessel to attribute golden tilefish landings from a single trip to more than one IFQ allocation. To create such a system would increase reporting burden on vessels and dealers, and add complexity to the IFQ accounting and cost recovery systems. In order to maintain simple and efficient administration of the IFQ fishery, this action prohibits a vessel from being authorized to land tilefish under multiple IFQ allocations on the same trip. A vessel could still change IFQ allocations over the course of the year while only being authorized by one IFQ allocation at a time. In addition, IFQ allocation holders can lease quota to maintain flexibility in harvesting their allocation.

Assumed Discards in Quota-Setting Process

The current specification process sets the annual catch limit (ACL) equal to the acceptable biological catch (ABC). The ACL is adjusted to address any management uncertainty to set an annual catch target (ACT), then assumed discards of golden tilefish are deducted from the ACT to generate the total

allowable landings (TAL). The incidental fishery is then allocated 5 percent of the TAL, and the remaining 95 percent of the TAL is divided among the IFQ shareholders based on their individual quota holdings. However, discarding golden tilefish is prohibited in the IFQ fishery. As a result, observed discards occur almost entirely in the incidental fishery. This action adjusts the specification process to allocate the ACT between the incidental and IFQ fisheries using the 5- and 95-percent split. Sector-specific assumed discards are then deducted to establish sector-specific TALs. The IFQ TAL is then allocated to the individual IFQ shareholders.

Updated Specifications

On November 7, 2017, we published a final rule (82 FR 51578) setting specifications for the 2018 commercial golden tilefish fishery and announcing projected specifications for the 2019 and 2020 fishing years. As discussed in that rule, the specifications were based on the regulations that were effective at the time but were anticipated to be revised if Framework 2 was fully implemented. Table 1 shows the 2018 golden tilefish specifications as implemented by the November 7, 2017, rule and new specification values that result from this rule. When this rule becomes effective, we will adjust each IFQ allocation based on the new higher IFQ TAL. Table 2 shows updated projected specifications for the 2019 and 2020 fishing years.

TABLE 1—CHANGES TO 2018 GOLDEN TILEFISH SPECIFICATIONS AS A RESULT OF THIS ACTION

	As implemented		Framework 2	
	million lb	mt	million lb	mt
Overfishing Limit	2.332	1,058	2.332	1,058
ABC	1.636	742	1.636	742
ACL	1.636	742	1.636	742
IFQ ACT	NA	NA	1.554	705
Incidental ACT	NA	NA	0.082	37
TAL	1.627	738	NA	NA
IFQ TAL	1.546	701	1.554	705
Incidental TAL	0.081	37	0.072	33

TABLE 2—UPDATED PROJECTED 2019 AND 2020 GOLDEN TILEFISH SPECIFICATIONS

	2019		2020	
	million lb	mt	million lb	mt
Overfishing Limit	2.421	1,098	2.291	1,039
ABC	1.636	742	1.636	742
ACL	1.636	742	1.636	742
IFQ ACT	1.554	705	1.554	705
Incidental ACT	0.082	37	0.082	37
IFQ TAL	1.554	705	1.554	705
Incidental TAL	0.072	33	0.072	33

Comments and Responses

We received two comments on the proposed rule. One comment did not mention or relate to the proposed measures or fishing in any way and is not discussed further. The other commenter supported all of the proposed measures and stated the changes would benefit all participants in the fishery.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule. However, a final rule published on November 15, 2017 (82 FR 52851), made changes to some of the same regulatory paragraphs as this rule. As a result, the regulatory text in this action reflects the current CFR.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Administrator, Greater Atlantic Region, NMFS, has determined that this final rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. Because this rule is not significant under Executive Order 12866, this rule is not an Executive Order 13771 regulatory action.

Pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act because the change to 50 CFR 648.7(a)(2)(ii) relieves the restriction requiring tilefish IFQ vessels to report each fishing trip through the IVR system. As explained above, this reporting requirement is redundant and no longer used for monitoring catch. A delay in effectiveness of this change would unnecessarily continue this reporting burden with no benefit to the industry, the tilefish resource, or the government. All other aspects of this rule are subject to a 30-day delay in effectiveness.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification and no information has arisen leading to a different conclusion. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a revision to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648–0590. Public reporting burden for the IVR reporting requirement is estimated to average 2 minutes for each IVR response, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule removes this reporting burden. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§ 648.7 [Amended]

■ 2. In § 648.7, paragraph (b)(2)(ii) is removed and reserved.

■ 3. In § 648.14, paragraphs (u)(2)(vi) and (viii) are revised and paragraph (u)(2)(ix) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(2) * * *

(vi) Land or possess golden tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental golden tilefish fishery is closed pursuant to § 648.295(a)(3), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.294(a), or engaged in recreational fishing.

* * * * *

(viii) Land or possess golden or blueline tilefish in or from the Tilefish Management Unit, on a vessel issued a valid commercial tilefish permit under this part, that do not have the head and fins naturally attached to the fish.

(ix) Engage in recreational fishing for golden tilefish with fishing gear that is not compliant with the gear restrictions specified at § 648.296.

* * * * *

■ 4. In § 648.291, paragraph (a) introductory text and paragraph (a)(1) are revised to read as follows:

§ 648.291 Tilefish Annual Catch Targets (ACT).

(a) *Golden tilefish.* The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the individual fishing quota (IFQ) and incidental sectors of the fishery as part of the golden tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *ACT allocation.* (i) The ACT shall be less than or equal to the ACL.

(ii) The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC.

(iii) The Tilefish Monitoring Committee shall allocate 5 percent of the ACT to the incidental sector of the fishery and the remaining 95 percent to the IFQ sector.

* * * * *

■ 5. In § 648.292, paragraphs (a)(1) through (a)(4) are revised to read as follows:

§ 648.292 Tilefish specifications.

(a) * * *

(1) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, golden tilefish landings and discards information, and any other relevant available data to determine if the golden tilefish ACL, ACT, or total allowable landings (TAL) for the IFQ and/or incidental sectors of the fishery require modification to respond to any changes to the golden tilefish stock's biological reference points or to ensure any applicable rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the IFQ and/or incidental TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend golden tilefish ACL, ACTs, and TALs to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate golden tilefish ACL, ACT, TAL, and other management measures for both the IFQ and the incidental sectors of the fishery for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate golden tilefish ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for both the IFQ and the incidental sectors of the fishery, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual golden tilefish ACL, ACT, TAL, and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years for both the IFQ and the incidental sectors of the fishery. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement the golden tilefish ACL, ACTs, TALs and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (a)(5) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(2) *Total Allowable Landings (TAL).* (i) The TALs for both the IFQ and the incidental sectors of the fishery for each fishing year will be specified pursuant to paragraph (a)(1) of this section.

(ii) The sum of the sector-specific TAL and the estimated sector-specific discards shall be less than or equal to the ACT for that sector of the fishery.

(3) *TAL allocation.* For each fishing year, up to 3 percent of the incidental and IFQ TALs may be set aside for the purpose of funding research. The remaining IFQ TAL will be allocated to the individual IFQ permit holders as described in § 648.294(a).

(4) *Adjustments to the quota.* If the incidental harvest exceeds the incidental TAL for a given fishing year, the incidental trip limit specified at § 648.295(a)(2) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

* * * * *

■ 6. In § 648.293, paragraph (a)(1) is revised to read as follows:

§ 648.293 Tilefish accountability measures.

(a) * * *

(1) *Commercial incidental fishery closure.* See § 648.295(a)(3).

* * * * *

■ 7. In § 648.294, paragraph (b)(4) is revised to read as follows:

§ 648.294 Golden tilefish individual fishing quota (IFQ) program.

* * * * *

(b) * * *

(4) *IFQ vessel.* (i) All Federal vessel permit numbers listed on the IFQ allocation permit are authorized to possess golden tilefish pursuant to the IFQ allocation permit.

(ii) An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess golden tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include:

(A) The vessel name and permit number, and

(B) The dates on which the IFQ allocation permit holder desires the vessel to be authorized to land golden tilefish pursuant to the IFQ allocation permit.

(iii) A vessel listed on the IFQ allocation permit is authorized to possess golden tilefish pursuant to the subject permit, until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder to remove the vessel.

(iv) A single vessel may not be listed on more than one IFQ allocation permit at the same time.

(v) A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ golden tilefish.

* * * * *

■ 8. Amend § 648.295 by:

■ a. Revising the section heading;

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

■ c. Adding paragraph (c).

The revisions and addition read as follows:

§ 648.295 Tilefish commercial trip limits and landing condition.

(a) *Golden tilefish*—(1) *IFQ landings.* Any golden tilefish landed by a vessel fishing under an IFQ allocation permit as specified at § 648.294(a), on a given fishing trip, count as landings under the IFQ allocation permit.

(2) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish vessel permit, as described at § 648.4(a)(12), unless the vessel is fishing under a tilefish IFQ allocation permit, is prohibited from possessing more than:

(i) 500 lb (226.8 kg) of golden tilefish at any time, or

(ii) 50 percent, by weight, of the total of all species being landed; whichever is less.

(3) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the golden tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental golden tilefish TAL has been landed. The Regional Administrator shall publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the incidental golden tilefish fishery is closed for the remainder of the fishing year.

(b) *Blueline tilefish*—(1) *Commercial possession limit.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 300 lb (136 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

* * * * *

(c) *Landing condition.* Commercial golden or blueline tilefish must be landed with head and fins naturally attached, but may be gutted.

■ 9. In § 648.296, the section heading and paragraph (a) are revised to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

(a) *Golden tilefish.* (1) Any person fishing from a vessel that is not fishing under a tilefish commercial vessel permit issued pursuant to § 648.4(a)(12), may land up to eight golden tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

(2) Any vessel engaged in recreational fishing may not retain golden tilefish, unless exclusively using rod and reel fishing gear, with a maximum limit of five hooks per rod. Anglers may use either a manual or an electric reel.

* * * * *

[FR Doc. 2018–04974 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02 and 170817779–8161–02]

RIN 0648–XG019

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 24, 2018, and will close 1200 hours, A.l.t., November 7, 2018. This period is the same as the 2018 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission. The IFQ and CDQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

DATES: Effective 1200 hours, A.l.t., March 24, 2018, until 1200 hours, A.l.t., November 7, 2018.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale

supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 24, 2018, and will close 1200 hours, A.l.t., November 7, 2018. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 7, 2018.

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

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: March 8, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05059 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 49
Tuesday, March 13, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0189; Product Identifier 2017–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Viking Air Limited Model DHC–3 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as pitting corrosion on the shank of the wing strut attach bolts. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 27, 2018.

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

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

For service information identified in this proposed AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; telephone: (North America) (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* internet: *http://www.vikingair.com/support/service-bulletins.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0189; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 287–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0189; Product Identifier 2017–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada, which is the aviation authority for Canada, has issued AD Number CF–2017–11, dated March 9, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for Viking Air Limited Model DHC–3 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> Pitting corrosion has been found on the shank of the following part number wing strut attach bolts: C3W114–3, C3W129–3 and C3W128–3. These bolts are manufactured using a standard AN12 bolt. Metallurgical evaluation concluded that pitting corrosion was present on the affected AN12 bolts prior to forming of the bolt head and threads. The pitting and un-plated voids could cause a surface condition that may have a detrimental effect on fatigue and corrosion resistance, leading to bolt failure and consequent failure of the wing.
>
> Viking has not been able to confirm the affected batch numbers or specific manufacture date range. New wing strut bolts manufactured after 21 March 2016 are inspected for pitting during manufacturing and issued new P/Ns C3W114–5, C3W129–5 and C3W128–5 under MOD 3/1010.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0189.

Related Service Information Under 1 CFR Part 51

Viking Air Limited has issued DHC–3 Otter Service Bulletin Number V3/0006, Revision B, dated March 9, 2017. The service information describes procedures for inspection and any necessary corrective action for pitting of the wing strut shank bolts. 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 of this NPRM.

FAA's Determination and Requirements of the 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 our bilateral agreement with this State of

Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 37 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $12,580, or $340 per product.

In addition, Table 1 is an estimate of possible necessary follow-on actions as a result of the required inspections. We have no way of determining the number of products that may need these actions. We estimate that any necessary follow-on replacement parts would cost as follows:

Replacing each affected bolt is on condition and is estimated to take about 1 work-hour at $85 for a cost of $85 per bolt.

TABLE 1—PARTS REPLACEMENT AND TOTAL BOLT COST

Part No.	Quantity per wing	Quantity per airplane	Price per bolt ($ USD)	Total cost per bolt (labor and parts)
C3W114–5	2	4	$284	$369
C3W128–5	1	2	275	360
C3W129–5	1	2	164	249

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.

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes and domestic business jet transport airplanes to the Director of the Policy and Innovation Division.

Regulatory Findings

We 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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited: Docket No. FAA–2018–0189; Product Identifier 2017–CE–022–AD.

(a) Comments Due Date

We must receive comments by April 27, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited Model DHC–3 airplanes with wing strut bolts wing strut bolts part numbers (P/N) C3W114–3, C3W129–3 and C3W128–3 (Pre MOD 3/1010), all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted by from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as pitting corrosion on the shank of the wing strut attach bolts. We are issuing this proposed AD to detect and correct pitting and un-plated voids, which could cause a surface condition that may have a detrimental effect on fatigue and corrosion resistance, leading to bolt failure and subsequent failure of the wing.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 12 months after the effective date of this AD, inspect the wing strut attach bolts installed on the airplane for pitting on the shank following paragraph A of the Accomplishment Instructions of Viking DHC–3 Otter Service Bulletin (SB) Number: V3/0006, Revision B, dated March 9, 2017.

(2) If pitting is found after the inspection required in paragraph (f)(1) of this AD, before further flight, replace the bolt with either a post MOD 3/1010 wing strut bolt (Part Numbers (P/Ns) C3W114–5, C3W129–5 or C3W128–5 as applicable) or a new or

serviceable pre MOD 3/1010 wing strut bolt that has been inspected following paragraph A of Viking DHC–3 Otter SB Number: V3/0006, Revision B, dated March 9, 2017.

(3) After the effective date of this AD, pre MOD 3/1010 bolts may continue to be used provided these bolts are inspected for pitting immediately before installation following paragraph A of the Accomplishment Instructions of Viking DHC–3 Otter SB Number: V3/0006, Revision B, dated March 9, 2017, and the accomplishment of the inspection must be documented in the airplane maintenance records.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for the actions required in paragraph (f)(1) or (2) of this AD if done before the effective date of this AD following SB Viking DHC–3 Otter V3/0006 Revision NC or A.

(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. Send information to ATTN: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 287–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(i) Related Information

Refer to MCAI Transport Canada AD Number CF–2017–11, dated March 9, 2017, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0189. For service information related to this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; telephone: (North America) (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* internet: *http://www.vikingair.com/support/service-bulletins*. You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 6, 2018.

Pat Mullen,

Acting Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–05012 Filed 3–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–129260–16]

RIN 1545–BN96

Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6103(n) of the Internal Revenue Code (Code) to authorize the Department of State to disclose returns and return information to its contractors who assist the Department of State in carrying out its responsibilities under section 32101 of the Fixing America's Surface Transportation (FAST) Act. The FAST Act requires the IRS to notify the Department of State of certified seriously delinquent tax debts, and the Department of State procures services from outside contractors in connection with carrying out its responsibilities under the FAST Act.

DATES: Written and electronic comments and requests for a public hearing must be received by April 12, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129260–16), Room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–129260–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–129260–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brittany Harrison of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6833; concerning the submission of comments and requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6103(n) of the Code. On December 4, 2015, the FAST Act, Public Law 114–94, 129 Stat. 1312, was enacted into law. Section 32101 of the FAST Act adds section 7345 to the Internal Revenue Code. Section 7345 requires the IRS to notify the Department of State of tax debts that the IRS certifies as seriously delinquent. Section 7345(b) generally defines a seriously delinquent tax debt as an unpaid, legally enforceable Federal tax liability of an individual that has been assessed, is greater than $50,000 (as indexed for inflation), and with respect to which a notice of lien has been filed pursuant to section 6323 and the administrative rights under section 6320 with respect to such filing have been exhausted or have lapsed, or a levy has been made pursuant to section 6331. Section 32101 of the FAST Act generally requires the Department of State to deny a passport (or the renewal of a passport) in the case of an individual if notified by the IRS that the individual has been certified as having a seriously delinquent tax debt and permits the Department of State to revoke a passport previously issued to such person.

Under section 6103(a) of the Code, returns and return information are confidential unless the Code otherwise authorizes disclosure. The FAST Act added section 6103(k)(11), which provides that, upon certification under section 7345, the IRS is authorized to disclose return information to the Department of State with respect to a taxpayer who has a seriously delinquent tax debt. Specifically, upon certification under section 7345, section 6103(k)(11)(A) authorizes the IRS to disclose to officers and employees of the Department of State (i) the taxpayer identity information with respect to the certified taxpayer and (ii) the amount of such seriously delinquent tax debt. Section 6103(k)(11)(A). Section 6103(k)(11)(B) limits the use of return information disclosed under subparagraph (A) for the purposes of, and to the extent necessary in, carrying out the requirements of section 32101 of the FAST Act.

The Department of State engages contractors to assist in carrying out its responsibilities with respect to passports, including responsibilities related to implementation of section 32101 of the FAST Act. Because such contractors are not ''officers and employees'' of the Department of State, section 6103(k)(11) of the Code does not authorize the disclosure of return information to such contractors.

Section 6103(n) of the Code authorizes, pursuant to regulations prescribed by the Secretary, the disclosure of returns and return information to any person for purposes of tax administration to the extent necessary in connection with, among other things, a written contract for services. The definition of the term ''tax administration'' includes ''the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes. . . .'' Section 6103(b)(4). Because implementation of the FAST Act relates to the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws and related statutes, disclosure of return information for the purpose of carrying out responsibilities under the FAST Act is a tax administration purpose.

The Treasury regulations provide that, pursuant to the provisions of section 6103(n) of the Code and subject to certain conditions, officers and employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice are authorized to disclose returns and return information to any person or to an officer or employee of the person, for purposes of tax administration (as defined in section 6103(b)(4)), to the extent necessary in connection with a written contract or an agreement for the acquisition of the providing of services. Section 301.6103(n)–1(a)(1). Any person, or officer or employee of the person, who receives such disclosed returns or return information may further disclose the returns or return information to its own officers or employees whose duties or responsibilities require such information in order to provide the services. Section 301.6103(n)–1(a)(2)(i). When authorized in writing by the IRS, such person, or officer or employee of the person, may further disclose such information to the extent necessary to provide services, including to its agents or subcontractors (or such agents' or subcontractors' officers or employees). Section 301.6103(n)–1(a)(2)(ii). Agents or subcontractors (or their officers or employees) who receive such returns or return information may further disclose the returns or return information to their officers or employees whose duties or responsibilities require the returns or return information for a purpose described in § 301.6103(n)–1(a). Section 301.6103(n)–1(a)(3). The regulations under section 6103(n) of the Code provide a number of rules related to limitations on such disclosures, penalties potentially applicable to recipients of returns and return information, notification requirements applicable to recipients of returns and return information, and safeguards requirements. See section 301.6103(n)–1(b), –1(c), –1(d), –1(e).

These proposed regulations add the Department of State to the list of agencies in current § 301.6103(n)–1(a)(1) whose officers and employees may disclose returns and return information to any person or to an officer or employee of such person for tax administration purposes to the extent necessary in connection with a written contract for the acquisition of property or services. These proposed regulations authorize the Department of State to disclose returns and return information to its contractors providing services in connection with the revocation or denial of passports pursuant to the requirements of section 7345 and the FAST Act.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

The purpose of these regulations is to allow the Department of State to share tax return information with its contractors for tax administration purposes. As a recipient of tax return information, the Department of State is required to comply with the reporting and other requirements under section 6103(p)(4). The Department of State is also responsible for the training and inspection of its contractors and ensuring that all safeguarding standards are met. These proposed regulations do not impose a reporting burden on the Department of State's contractors and will not require the contractors to file information with the IRS. Because the proposed regulations do not impose a collection of information on entities other than the Department of State, they do not impose a collection of information on small entities. Accordingly, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before the regulations proposed herein are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments submitted will be made available at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Sections 6103(n)–1(a)(1) and (e)(4)(i) are amended by removing the language ''or the Department of Justice'' and adding the language ''the Department of Justice, or the Department of State'' in its place.

■ **Par. 3.** Section 301.6103(n)–1(g) is amended to read as follows:

(g) *Applicability date.* This section is applicable on June 5, 2007, except that paragraphs (a) and (e)(4)(i) of this section apply to the Department of State on or after March 12, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–04971 Filed 3–12–18; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0395; FRL–9975–40–Region 4]

Air Plan Approval; Tennessee: Volatile Organic Compounds

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a revision to the Hamilton County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation from Chattanooga/Hamilton County Air Pollution Control Bureau on June 25, 2008. The revision amends the definition of ''volatile organic compounds'' (VOC) to be consistent with state and federal regulations. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before April 12, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0395 *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bell can be reached by phone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOC and NO_X that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent.

Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOC for regulatory purposes. It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

In this rulemaking, EPA is proposing action to approve Hamilton County's SIP revision which amends the definition of ''Volatile Organic Compounds'' in the Chattanooga Code, Chapter 4 of Part II, Section 4–2. This SIP revision also amends paragraph 3 and adds paragraphs 4 and 5 to the Chattanooga Code, Chapter 4 of Part II, Section 4–2 definition of VOC. Tennessee is updating the Hamilton County portion of its SIP to be consistent with changes to federal and other similar SIP-approved regulations.[1]

II. Analysis of State's Submittal

On June 25, 2008, Tennessee submitted a SIP revision[2] to EPA for review and approval. The revision amends the definition of VOC found in Chapter 4 of Part II, Section 4–2, of the Chattanooga Code. Specifically, the revision adds the following compounds to the list of negligibly reactive compounds to be consistent with federal and other similar SIP-approved regulations: 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (HFE–7100); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$, HFE–7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); and methyl formate ($HCOOCH_3$). These compounds are excluded from the VOC definition on the basis that each of these compounds makes a negligible contribution to tropospheric ozone formation. EPA is proposing to approve this revision because it is consistent with the definition of VOC at 40 CFR 51.100(s). EPA is also proposing to approve this revision because it is consistent with other similar SIP-approved regulations.

The revision includes minor changes to paragraph 3 of Chattanooga Code, Chapter 4 of Part II, Section 4–2 definition of VOC to be consistent with federal and other similar SIP-approved regulations. As a precondition to excluding compounds as VOCs, paragraph 3 states that: ''As a precondition to excluding these compounds as VOC or at any time thereafter, the Director shall require an owner or operator to provide monitoring or testing methods and results demonstrating the amount of negligibly-reactive compounds in the source's emissions.'' The SIP revision changes the precondition for the director to require this testing from ''shall'' to ''may'' and adds that any testing be ''to the satisfaction of the Director'' of the Chattanooga-Hamilton County Air Pollution Control Bureau. The SIP

[1] EPA approved similar revisions to the Tennessee SIP on April 23, 2006. *See* 71 FR 19124. EPA also approved a Knox County portion of the Tennessee SIP on January 4, 2007. *See* 72 FR 265.

[2] EPA will consider the other changes included in Tennessee's June 25, 2008, SIP revision in a future rulemaking.

revision also adds paragraph 4 which states: ''For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used to be consistent with state regulations.'' EPA is proposing to approve these revisions because they are consistent with the definition of VOC at 40 CFR 51.100(s) and with other similar SIP-approved regulations.

Finally, the SIP revision adds paragraph 5 which states: ''The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.'' Through this revision, Hamilton County is also adding t-butyl acetate to the list of negligibly reactive compounds, but maintaining the requirements of recordkeeping, emissions reporting, and inventory. EPA is proposing to approve this revision because it is consistent with the definition of VOC at 40 CFR 51.100(s).[3] [4]

Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The State's addition of the County's exemptions from the definition of VOC, addition of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-butyl acetate, and other changes in paragraphs 3 and 4 to Chapter 4 of Part II, Section 4–2, of the Chattanooga Code ''Definitions'' are approvable under section 110(l) because they reflect changes to federal regulations based on findings that the aforementioned compounds are negligibly reactive and make a negligible contribution to troposphere ozone formation.

[3] In EPA's November 29, 2004, final rulemaking, the Agency added tertiary butyl acetate to the list of excluded compounds from the definition of VOCs. *See* 69 FR 69298.

[4] While EPA added t-butyl acetate to the list of negligibly reactive compounds in the November 29, 2004, final rulemaking, t-butyl acetate continued to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which applied to VOC. *See* 69 FR 69298. Subsequently, on February 25, 2016 (81 FR 9339), EPA issued a final rule removing recordkeeping, emissions reporting, and inventory requirements for t-Butyl acetate. Although EPA no longer requires recordkeeping, emissions reporting, and inventory requirements for t-butyl acetate, this SIP revision includes this requirement.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Chapter 4 of Part II, Section 4–2, ''Definitions'' effective August 16, 1995, which revised the definition of VOC. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the aforementioned changes to Tennessee's SIP for Chapter 4 of Part II, Section 4–2. EPA has evaluated the relevant portions of Tennessee's June 25, 2008, SIP revision and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 20, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–04932 Filed 3–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2018–0017; FRL–9975–52-Region 4]

Air Plan Approval and Air Quality Designation; SC; Redesignation of the Greenville-Spartanburg Unclassifiable Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On January 22, 2018, the State of South Carolina, through the Department of Health and Environmental Control (DHEC), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Greenville-Spartanburg, South Carolina fine particulate matter ($PM_{2.5}$) unclassifiable area (hereinafter referred to as the ''Greenville Area'' or ''Area'') to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ national ambient air quality standards (NAAQS). The Greenville Area is comprised of Anderson, Greenville, and Spartanburg Counties in South Carolina. EPA now has sufficient data to determine that the Greenville Area is in attainment of the 1997 primary and secondary annual $PM_{2.5}$ NAAQS. Therefore, EPA is proposing to approve the State's request and redesignate the Area to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the $PM_{2.5}$ monitors in the Area are in compliance with the 1997 primary and secondary annual $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before April 12, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0017 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the NAAQS. After the promulgation of a new or revised NAAQS, EPA is required to designate areas, pursuant to section 107(d)(1) of the CAA, as attainment, nonattainment, or unclassifiable. On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for $PM_{2.5}$ (annual and 24-hour). The primary and secondary annual standards were each set at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. The primary and secondary 24-hour standards were each set at a level of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999, and deployed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA designated areas across the country as nonattainment, unclassifiable, or unclassifiable/attainment [1] for the $PM_{2.5}$ NAAQS based upon air quality monitoring data from these monitors for calendar years 2001–2003.

Greenville County, South Carolina, had a monitor with less than three years of data since the monitor had not been in operation for the full 2001–2003 period. Based upon the data that was obtained during its operation, the monitor indicated a potential to violate the 1997 annual $PM_{2.5}$ NAAQS. Also, Anderson and Spartanburg Counties had emissions and population levels that potentially contributed to the elevated concentrations of $PM_{2.5}$ at the Greenville monitor in question. Therefore, EPA designated all three counties—Anderson, Greenville and Spartanburg—as unclassifiable for the 1997 annual $PM_{2.5}$ NAAQS.

II. What are the criteria for redesignating an area from unclassifiable to unclassifiable/attainment?

Section 107(d)(3) of the CAA provides the framework for changing the area designations for any NAAQS pollutants. Section 107(d)(3)(A) provides that the Administrator may notify the Governor of any state that the designation of an area should be revised ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' The Act further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor's own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request.

When approving or denying a request to redesignate an area, EPA bases its decision on the air quality data for the area as well as the considerations provided under section 107(d)(3)(A).[2] In keeping with section 107(d)(1)(A), areas that are redesignated to unclassifiable/attainment must meet the requirements for attainment areas and thus must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not meet the NAAQS. The relevant monitoring data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database. The designated monitors generally should have remained at the same location for the duration of the monitoring period

[1] For the initial PM area designations in 2005 (for the 1997 annual $PM_{2.5}$ NAAQS), EPA used a designation category of ''unclassifiable/attainment'' for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category ''unclassifiable'' for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

[2] While CAA section 107(d)(3)(E) also list specific requirements for redesignations, those requirements only apply to redesignations of nonattainment areas to attainment and therefore are not applicable in the context of a redesignation of an area from unclassifiable to unclassifiable/attainment.

upon which the redesignation request is based.[3]

III. What is EPA's rationale for proposing to redesignate the Area?

In order to redesignate the Area from unclassifiable to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS, the 3-year average of annual arithmetic mean concentrations (*i.e.,* design value) over the most recent 3-year period must be less than or equal to 15.0 μg/m^3 at all monitoring sites in the Area over the full 3-year period, as determined in accordance with 40 CFR 50.18 and Appendix N of Part 50. EPA reviewed $PM_{2.5}$ monitoring data from monitoring stations in the Greenville Area for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS for the 3-year period from 2014–2016. These data have been quality-assured, certified, and recorded in AQS by South Carolina, and the monitoring locations have not changed during the monitoring period. As summarized in Table 1, the design values for the monitors in the Area for the 2014–2016 period are well below the 1997 primary and secondary annual $PM_{2.5}$ NAAQS.

TABLE 1—1997 ANNUAL $PM_{2.5}$ DESIGN VALUES FOR MONITORS IN THE GREENVILLE AREA FOR 2014–2016

Local site name	Monitoring site	2014–2016 Design value (μg/m^3)
Greenville ESC	45–045–0015	9.3
Hillcrest Middle School	45–045–0016	8.6
T.K. Gregg	45–083–0011	8.7

Because the 3-year design values, based on valid, quality-assured data, demonstrate that the Area meets the 1997 primary and secondary annual $PM_{2.5}$ standards, EPA is proposing to redesignate the Greenville Area from unclassifiable to unclassifiable/attainment for this NAAQS.

IV. Proposed Action

EPA is proposing to approve South Carolina's January 22, 2018, request to redesignate the Greenville Area from unclassifiable to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS. If finalized, approval of the redesignation request would change the legal designation, found at 40 CFR part 81, of Anderson, Greenville, and Spartanburg Counties from unclassifiable to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not in and of itself create any new requirements. Accordingly, this proposed action merely proposes to redesignate an area to unclassifiable/attainment and does not impose additional requirements. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because redesignations are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action to redesignate the Greenville Area from unclassifiable to unclassifiable/attainment for the 1997 primary and secondary annual $PM_{2.5}$ NAAQS does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' However, because no tribal lands are located within the Area and the redesignation does not create new requirements, EPA has determined that this proposed rule does not have substantial direct effects on an Indian Tribe. EPA notes this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: March 5, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–05060 Filed 3–12–18; 8:45 am]

BILLING CODE 6560–50–P

[3] *See* Memorandum from John Calcagni, Director, EPA Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (September 4, 1992).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[WC Docket No. 14–130, CC Docket No. 14–130; FCC 18–22]

Comprehensive Review of the Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on its proposal to adopt recommendations from the Federal-State Joint Board on Jurisdictional Separations and to amend the Part 36 jurisdictional separations rules accordingly. Acknowledging the implications that reforms adopted in the *Part 32 Reform Order* would have on the Part 36 rules, the Commission referred to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) consideration of how and when to modify Part 36 to ensure that it is consistent with the Part 32 reforms. The Joint Board issued its Recommended Decision in October 2017. The Commission proposes to adopt each of the Joint Board's recommendations using, with minor exceptions, the amendment language the Joint Board suggested, and seeks comment on these proposals.

DATES: Comments are due on or before April 12, 2018. Reply comments are due on or before April 27, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 17–287, 11–42, and 09–197, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Edward Krachmer, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1540 or via email at *edward.krachmer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 18–22, released February 22, 2018. For a full text copy of this document please go to the following internet Address: *https://www.fcc.gov/document/fcc-proposes-adopt-separations-joint-boards-recommendations.*

I. Introduction

1. In the Notice of Proposed Rulemaking (NPRM), the Commission takes steps to harmonize its rules regarding jurisdictional separations to reflect the Commission's actions in February 2017 to reduce and eliminate unnecessary accounting rules. Today, the Commission furthers its goal of updating and modernizing the Commission's rules to minimize outdated compliance burdens on carriers and to free up scarce resources that can accordingly be used to expand modern networks that bring economic opportunity, job creation and civic engagement to all Americans.

2. In the *Part 32 Reform Order,* the Commission amended its Part 32 Uniform System of Accounts (USOA) to streamline or eliminate rules that had outlived their utility. Recognizing that those amendments had implications for its Part 36 jurisdictional separations rules, the Commission referred to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) consideration of how and when the Part 36 rules should be modified to reflect the reforms adopted in the *Part 32 Reform Order.* The Commission asked the Joint Board to consider how the Part 32 reforms ''impact Part 36 and consequently the rule changes necessary to ensure the jurisdictional separations rules are consistent'' with changes to Part 32. The Commission also asked that the Joint Board ''prepare a recommended decision . . . regarding how and when the Commission's jurisdictional separations rules should be modified to reflect the issues in the referral.'' The Joint Board released its *Recommended Decision* on October 27, 2017.

3. In this NPRM, the Commission proposes to adopt each of the Joint Board's recommendations and to amend the Part 36 rules consistent with those recommendations. The Commission invites comment on these proposals.

II. Background

4. Jurisdictional separations are the third step in a four-step regulatory process used to establish tariffed rates for interstate and intrastate regulated services for incumbent local exchange carriers (LECs). First, carriers record their costs into various accounts in accordance with the USOA prescribed by Part 32 of the Commission's rules. Second, carriers divide the costs in these accounts between regulated and nonregulated activities in accordance with Part 64 of the Commission's rules. This division ensures that the costs of nonregulated activities will not be recovered in regulated interstate service rates. Third, carriers separate the regulated costs between the intrastate and interstate jurisdictions in accordance with the Commission's Part 36 separations rules. This process begins with the carriers assigning regulated costs to various investment and expense categories. In certain instances, carriers further disaggregate costs among service categories. Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for their exchange access tariffs. Carriers subject to rate-of-return regulation perform this apportionment in accordance with Part 69 of the Commission's rules.

5. Historically, Part 32 divided incumbent LECs into two classes for accounting purposes based on an incumbent LEC's annual regulated revenues: Class A incumbent LECs (currently those with regulated annual revenues equal to or greater than $157 million) and Class B incumbent LECs (currently those with less than $157 million in annual regulated revenues). Part 32 required Class A carriers to create and maintain substantially more accounts than it required from smaller Class B carriers. In all but one case, Class A carrier accounts could be grouped into sets that were represented by single Class B carrier accounts—that is, such Class A accounts consolidated into, or ''rolled up'' into Class B accounts.

6. The reforms adopted in the *Part 32 Reform Order* include the elimination of Part 32's distinction between Class A and Class B incumbent LECs. Under the new rules, effective January 1, 2018, all carriers subject to Part 32 are required to keep only the less onerous Class B accounts.

7. At the request of the Commission, the Joint Board considered the impact of the Part 32 reforms on the Part 36 rules and released a recommended decision. In the *Recommended Decision,* the Joint

Board recommends removing all of the provisions in the Part 36 rules that deal with Class A accounts, allowing former Class A carriers (carriers with revenue equal to or greater than $157 million for calendar year 2016) to select between the former Class A and former Class B procedures for apportioning general support facilities costs, and making certain stylistic and typographical corrections to the Part 36 rules.

III. Discussion

8. The Commission proposes to adopt each of the Joint Board's recommendations and to amend the Part 36 rules using, with minor exceptions, the language the Joint Board suggests. The Commission invites comment on these proposals. The Commission also welcomes comment on whether it should make other changes to the Part 36 rules to harmonize them with the changes the Commission made to Part 32 in the *Part 32 Reform Order.*

9. First, the Commission proposes to adopt the Joint Board's recommendation to remove from its Part 36 rules all the provisions that deal with Class A accounts, because carriers are no longer be required to keep such accounts since the revised Part 32 rules took effect on January 1, 2018. Under this approach, the Commission proposes to: (a) Delete references to Class A accounts and the phrase ''Class B accounts'' in Part 32 rules that contain parallel references to Class A accounts and the Class B accounts into which they roll up; (b) delete references to current-year account balances and modify references to Class A carriers in other Part 36 rules; and (c) delete references to Class A accounts in sections 36.501 and 36.505 of the rules. The Commission seeks comment on this proposal as well as on whether there is a different approach it should take in harmonizing the Part 36 rules with the newly amended Part 32 rules.

10. Second, the Commission proposes to amend section 36.112, which concerns the apportionment of general support facilities costs. As the Joint Board observes, this is the only Part 36 rule that provides different separations procedures for Class A and Class B carriers. Consistent with the Joint Board's recommendation, the Commission proposes to allow former Class A carriers (carriers with revenue equal to or greater than $157 million for calendar year 2016) to select between these two procedures in apportioning their general support facilities costs. The Commission seeks comment on permitting such selections. The Commission also seeks comment on whether each carrier should be permitted to make an election only one time or be allowed to change the approach it takes over time. What are the practical consequences of permitting carriers to make such elections?

11. Additionally, consistent with the Joint Board's recommendations, the Commission's proposed rule changes include certain stylistic and typographical corrections to the Part 36 rules. For example, the Commission proposes to correct a spelling error in section 36.126(b) and to hyphenate the adjective ''twelve month'' throughout Part 36. In addition to adopting these corrections, are there other ministerial corrections that the Commission should make to those rules?

12. The Commission also seeks comment on the timing for making these changes to its Part 36 rules. The changes to its Part 32 rules took effect January 1, 2018. Should the Commission make harmonizing changes to its Part 36 rules as soon as practicable, as the Joint Board recommends? Should the Commission make changes effective January 1, 2019? The Commission asks commenters to explain the implications of different effective dates for any changes it makes to harmonize its Part 36 rules with its newly revised Part 32 rules.

IV. Procedural Matters

A. Comment Filing Procedures

13. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

B. Ex Parte Presentations

14. The proceeding this FNPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda

summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

C. Paperwork Reduction Act

15. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

D. Initial Regulatory Flexibility Act Analysis

16. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM indicated on the first page of this document. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

V. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments and reply comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

18. In the *Part 32 Reform Order,* the Commission amended its Part 32 Uniform System of Accounts (USOA) to streamline or eliminate rules that had outlived their utility. Recognizing that those amendments had implications for its Part 36 jurisdictional separations rules, the Commission referred to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) consideration of how and when the Part 36 rules should be modified to reflect the reforms adopted in the *Part 32 Reform Order.* The Commission asked the Joint Board to consider how those reforms ''impact Part 36 and consequently the rule changes necessary to ensure the jurisdictional separations rules are consistent'' with changes to Part 32. The Commission also asked that the Joint Board ''prepare a recommended decision . . . regarding how and when the Commission's jurisdictional separations rules should be modified to reflect the issues in the referral.'' The Joint Board released its *Recommended Decision* on October 27, 2017. In this Notice of Proposed Rulemaking (Notice), the Commission invites comment on that *Recommended Decision* and, in particular, on the proposed amendments to the Part 36 rules recommended by the Joint Board. The purpose of those proposed amendments is to ensure that the Part 36 rules are consistent with the amendments to the Part 32 rules adopted in the *Part 32 Reform Order.*

B. Legal Basis

19. The legal basis for the Notice of Proposed Rulemaking is contained in sections 1, 2, 4(i), 201–205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended.

C. Description and Estimate of the Number of Small Entities to Which Rules May Apply

20. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

21. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,307 incumbent local exchange carriers (LECs) reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

22. The Commission has included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Because the Commission's proposals concerning the Part 36 rules will affect all incumbent LECs, some entities employing 1,500 or fewer employees may be affected by the proposals made in this Notice. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. The Commission notes, however, that proposals in the Notice are focused on incumbent LECs with regulated annual revenues equal to or above $157 million, a group that excludes many small incumbent LECs.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. None.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

25. As discussed above, the purpose of the proposals in this Notice is to ensure that the Part 36 rules are consistent with the amendments to the Part 32 rules adopted in the *Part 32 Reform Order*. The Commission seeks comment on the effects its proposals would have on small entities, and whether any rules that it adopts should apply differently to small entities. The Commission requests commenters to consider the costs and burdens of possible rule amendments on small incumbent LECs and whether such amendments would disproportionately affect specific types of carriers or ratepayers.

26. The Commission believes that the proposed rules would ease the administrative burden of regulatory compliance for incumbent LECs, including any small incumbent LECs those rules might affect. The *Part 32 Reform Order* reduced the number of Part 32 accounts that incumbent LECs with regulated annual revenues equal to or above $157 million are required to keep, and the proposed amendments to Part 36 would carry forward those reductions into the jurisdictional separations process. If those amendments can be said to have any effect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

27. None.

VI. Ordering Clauses

28. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 215, 218, 220, 410, this Notice of Proposed Rulemaking *is adopted.*

29. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Communications common carriers; Reporting and recordkeeping requirements; Telephone; Uniform system of accounts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

■ 2. Revise § 36.112 to read as follows:

§ 36.112 Apportionment procedure.

(a) The costs of the general support facilities of local exchange carriers that had annual revenues from regulated telecommunications operations equal to or greater than $157 million for calendar year 2016 are apportioned among the operations on the basis of one of the following, at the election of the local exchange carrier:

(1) The separation of the costs of the combined Big Three Expenses which include the following accounts:

Plant Specific Expenses

Central Office Switching Expenses—Account 6210
Operators Systems Expenses—Account 6220
Central Office Transmission Expenses—Account 6230
Information Origination/Termination Expenses—Account 6310
Cable and Wire Facilities Expenses—Account 6410

Plant Non-Specific Expenses

Network Operations Expenses—Account 6530

Customer Operations Expenses

Marketing—Account 6610
Services—Account 6620; or

(2) The separation of the costs of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

(b) The costs of the general support facilities of local exchange carriers that had annual revenues from regulated telecommunications operations less than $157 million for calendar year 2016 are apportioned among the operations on the basis of the separation of the costs of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

§ 36.121 [Amended]

■ 3. Amend § 36.121 as follows:
■ a. Revise paragraph (a); and
■ b. In paragraph (c)(1)(i), remove ''130 volt'' and add, in its place, ''130-volt''.

The revision reads as follows:

§ 36.121 General.

(a) The costs of central office equipment are carried in the following accounts:

Central Office Switching Account—2210.
Operator Systems Account—2220.
Central Office—Transmission Account—2230.

* * * * *

§ 36.124 [Amended]

■ 4. Amend § 36.124 as follows:
■ a. In paragraph (a), remove ''Accounts 2210, 2211, and 2212'' and add, in its place, ''Account 2210''.
■ b. In paragraph (c), remove ''assign the average balances of Accounts 2210, 2211, and 2212'' and add, in its place, ''assign the average balance of Account 2210''; and remove ''assignment of the average balances of Accounts 2210, 2211, and 2212,'' and add, in its place, ''assignment of the average balance of Account 2210 (or, if Accounts 2211 and 2212 were required to be maintained at the applicable time, the average balances of Accounts 2211 and 2212)''.

§ 36.125 [Amended]

■ 5. Amend § 36.125 as follows:
■ a. In paragraph (a), remove ''Accounts 2210, 2211, and 2212'' and add, in its place, ''Account 2210''; remove ''*e.g.* transmitters,'' and add, in its place, ''*e.g.,* transmitters,''; remove ''directors'' and, add in its place, ''directors,''; and remove ''*e.g.* switching'' and add, in its place, ''*e.g.,* switching''.

■ b. In paragraph (h), remove ''assign the average balances of Accounts 2210, 2211, and 2212'' and add, in its place, ''assign the average balance of Account 2210''; and remove ''assignment of the average balances of Accounts 2210, 2211, and 2212,'' and add, in its place, ''assignment of the average balance of Account 2210 (or, if Accounts 2211 and 2212 were required to be maintained at the applicable time, the average balances of Accounts 2211 and 2212)''.

§ 36.126 [Amended]

■ 6. Amend § 36.126 as follows:
■ a. In paragraph (a), remove ''Accounts 2230 through 2232 respectively'' and add, in its place, ''Account 2230''.
■ b. In the introductory text of paragraph (b), remove ''equiment'' and add, in its place, ''equipment''.
■ c. In paragraphs (b)(5) and (6), remove ''assign the average balances of Accounts 2230 through 2232'' and add, in its place, ''assign the average balance of Account 2230''; and remove ''assignment of the average balances of Accounts 2230 through 2232'' and add, in its place, ''assignment of the average balance of Account 2230 (or, if Accounts 2231 and 2232 were required to be maintained at the applicable time, the average balances of Accounts 2231 and 2232)''.

§ 36.154 [Amended]

■ 7. Amend § 36.154 by removing ''jurisdication'' and adding, in its place, ''jurisdiction''.

§ 36.201 [Amended]

■ 8. Amend § 36.201 as follows:
■ a. Redesignate paragraph (a) as an undesignated paragraph; and
■ b. In the table, remove ''(Class B telephone companies); Basic area revenue—Account 5001 (Class A telephone companies)''.

§ 36.211 [Amended]

■ 9. Amend § 36.211 as follows:
■ a. Redesignate paragraph (a) as an undesignated paragraph; and
■ b. In the table:
■ i. Remove ''Basic local service revenue (Class B telephone companies)'' and add, in its place, ''Basic Local Service Revenue''; and
■ ii. Remove the entry ''Basic Area Revenue (Class A telephone companies)''.
■ 10. Amend § 36.212 by revising the section heading to read as follows:

§ 36.212 Basic local services revenue—Account 5000.

* * * * *

§ 36.301 [Amended]

■ 11. Amend § 36.301 as follows:
■ a. Redesignate paragraph (a) as an undesignated paragraph; and
■ b. In the table:
■ i. Remove ''(Class B Telephone Companies); Accounts 6112, 6113, 6114, 6121, 6122, 6123, and 6124 (Class A Telephone Companies)'';
■ ii. Remove ''Accounts 6210, 6220, 6230 (Class B Telephone Companies); Accounts 6211, 6212, 6220, 6231, and 6232 (Class A Telephone Companies)'' and add, in its place, ''Accounts 6210, 6220, and 6230'';
■ iii. Remove ''(Class B Telephone Companies); Accounts 6311, 6341, 6351, and 6362 (Class A Telephone Companies)'';
■ iv. Remove ''(Class B Telephone Companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A Telephone Companies)'';
■ v. Remove ''(Class B Telephone Companies); Accounts 6511 and 6512 (Class A Telephone Companies)'';
■ vi. Remove ''(Class B Telephone Companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A Telephone Companies)'';
■ vii. Remove ''(Class B Telephone Companies); Accounts 6611 and 6613 (Class A Telephone Companies)'';
■ viii. Remove ''Local Bus. Office'' and add, in its place, ''Local Business Office''; and
■ ix. Remove ''(Class B Telephone Companies); Accounts 7210, 7220, 7230, 7240, and 7250 (Class A Telephone Companies)''.

§ 36.302 [Amended]

■ 12. Amend § 36.302 in the introductory text to paragraph (c)(1) and in paragraph (c)(1)(i), by removing ''SRC'' and adding, in its place, ''SRCs''.
■ 13. Amend § 36.310 by revising paragraph (a) to read as follows:

§ 36.310 General.

(a) Plant specific operations expenses include the following accounts:

Network Support Expenses. Account 6110
General Support Expenses. Account 6120
Central Office Switching Expenses. Account 6210
Operator System Expenses. Account 6220
Central Office Transmission Expenses. Account 6230
Information Origination/Termination Expenses. Account 6310
Cable and Wire Facilities Expenses. Account 6410

* * * * *

■ 14. Amend § 36.311 by revising the section heading to read as follows:

§ 36.311 Network Support/General Support Expenses—Accounts 6110 and 6120.

* * * * *

■ 15. Amend § 36.321 as follows:
■ a. Revise the section heading;
■ b. Remove, from the table in paragraph (a), ''(Class B telephone companies); Accounts 6211 and 6212 (Class A telephone companies)'' and ''(Class B telephone companies); Accounts 6231 and 6232 (Class A telephone companies)''; and
■ c. Remove, from paragraph (b), ''equipment. Accounts'' and adding, in its place, ''equipment—Accounts''.

The revision reads as follows:

§ 36.321 Central office expenses—Accounts 6210, 6220, and 6230.

* * * * *

■ 16. Amend § 36.331 by revising the section heading to read as follows:

§ 36.331 Information origination/termination expenses—Account 6310.

* * * * *

■ 17. Amend § 36.341 by revising the section heading to read as follows:

§ 36.341 Cable and wire facilities expenses—Account 6410.

* * * * *

§ 36.351 [Amended]

■ 18. Amend § 36.351 as follows:
■ a. Redesignate paragraph (a) as an undesignated paragraph; and
■ b. In the table:
■ i. Remove ''(Class B telephone companies); Accounts 6511 and 6512 (Class A telephone companies)''; and
■ ii. Remove ''(Class B telephone companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A telephone companies)''.
■ 19. Amend § 36.352 by revising the section heading to read as follows:

§ 36.352 Other property plant and equipment expenses—Account 6510.

* * * * *

■ 20. Amend § 36.353 by revising the section heading to read as follows:

§ 36.353 Network operations expenses—Account 6530.

* * * * *

§ 36.371 [Amended]

■ 21. Amend § 36.371 in the table by removing ''(Class B telephone companies); Accounts 6611 and 6613 (Class A telephone companies)''.
■ 22. Amend § 36.372 by revising the section heading to read as follows:

§ 36.372 Marketing—Account 6610.

* * * * *

§ 36.375 [Amended]

■ 23. Amend § 36.375 in paragraphs (b)(4) and (5), by removing ''through (4)'' and adding, in its place, ''through (3)''.

§ 36.392 [Amended]

■ 24. Amend § 36.392(c) as follows:
■ a. Remove ''(Class B Telephone Companies); Accounts 6211 and 6212 (Class A Telephone Companies)'';
■ b. Remove ''(Class B Telephone Companies); Accounts 6231 and 6232 (Class A Telephone Companies)'';
■ c. Remove ''(Class B Telephone Companies); Accounts 6311, 6341, 6351, and 6362 (Class A Telephone Companies)'';
■ d. Remove ''(Class B Telephone Companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A Telephone Companies)'';
■ e. Remove ''(Class B Telephone Companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A Telephone Companies)'' and
■ f. Remove ''(Class B Telephone Companies); Accounts 6611 and 6613 (Class A Telephone Companies)''.

■ 25. Amend § 36.411 as follows:
■ a. Revise the section heading;
■ b. Redesignate paragraph (a) as an undesignated paragraph
■ c. Revise the final entry in the list.

The revisions read as follows:

§ 36.411 Operating taxes—Account 7200.

* * * * *

Provision for Deferred Operating Income Taxes

■ 26. Amend § 36.501 as follows:

§ 36.501 [Amended]

Remove ''(Class B Telephone Companies); Account 3410 (Class A Telephone Companies)''.

■ 27. Amend § 36.505 as follows:
■ a. Revise the section heading;
■ b. Redesignate paragraph (a) as an undesignated paragraph.

The revision reads as follows:

§ 36.505 Accumulated amortization—Tangible—Account 3400.

§§ 36.3, 36.123, 36.124(c) and (d); 36.125(h) and (i); 36.126(b)(5) and (6); 36.126(c)(4), (e)(4), and (f)(2); 36.141(c); 36.142(c); 36.152(d); 36.157(b); 36.191(d); 36.374(b); 36.375(b)(4); 36.377 introductory text and (a)(1)(ix), (2)(vii), (3)(vii), (4)(vii), (5)(vii), and (6)(vii); 36.378(b)(1); 36.379(b)(1); 36.380(d) and (e); 36.381(c); and 36.382(a) [Amended]

■ 28. Remove the term ''twelve-month'' and add in its place ''twelve-month'' in:
■ a. §§ 36.3(a) and (b);
■ b. §§ 36.123(a)(5) and (6);
■ c. §§ 36.124(c) and (d);
■ d. §§ 36.125(h) and (i);
■ e. § 36.126(b)(5) and (6);
■ f. §§ 36.126(c)(4), (e)(4), and (f)(2);
■ g. § 36.141(c);
■ h. § 36.142(c);
■ i. § 36.152(d);
■ j. § 36.157(b);
■ k. § 36.191(d);
■ l. § 36.374(b);
■ m. § 36.375(b)(4);
■ n. §§ 36.377 introductory text and (a)(1)(ix), (2)(vii), (3)(vii), (4)(vii), (5)(vii), and (6)(vii);
■ o § 36.378(b)(1);
■ p. § 36.379(b)(1);
■ q. §§ 36.380(d) and (e);
■ r. § 36.381(c); and
■ s. § 36.382(a).

[FR Doc. 2018–04563 Filed 3–12–18; 8:45 am]

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Notices

Federal Register
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Tuesday, March 13, 2018

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2018.

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

Comments regarding this information collection received by April 12, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Third National Survey of WIC Participants (NSWP–III).

OMB Control Number: 0584—New.

Summary of Collection: The Third National Survey of WIC Participants (NSWP–III) is designed to provide nationally representative estimates of improper payments in the Special Supplemental Program for Women, Infants, and Children (WIC) arising from errors in the certification or denial of WIC applicants, to investigate potential State and local agency characteristics that may correlate with these errors, and to assess WIC participants' reasons for satisfaction or dissatisfaction with the program. The NSWP–III builds on three previous studies and reports spanning several decades. The Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (P.L. 112–248); 2009 Executive Order 13520—Reducing Improper Payments; the Office of Inspector General (OIG) USDA FY 2014 Compliance with Improper Payments Requirements; and the Requirements for Effective Estimation and Remediation of Improper Payments set forth the priority, mandate, and requirements for the Food and Nutrition Service to identify, estimate, and reduce erroneous payments in WIC.

Need and use of the Information: The NSWP–III will collect data from state and local WIC agency directors, current and former WIC program participants, and recently denied WIC program participants. The surveys for the state and local WIC agency directors are mandatory, while the surveys for the WIC program participants are voluntary. The NSWP–III has two purposes: (1) To obtain the data necessary to accomplish the study objectives noted above and (2) to pilot a new methodology for future annual estimates of improper payments in the WIC program.

Description of Respondents: State, Local, or Tribal Government; Individuals or Households.

Number of Respondents: 6,588.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 5,110.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–04982 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2018.

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

Comments regarding this information collection received by April 12, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street, NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Farm Service Agency

Title: Emergency Conservation Program and Biomass Crop Assistance Program.

OMB Control Number: 0560–0082.

Summary of Collection: The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives and technical assistance through several conservation and environmental programs to help farmers, ranchers, and other eligible landowners and operators conserve soil, improve water quality, develop forests, and rehabilitate farmland severely damaged by natural disasters. The authorities to collect information for this collection are found under the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2205), which provides emergency funds for sharing with agricultural producers the cost of rehabilitating farmland damaged by natural disaster, and for carrying out emergency water conservation measures during periods of severe drought. FSA is also managing the Biomass Crop Assistance Program (BCAP) authorized by Section 9010 of the Agricultural Act of 2014 (Pub. L. 113–79), which amends Title 1X of the Food, Conservation and Energy Act of 008. BCAP regulations outlined the legislations parameters, program definitions and process or: (1) Establishing BCAP project areas; (2) Matching payment opportunity for eligible material wners and qualifying biomass conversion facilities; (3) Contracting acreage for producers in BCAP project areas; and (4) Establishment and annual production payments for producers in CAP projects areas.

Need and use of the Information: FSA will collect information using several forms. The collected information will be used to determine if the person, land, and practices are eligible for participation in the respective program and to receive cost-share assistance. Information collection from eligible biomass owners, biomass conversion facilities, and producers meeting the requirements for matching payments, annual production payment assistance, establishment payments and BCAP project area designation is necessary in order to ensure the financial accountability needed to operate and administer the BCAP. Without the information, FSA will not be able to make eligibility determinations and compute payments in a timely manner.

Description of Respondents: Farms.

Number of Respondents: 70,000.

Frequency of Responses: Reporting: Annually.

Total burden hours: 77,763.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–05033 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2018.

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

Comments regarding this information collection received by April 12, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Rural Utilities Service

Title: 7 CFR 1726, Electric System Construction Policies and Procedures—Electric.

OMB Control Number: 0572–0107.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et.seq.,* as amended, (RE ACT) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural electrification, Section 4 of the RE Act further requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. RUS will collect information using various RUS forms.

Need and Use of the Information: RUS will collect information to implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. The use of standard forms and procurement procedures helps assure RUS that appropriate standards and specifications are maintained; agency loan security is not adversely affected; and loan and loan guarantee funds are used effectively and for the intended purposes. The information will be used by RUS electric borrowers, their contractors and by RUS. If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and each document submitted by a borrower would require extensive and costly review by both RUS and the Office of the General Counsel.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 817.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Rural Utility Service

Title: 7 CFR 1780, Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0572–0121.

Summary of Collection: Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, authorizes Rural Utilities Service (RUS) to make loans and grants to public entities, federally-recognized American Indian tribes, and nonprofit corporations. The loans and grants fund the development of drinking water waste water, solid waste disposal, and storm wastewater disposal facilities in rural areas with populations of up to 10,000 residents.

Need and Use of the Information: Rural Development's field offices will collect information from applicants/borrowers and consultants to determine eligibility and project feasibility. The information will help to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. There are agency forms required as well as other requirements that involve certifications from the borrower, lenders, and other parties. Failure to collect proper information could result in improper determinations of eligibility, use of funds and or unsound loans.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 865.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150,339.

Rural Utility Service

Title: Servicing of Water Programs Loans and Grants.

OMB Control Number: 0572–0137.

Summary of Collection: Authority for servicing of Water Programs Loan and Grants is contained in Section 306e of the Consolidated Farm and Rural Development Act, as amended. The information collected covers loan and grant servicing regulations, 7 CFR part 1782, which prescribes policies and responsibilities for servicing actions necessary in connection with Water and Environmental Programs (WEP) loans and grants. WEP provides loans, guaranteed loans and grants for water, sewer, storm water, and solid waste disposal facilities in rural areas and towns of up to 10,000 people.

Need and Use of the Information: The Rural Utilities Service will collect information using various forms. The collected information for the most part is financial in nature and needed by the Agency to determine if borrowers, based on their individual situations, qualify for the various servicing authorities. Servicing actions become necessary due to the development of financial or other problems and may be initiated by either a recipient which recognizes that a problem exists and wished to resolve it, or by the Agency. If a problem exists, a recipient must furnish financial information which is used to aid in resolving the problem through re-amortization, sale, transfer, debt restructuring, liquidation, or other means provided in the regulations.

Description of Respondents: Business or other for-profit; non-profit institutions; State and local governments.

Number of Respondents: 62.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 729.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–05026 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Strengthening Civil Rights Management

AGENCY: Office of the Secretary, USDA.

ACTION: Request for Information (RFI).

SUMMARY: Consistent with Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch,'' and using the authority of the Secretary to reorganize the Department under section 4(a) of Reorganization Plan No. 2 of 1953 the U.S. Department of Agriculture (USDA) is soliciting public comment on a proposed realignment of the Office of the Assistant Secretary for Civil Rights (OASCR), which will improve customer service, better align functions within the organization, and ensure improved consistency, resource management, and strategic decision-making.

DATES: Comments and information are requested on or before March 25, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. All submissions must refer to ''Improving Civil Rights'' to ensure proper delivery.

• *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* USDA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically.

• *Submission of Comments by Mail, Hand Delivery, or Courier.* Paper, disk, or CD–ROM submissions should be submitted to the Office of the Assistant Secretary for Civil Rights, USDA, Jamie L. Whitten Building, Room 507–W, 1400 Independence Ave. SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Winona Lake Scott, Telephone Number: (202) 720–3808, *winona.scott@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: USDA is committed to operating efficiently, effectively, and with integrity, and minimizing the burdens on individuals, businesses, and communities for participation in and compliance with USDA programs. USDA works to support the American agricultural economy to strengthen rural communities; to protect and conserve our natural resources; and to provide a safe, sufficient, and nutritious food supply for the American people. The Department's wide range of programs and responsibilities touches the lives of every American every day.

I. Executive Order 13781

Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch'', is intended to improve the efficiency, effectiveness, and accountability of the executive branch. The principles in the Executive Order provide the basis for taking actions to enhance and strengthen the delivery of USDA programs.

II. Reorganization Actions

On March 9, 2018, Secretary Perdue will be announcing his intent to take actions to strengthen civil rights and customer service at USDA by taking the following actions to ensure integrity, consistency, and fairness:

• USDA will eliminate inefficiencies in delivering civil rights services at the agency and staff office level, thereby resulting in improved civil rights management. Under the realignment, a Civil Rights Director and appropriate Equal Opportunity staff will be aligned as follows:

(1) Departmental Administration, staff offices, and Trade and Foreign Agricultural Affairs will share civil rights resources;

(2) Each remaining Departmental Mission Area will consolidate its sub-

agency resources at the Mission Area level; and

(3) The Office of the Inspector General (OIG) shall have an independent Civil Rights Director.

• OASCR will direct all Departmental civil rights activities, including those of the Mission Areas, Departmental Administration, staff offices, and to the extent appropriate and lawful, OIG. The delegations for the Assistant Secretary for Civil Rights shall be revised as necessary to reflect OASCR's direct responsibility in providing civil rights policy direction to Mission Area and other Civil Rights Directors and Civil Rights staff and conveying the clear guidance of the Office of the Secretary on all civil rights issues.

• OASCR will implement a timely, fair, transparent, and consistent approach to addressing all Equal Employment Opportunity or program complaints, including those based on discrimination, harassment, and retaliation that shall be adopted by all Mission Areas, Departmental Administration, staff offices and, to the extent appropriate and lawful, OIG.

• OASCR will direct an effective, robust, and compliant mandatory civil rights training program for all staff, including Mission Areas, Departmental Administration, staff offices and, to the extent appropriate and lawful, OIG.

• OASCR will monitor and evaluate the implementation of the reasonable accommodation process by the Mission Areas, Departmental Management, staff offices and, to the extent appropriate and lawful, OIG.

• OASCR will not address matters that Office of Human Resource Management (OHRM) handles exclusively, such as setting human resources policy, investigating and evaluating harassment allegations for misconduct, and reviewing and advising on requests for reasonable accommodations, but will serve as a collaborative partner with OHRM on all appropriate issues affecting civil rights policy, implementation, and compliance.

• OASCR will request the Mission Areas to provide a list of all civil rights positions on-board (full-time, part-time, or collateral duty) within 30 days from issuance of this Memorandum to determine staff needs to effectuate the purpose of this Memorandum.

• Mission Areas, Departmental Administration, and the Staff Offices will implement all organizational changes necessary to effectuate the civil rights staff realignments indicated above based upon the direction of OASCR. When conducting any reorganizations, the Mission Areas, Departmental Administration, and Staff Offices will adhere to all relevant Departmental Directives, including Departmental Regulation 1010 and the corresponding Congressional notification requirements.

• OASCR will eliminate the position of Deputy Assistant Secretary for Civil Rights (ASCR), so as to flatten the organization with the Associate Assistant Secretary for Civil Rights assuming the responsibilities of the Deputy ASCR.

• OASCR will eliminate its Policy Division, which is no longer necessary in an era of decreased regulations, and will perform reduced policy functions with staff from other areas of the organization.

• OASCR will eliminate its Training and Cultural Transformation Division and will develop training with staff from other areas of the organization.

• OASCR will eliminate its Early Resolution and Complaint Division, and the Department will carry out informal counseling within each Mission Area, with coordination from a Mission Area Liaison within OASCR.

• OASCR's career Senior Executive Service (SES) Director for the Office of Compliance, Policy, Training and Cultural Transformation will be reclassified as the career SES Executive Director for Civil Rights Operations, a position responsible for managing the Mission Area Liaison, the Compliance Division, and the Data and Records Management Division over customer service, data, and information technology. The largest component in this part of the OASCR organization is the Compliance Division, which will continue addressing compliance reporting to oversight entities as well as limited regulatory and policy review.

• OASCR's career SES Director for the Office of Adjudication will be reclassified as the career SES Executive Director for Civil Rights Enforcement, a position responsible for leading not only the Office of Adjudication, but also the Program Planning, and Accountability Division over budget, contracting and procurement, human resources management, facilities management, strategic planning, and Continuity of Operations for OASCR. The largest component of this part of the OASCR organization is the Office of Adjudication is responsible for intake, investigation, and adjudication of employment discrimination complaints from USDA employees and program complaints of discrimination arising within any program conducted or assisted by USDA.

III. Request for Information

USDA is seeking public comment on these actions and notes that this notice is issued solely for information and program-planning purposes. While responses to this notice do not bind USDA to any further actions, all submissions will be reviewed by the appropriate program office, and made publicly available on *http://www.regulations.gov.*

Dated: March 8, 2018.

Winona Lake Scott,

Acting Deputy Assistant Secretary for Civil Rights.

[FR Doc. 2018–05051 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Generic Clearance for Social Science and Economics Data Collections on Natural Disasters and Disturbances

AGENCY: Forest Service, 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 a new generic information collection request, *Social Science and Economics Data Collections on Natural Disasters and Disturbances.*

DATES: Comments must be received in writing on or before May 14, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Send written comments to Kenli Kim, National Program Leader for Social Science Research, Forest Service, 1400 Independence Ave., SW, Mailstop 1114, Washington, DC 20250–1114, or by electronic mail to *PRAcomments@fs.fed.us,* with ''PRA comment on natural disasters and disturbances'' in the subject line. If comments are sent by electronic mail, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the information collection request, explain the reasons for any recommended changes, and, where possible, reference the specific section or paragraph being addressed.

All timely submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this information

collection at the USDA Forest Service Headquarters, 201 14th St. SW, Washington, DC 20250 between the hours of 10:00 a.m. to 5:00 p.m. on business days. Those wishing to inspect comments should contact Kenli Kim (*kkim@fs.fed.us*) to facilitate an appointment and entrance to the building.

FOR FURTHER INFORMATION CONTACT: Kenli Kim, National Program Leader for Social Science Research at the Forest Service (*kkim@fs.fed.us*). 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: Generic Clearance for Social Science and Economics Data Collections on Natural Disasters and Disturbances

OMB Number: 0596—NEW.

Expiration Date of Approval: NEW.

Type of Request: NEW.

Abstract: The USDA Forest Service has broad responsibilities for caring for the forests and grasslands of the nation. This includes managing wildland fires and responding to many other threats such as droughts, floods, tree pests and diseases, invasive species, extreme weather events, effects of climate change, and other natural disasters and disturbances. The frequency, type, duration, and intensity of disturbances and disasters shape our forests and other natural ecosystems and impact people's lives. In any given year, a wide range of people living in all types of communities across the nation—rural, suburban, and urban; forested, industrical, and agricultural—are affected by natural disasters and disturbances.

This Generic Information Collection Request (ICR) seeks Office of Management and Budget (OMB) approval to collect information that will help the Forest Service understand how individuals, communities, and organizations prepare for, respond and adapt to, and recover from natural disturbances and disasters, as well as build resilience. This information is critical to supporting the Forest Service's mission of both managing national forests and grasslands and collaborating with others to develop useful guidelines for management of the nation's forests. Under this Generic ICR, social science research methods such as surveys, interviews, and focus groups will collect information from individuals and groups who are preparing for, responding to, and/or recovering from natural disasters and disturbances. Results from the proposed research and data collections can inform prediction, preparation, response, and recovery strategies and efforts by the Forest Service and other Federal agencies, as well as related local government, civil society, and community efforts. In the long term, such knowledge can contribute to fewer societal costs from disturbance processes, more cost-effective management efforts, and more resilient communities and economies. Any specific study conducted under this Generic ICR will be posted for public comment in The **Federal Register** for 30 days by the USDA Forest Service.

Estimate of Annual Burden on Respondents: 15,533 hours/year.

Type of Respondents: Participants/respondents will be individuals, not specific entities.

Estimated Annual Number of Respondents: 100,500 year.

Estimated Annual Number of Responses per Respondent: 1 response/respondent is anticipated.

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. The Forest Service will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval.

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 for final Office of Management and Budget approval.

Dated: February 15, 2018.

Monica Lear,

Associate Deputy Chief, Research & Development.

[FR Doc. 2018–05004 Filed 3–12–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Generic Clearance for Social Science and Economics Data Collections on Natural Resource Planning and Collaborative Conservation

AGENCY: Forest Service, 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 a new generic information collection request, *Social Science and Economics Data Collections on Natural Resource Planning and Collaborative Conservation.*

DATES: Comments must be received in writing on or before May 14, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Send written comments to Kenli Kim, National Program Leader for Social Science Research, Forest Service, 1400 Independence Ave. SW, Mailstop 1114, Washington, DC 20250–1114,or by electronic mail to *PRAcomments@fs.fed.us,* with ''PRA comment on planning and collaborative conservation'' in the subject line. If comments are sent by electronic mail, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the information collection request, explain the reasons for any recommended changes, and, where possible, reference the specific section or paragraph being addressed.

All timely submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this information collection at the USDA—Forest Service headquarters, 201 14th St. SW, Washington, DC 20250 between the hours of 10:00 a.m. to 5:00 p.m. on business days. Those wishing to inspect comments should contact Kenli Kim (*kkim@fs.fed.us*) to facilitate an appointment and entrance to the building.

FOR FURTHER INFORMATION CONTACT: Kenli Kim, National Program Leader for Social Science Research at the Forest Service (*kkim@fs.fed.us*). 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: Generic Clearance for Social Science Research on Natural Resource Planning and Collaborative Conservation.

OMB Number: 0596—NEW.

Expiration Date of Approval: NEW.

Type of Request: NEW.

Abstract: The USDA Forest Service's mission is ''Caring for the Land and Serving People.'' This includes directly managing National Forest and Grassland units and providing science-based guidelines for the management of forests, grasslands, and other natural resources in cities and towns as well as those under management by land trusts, neighborhood groups, states, and other entities. In order to fulfill this mission, the Agency needs an accurate understanding of the range of views and preferences held by stakeholders regarding the management and conservation of forests and other natural resources.

Collaborative conservation is the process of creating and executing land and resource management decisions informed by local knowledge, community participation, and science. Collaborative conservation aims to improve the health, resilience, and sustainability of natural resources and human communities and to maximize the benefits that forests, grasslands, and other natural resources provide to society. This includes environmental benefits such as clean air and water and carbon storage; economic benefits such as energy savings and timber and other forest products; and social benefits such as improved physical health, aesthetic beauty, and stress reduction. A collaborative conservation approach to land management amendments and planning revisions for forests, grasslands, and other natural resources may also help ensure environmental justice for groups and individuals whose views and concerns have not historically been taken into account in land management planning.

Managing forests, grasslands, and natural areas in a collaborative and sustainable way requires detailed, scientifically-based information about people's views on both conservation in general and about specific forests or other natural places that are important in their lives. A collaborative conservation approach to land management amendments and planning takes in-depth understanding of how groups and individuals work effectively together, how information and knowledge are shared, and how to incorporate multiple viewpoints in resource planning while effectively managing conflict.

Taking all of this into account, the Forest Service and other public and private land managers need to collect information from a wide range of stakeholders in order to make informed decisions about natural resource conservation, restoration and management, land management amendments and planning revisions. To ensure that the Forest Service can meet its statutory and regulatory responsibilities and is able to inform management of forests and other natural areas, the Forest Service is seeking OMB approval to collect information from people who use, live near, manage, make policies for, or otherwise have a stake in the management of forests and other natural resources.

Estimate of Annual Burden on Respondents: 32,183 hours/year.

Type of Respondents: Participants/respondents will be individuals, not specific entities.

Estimated Annual Number of Respondents: 251,050 year.

Estimated Annual Number of Responses per Respondent: 1 response/respondent is anticipated.

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. The Forest Service will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval.

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 for final Office of Management and Budget approval.

Dated: February 15, 2018

Monica Lear,

Associate Deputy Chief, Research & Development.

[FR Doc. 2018–05003 Filed 3–12–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Generic Clearance for Social Science and Economics Data Collections on Goods, Services, and Jobs Provided by Forests and Natural Areas

AGENCY: Forest Service, 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 a new generic information collection request, *Social Science and Economics Data Collections on Goods, Services, and Jobs Provided by Forests and Natural Areas.*

DATES: Comments must be received in writing on or before May 14, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Send written comments to Kenli Kim, National Program Leader for Social Science Research, 1400 Independence Ave. SW, Mailstop 1114, Washington, DC 20250–1114, or by electronic mail to *PRAcomments@fs.fed.us,* with ''PRA comment on Goods, Services, and Jobs'' in the subject line. If comments are sent by electronic mail, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the information collection request, explain the reasons for any recommended changes, and, where possible, reference the specific section or paragraph being addressed.

All timely submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this information collection at the USDA Forest Service Headquarters, 201 14th St. SW, Washington, DC 20250 between the hours of 10:00 a.m. to 5:00 p.m. on business days. Those wishing to inspect comments should contact Kenli Kim (*kkim@fs.fed.us*) to facilitate an appointment and entrance to the building.

FOR FURTHER INFORMATION CONTACT: Kenli Kim, National Program Leader for Social Science Research at the Forest Service (*kkim@fs.fed.us*). 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: Generic Clearance for Social Science and Economics Data Collections on Goods, Services, and Jobs Provided by Forests and Natural Areas.

OMB Number: 0596—NEW.

Expiration Date of Approval: NEW.

Type of Request: NEW.

Abstract: The USDA Forest Service is seeking Office of Management and Budget (OMB) approval to collect information that will help the Forest Service sustainably manage and provide guidance to others about managing the wide range of goods, services, jobs, and other values that people get from forests, grasslands, parks, and other natural areas.

In rural, suburban, and urban parts of the country, forests, grasslands, and other natural areas provide jobs through: Logging, sawmills, and extraction of non-timber forest products; guide services, hotels, restaurants, and equipment sales that support outdoor recreation; and natural area restoration and management activities. Innovative forest products such as wood-based nano-technologies and laminated timbers are critical to the modern economies of communities large and small. Forests and natural areas provide important ecosystem services such as clean water and natural flood control and influence other critical economic factors like home and land values. Time spent in or with a view of trees, forests, and green spaces can have indirect economic impacts and provide community benefits by improving mental and physical health and well-being.

In addition to the products and services derived from forests, grasslands, or natural areas, people may also value and appreciate the natural environment itself when they experience it directly. These experiences can have meaningful and direct impacts on quality of life, sense of self, and sense of community. While such values are sometimes hard for people to express or to quantify, they play an important role in how people respond to natural resource management proposals and actions, and can often be at the root of conflict over land management policies and practices.

Understanding people's views on these goods, services, and values is critical to managing forests, grasslands, and other natural areas to meet the needs of American citizens—to provide the ''greatest good to the greatest number of people for the longest time'' as Gifford Pinchot, Founding Chief of the Forest Service, described it. Surveys, interviews, focus groups, and related methods administered under this Generic Clearance will collect information from individuals and groups who seek or benefit from a wide variety of goods, services, and other values from forests, grasslands, and other natural areas. Any specific study conducted under this Generic ICR will be posted for public comment in The **Federal Register** for 30 days by the USDA Forest Service.

Estimate of Annual Burden on Respondents: 9,440 hours/year.

Type of Respondents: Participants/respondents will be individuals, not specific entities.

Estimated Annual Number of Respondents: 60,420 year.

Estimated Annual Number of Responses per Respondent: 1 response/respondent is anticipated.

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. The Forest Service will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval.

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 for final Office of Management and Budget approval.

Dated: February 15, 2018.

Monica Lear,

Associate Deputy Chief, Research & Development.

[FR Doc. 2018–05006 Filed 3–12–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Rural Energy for America Program for Federal Fiscal Year 2018

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (the Agency) Notice of Solicitation of Applications (NOSA) is being issued prior to passage of a final appropriations act to allow potential applicants time to submit applications for financial assistance under Rural Energy for America Program (REAP) for Federal Fiscal Year (FY) 2018, and give the Agency time to process applications within the current fiscal year. This NOSA is being issued prior to enactment of full year appropriation for 2018. The Agency will publish the amount of funding received in any continuing resolution or the final appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

The REAP has two types of funding assistance: (1) Renewable Energy Systems and Energy Efficiency Improvements Assistance, and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvement Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy efficiency improvements to their operations. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds, grantee, will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

DATES: See under **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: The applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Maureen Hessel, Business Loan and Grant Analyst, USDA Rural Development, Energy Division, 1400 Independence Avenue SW, Stop 3225, Room 6870, Washington, DC, 20250. Telephone: (202) 401–0142. Email: *maureen.hessel@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Description

The Rural Energy for America Program (REAP) helps agricultural producers and rural small businesses reduce energy costs and consumption and helps meet the Nation's critical energy needs. REAP has two types of funding assistance: (1) Renewable Energy Systems and Energy Efficiency Improvements Assistance and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvements Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses for renewable energy systems and energy efficiency improvements. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds, grantee, will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

A. *General.* Applications for REAP can be submitted any time throughout the year. This Notice announces the deadline times and dates that applications have to be received in order to be considered for REAP funds provided by the Agricultural Act of 2014, (2014 Farm Bill), and any appropriated funds that REAP may receive from the appropriation for Federal FY 2018 for grants, guaranteed loans, and combined grants and guaranteed loans to purchase and install renewable energy systems, and make energy efficiency improvements; and for grants to conduct energy audits and renewable energy development assistance.

The Notice of Solicitation of Applications (NOSA) announces the acceptance of applications under REAP for Federal FY 2018 for grants, guaranteed loans, and combined grants and guaranteed loans for the development of renewable energy systems and energy efficiency projects as provided by the Agricultural Act of 2014 (2014 Farm Bill). The Notice also announces the acceptance of applications under REAP for Federal FY 2018 for energy audit and renewable energy development assistance grants as provided by the 2014 Farm Bill.

The administrative requirements in effect at the time the application window closes for a competition will be applicable to each type of funding available under REAP and are described in 7 CFR part 4280, subpart B. In addition to the other provisions of this Notice:

(1) The provisions specified in 7 CFR 4280.101 through 4280.111 apply to each funding type described in this Notice.

(2) The requirements specified in 7 CFR 4280.112 through 4280.124 apply to renewable energy system and energy efficiency improvements project grants.

(3) The requirements specified in 7 CFR 4280.125 through 4280.152 apply to guaranteed loans for renewable energy system and energy efficiency improvements projects. For Federal FY 2018, the guarantee fee amount is one percent of the guaranteed portion of the loan, and the annual renewal fee is one-quarter of 1 percent (0.250 percent) of the guaranteed portion of the loan.

(4) The requirements specified in 7 CFR 4280.165 apply to a combined grant and guaranteed loan for renewable energy system and energy efficiency improvements projects.

(5) The requirements specified in 7 CFR 4280.186 through 4280.196 apply to energy audit and renewable energy development assistance grants.

II. Federal Award Information

A. *Statutory Authority.* This program is authorized under 7 U.S.C. 8107.

B. *Catalog of Federal Domestic Assistance (CFDA) Number.* 10.868.

C. *Funds Available.* This Notice is announcing deadline times and dates for applications to be submitted for REAP funds provided by the 2014 Farm Bill and any appropriated funds that REAP may receive from the congressional enactment of a full-year appropriation for Federal FY 2018. This Notice is being published prior to the congressional enactment of a full-year appropriation for Federal FY 2018. The Agency will continue to process applications received under this announcement and should REAP receive appropriated funds, these funds will be announced on the following website: *https://www.rd.usda.gov/programs-services/rural-energy-america-program-renewable-energy-systems-energy-efficiency,* and are subject to the same provisions in this Notice.

To ensure that small projects have a fair opportunity to compete for the funding and are consistent with the priorities set forth in the statute, the Agency will set-aside not less than 20 percent of the Federal FY 2018 funds until June 29, 2018, to fund grants of $20,000 or less.

(1) *Renewable energy system and energy efficiency improvements grant-funds.* There will be allocations of grant funds to each Rural Development State Office for renewable energy system and energy efficiency improvements applications. The State allocations will include an allocation for grants of $20,000 or less funds and an allocation of grant funds that can be used to fund renewable energy system and energy efficiency improvements applications for either grants of $20,000 or less or grants of more than $20,000, as well as the grant portion of a combination grant and guaranteed loan. These funds are commonly referred to as unrestricted grant funds. The funds for grants of $20,000 or less can only be used to fund grants requesting $20,000 or less, which includes the grant portion of combination requests when applicable.

(2) *Renewable energy system and energy efficiency improvements loan guarantee funds.* Rural Development's National Office will maintain a reserve of guaranteed loan funds.

(3) *Renewable energy system and energy efficiency improvements combined grant and guaranteed loan funds.* Funding availability for combined grant and guaranteed loan applications are outlined in paragraphs II.(C)(1) and II.(C)(2) of this Notice.

(4) *Energy audit and renewable energy development assistance grant funds.* The amount of funds available for energy audits and renewable energy development assistance in Federal FY 2018 will be 4 percent of Federal FY 2018 mandatory funds and will be maintained in a National Office reserve. Obligations of these funds will take place through March 30, 2018. Any

unobligated balances will be moved to the renewable energy budget authority account, and may be utilized in any of the renewable energy system and energy efficiency improvements national competitions.

D. *Approximate Number of Awards.* The estimated number of awards is 1,000 based on the historical average grant size and the anticipated mandatory funding of $50 million for Federal FY 2018, but will depend on the actual amount of funds made available and on the number of eligible applicants participating in this program.

E. *Type of Instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

III. Eligibility Information

The eligibility requirements for the applicant, borrower, lender, and project (as applicable) are clarified in 7 CFR part 4280 subpart B, and are summarized in this Notice. Failure to meet the eligibility criteria by the time of the competition window may result in the Agency reviewing an application, but will preclude the application from receiving funding until all eligibility criteria have been met.

A. *Eligible Applicants.* This solicitation is for applications from agricultural producers and rural small businesses for grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements. This solicitation is also for applications for Energy Audit or a Renewable Development Assistance grants from units of State, Tribal, or local government; instrumentalities of a State, Tribal, or local government; institutions of higher education; rural electric cooperatives; public power entities; and councils, as defined in 16 U.S.C. 3451, which serve agricultural producers and rural small businesses. To be eligible for the grant portion of the program, an applicant must meet the requirements specified in 7 CFR 4280.110, and 7 CFR 4280.112, or 7 CFR 4280.186, as applicable.

B. *Eligible Lenders and Borrowers.* To be eligible for the guaranteed loan portion of the program, lenders and borrowers must meet the eligibility requirements in 7 CFR 4280.125 and 7 CFR 4280.127, as applicable.

C. *Eligible Projects.* To be eligible for this program, a project must meet the eligibility requirements specified in 7 CFR 4280.113, 7 CFR 4280.128, and 7 CFR 4280.187, as applicable.

D. *Cost Sharing or Matching.* The 2014 Farm Bill mandates the maximum percentages of funding that REAP can provide. Additional clarification is provided in paragraphs IV.E. (1) through (3) of this Notice.

(1) *Renewable energy system and energy efficiency improvements funding.* Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of total eligible project costs, with any Federal grant portion not to exceed 25 percent of total eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) *Energy audit and renewable energy development funds.* Requests for the energy audit and renewable energy development assistance grants, will indicate that the grantee that conducts energy audits must require that, as a condition of providing the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. The Agency recommended practice for on farm energy audits, audits for agricultural producers, ranchers, and farmers is the American Society of Agricultural and Biological Engineers S612 Level II audit. This audit conforms to program standards used by the Natural Resource Conservation Service. As per 7 CFR 4280.110(a), an applicant who has received one or more grants under this program must have made satisfactory progress towards completion of any previously funded projects before being considered for subsequent funding. The Agency interprets satisfactory progress as at least 50 percent of previous awards expended by January 31, 2018. Those who cannot meet this requirement will be determined to be a ''risk'' pursuant to 2 CFR 200.205 and may be determined in-eligible for a subsequent grant or have special conditions imposed.

E. *Other.* Ineligible project costs can be found in 7 CFR 4280.114(d), 7 CFR 4280.129(f), and 7 CFR 4280.188(c), as applicable. The U.S. Department of Agriculture Departmental Regulations and Laws that contain other compliance requirements are referenced in paragraphs VI.B.(1) through (3), and IV.F of this Notice. Applicants who have been found to be in violation of applicable Federal statutes will be ineligible.

IV. Application and Submission Information

A. *Address to Request Application Package.* Application materials may be obtained by contacting one of Rural Development's Energy Coordinators, as identified via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.* In addition, for grant applications, applicants may obtain electronic grant applications for REAP from *www.grants.gov.*

B. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B. Applicants must submit complete applications by the dates identified in Section IV.C., of this Notice, containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable, in order to be considered.

(1) *Renewable energy system and energy efficiency improvements grant application.*

(a) Information for the required content of a grant application to be considered complete is found in 7 CFR part 4280, subpart B.

(i) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $80,000 or less must provide information required by 7 CFR 4280.119.

(ii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $200,000 or less, but more than $80,000, must provide information required by 7 CFR 4280.118.

(iii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of greater than $200,000 must provide information required by 7 CFR 4280.117.

(iv) Grant applications for energy audits or renewable energy development assistance grant applications must provide information required by 7 CFR 4280.190.

(b) All grant applications must be submitted either as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located, or electronically using the Government-wide *www.grants.gov* website.

(i) Applicants submitting a grant application as a hard copy must submit one original to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(ii) Applicants submitting a grant application to the Agency via *www.grants.gov* (website) will find information about submitting an application electronically through the website, and may download a copy of

the application package to complete it off line, upload and submit the completed application, including all necessary assurances and certifications, via *www.grants.gov.* After electronically submitting an application through the website, the applicant will receive an automated acknowledgement from *www.grants.gov* that contains a *www.grants.gov* tracking number. USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through *www.grants.gov.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.122 (a) through (h) for the grant agreement to be executed.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan application.*

(a) Information for the content required for a guaranteed loan application to be considered complete is found in 7 CFR 4280.137.

(b) All guaranteed loan applications must be submitted as a hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal award, borrowers must meet the conditions prior to issuance of loan note guarantee as outlined in of 7 CFR 4280.142.

(3) *Renewable energy system and energy efficiency improvements combined guaranteed loan and grant application.*

(a) Information for the content required for a combined guaranteed loan and grant application to be considered complete is found in 7 CFR 4280.165(c).

(b) All combined guaranteed loan and grant applications must be submitted as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements, including the requisite forms and certifications, specified in 7 CFR 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, for the issuance of a grant agreement and loan note guarantee.

(4) *Energy audits or renewable development assistance grant applications.*

(a) Grant applications for energy audits or renewable energy development assistance must provide the information required by 7 CFR 4280.190 to be considered a complete application.

(b) All energy audits or renewable development assistance grant applications must be submitted either as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located, electronically using the Government-wide *www.grants.gov* website, or via an alternative electronic format with electronic signature followed up by providing original signatures to the appropriate Rural Development office. Instructions for submission of the application can be found at section IV.B. of this Notice.

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.195 for the grant agreement to be executed.

5. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM).* Unless exempt under 2 CFR 25.110, or who have an exception approved by the Federal awarding agency under 2 CFR 25.110 (d), applicants as applicable are required to:

(a) Be registered in SAM prior to submitting a grant application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *fedgov.dnb.com/webform.*

(b) Provide a valid DUNS number in its grant or loan application.

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal grant award or a grant application under consideration by the Agency.

(d) If an applicant has not fully complied with the requirements of IV.C. (1) through (3) at the time the Agency is ready to make an award, the Agency may determine the applicant is not eligible to receive the award.

C. *Submission Dates and Times.* Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance provided by the 2014 Farm Bill for Federal FY 2018, and for appropriated funds that REAP may receive from the appropriation for Federal FY 2018, may be submitted at any time on an ongoing basis. When an application window closes, the next application window opens on the following day. This Notice establishes the deadline dates for the applications to be received in order to be considered for funding. If an application window falls on a Saturday, Sunday, or Federal holiday, the application package is due the next business day. An application received after these dates will be considered with other applications received in the next application window. In order to be considered for funds under this Notice, complete applications must be received by the appropriate USDA Rural Development State Office or via *www.grants.gov.* The deadline for applications to be received to be considered for funding in Federal FY 2018 are outlined in the following paragraphs and also summarized in a table at the end of this section:

(1) *Renewable energy system and energy efficiency improvements grant applications and combination grant and guaranteed loan applications.* As per RD Instruction 4280–B Application deadlines for Federal FY 2018 grant funds are:

(a) For applicants requesting a grant only of $20,000 or less or a combination grant and guaranteed loan where the grant request is $20,000 or less, that wish to have their grant application compete for the ''Grants of $20,000 or less set aside,'' complete applications must be received no later than:

(i) 4:30 p.m. local time on October 31, 2017, or

(ii) 4:30 p.m. local time on April 30, 2018.

(b) For applicants requesting a grant only of over $20,000 (unrestricted) or a combination grant and guaranteed loan where the grant request is greater than $20,000, complete applications must be received no later than 4:30 p.m. local time on April 30, 2018.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan-only applications.* Eligible applications will be reviewed and processed when received for periodic competitions.

(3) *Energy audits and renewable energy development assistance grant applications.* Applications must be received no later than 4:30 p.m. local time on January 31, 2018.

Application	Application window opening dates	Application window closing dates
Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less competing for up to approximately 50 percent of the set aside funds).	April 1, 2017	October 31, 2017.
Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less competing for the remaining set aside funds).	November 1, 2017	April 30, 2018*.
Renewable Energy Systems and Energy Efficiency Improvements Grants (Unrestricted grants, including combination grant and guaranteed loan where the grant request is greater than $20,000,).	April 1, 2017	April 30, 2018*.
Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loans	Continuous application cycle.	Continuous application cycle.
Energy Audit and Renewable Energy Development Assistance Grants	February 1, 2017	January 31, 2018.

* Applications received after this date will be considered for the next funding cycle in the subsequent Federal FY.

D. *Intergovernmental Review.* REAP is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

E. *Funding Restrictions.* The following funding limitations apply to applications submitted under this Notice.

(1) *Renewable energy system and energy efficiency improvements projects.*

(a) Applicants can be awarded only one renewable energy system grant and one energy efficiency improvement grant in Federal FY 2018.

(b) For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvements grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(c) For renewable energy system and energy efficiency improvements loan guarantees, the minimum REAP guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million.

(d) Renewable energy system and energy efficiency improvements guaranteed loan and grant combination applications. Paragraphs IV.E.(1)(b) and (c) of this Notice contain the applicable maximum amounts and minimum amounts for grants and guaranteed loans. Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of eligible project costs, with any Federal grant portion not to exceed 25 percent of the eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) *Energy audit and renewable energy development assistance grants.*

(a) Applicants may submit only one energy audit grant application and one renewable energy development assistance grant application for Federal FY 2018 funds.

(b) The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this Notice cannot exceed $100,000 for Federal FY 2018.

(c) The 2014 Farm Bill mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business must require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

(3) *Maximum grant assistance to an entity.* For the purposes of this Notice, the maximum amount of grant assistance to an entity will not exceed $750,000 for Federal FY 2018 based on the total amount of the renewable energy system, energy efficiency improvements, energy audit, and renewable energy development assistance grants awarded to an entity under REAP.

F. *Other Submission Requirements.*

(1) *Environmental information.* For the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1970. Any required environmental review must be completed prior to obligation of funds or the approval of the application. Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable to ensure adequate review time.

(2) *Felony conviction and tax delinquent status.* Corporate applicants submitting applications under this Notice must include Form AD 3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.'' Corporate applicants who receive an award under this Notice will be required to sign Form AD 3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Both forms can be found online at *http://www.ocio.usda.gov/document/ad3030,* and *http://www.ocio.usda.gov/document/ad3031.*

(3) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through *www.grants.gov* at a later date.

(4) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that they have the necessary processes and systems in place to comply with the reporting requirements to receive funding.

(5) *Race, ethnicity, and gender.* The Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this information with their applications, but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information. However, failure to furnish this information may preclude the awarding of State Director and Administrator points in Section V.E.(3) of this Notice.

V. Application Review Information

A. *Criteria.* In accordance with 7 CFR part 4280 subpart B, the application dates published in Section IV.C. of this Notice identify the times and dates by which complete applications must be received in order to compete for the funds available.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Complete renewable energy systems and energy efficiency improvements grant applications are

eligible to compete in competitions as described in 7 CFR 4280.121.

(a) Complete renewable energy systems and energy efficiency improvements grant applications requesting $20,000 or less are eligible to compete in up to five competitions within the Federal FY as described in 7 CFR 4280.121(b). If the application remains unfunded after the final national office competition for the Federal FY it must be withdrawn. Pursuant to the publication of this announcement, all complete and eligible applications will be limited to competing in the Federal FY that the application was received, versus rolling into the following Federal FY, which may result in less than five total competitions. This was effective for any application submitted on or after April 1, 2017.

(b) Complete renewable energy systems and energy efficiency improvements grant applications, regardless of the amount of funding requested are eligible to compete in two competitions a Federal FY—a State competition and a national competition as described in 7 CFR 4280.121(a).

(2) *Renewable energy systems and energy efficiency improvements guaranteed loan applications.* Complete guaranteed loan applications are eligible for periodic competitions as described in 7 CFR 4280.139(a).

(3) *Renewable energy systems and energy efficiency improvements combined guaranteed loan and grant applications.* Complete combined guaranteed loan and grant applications with requests of $20,000 or less are eligible to compete in up to five competitions within the Federal FY as described in 7 CFR 4280.121(b). Combination applications where the grant request is greater than $20,000, are eligible to compete in two competitions a Federal FY—a State competition and a national competition as described in 7 CFR 4280.121(a).

(4) *Energy audit and renewable energy development assistance grant applications.* Complete energy audit and renewable energy development assistance grants applications are eligible to compete in one national competition per Federal FY as described in 7 CFR 4280.193.

B. *Review and Selection Process.* All complete applications will be scored in accordance with 7 CFR part 4280 subpart B and this section of the Notice. Specifically, sections C and D below outline revisions to the scoring criteria found in 7 CFR 4280.120.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Renewable energy system and energy efficiency grant applications will be scored in accordance with 7 CFR 4280.120 and selections will be made in accordance with 7 CFR 4280.121. For grant applications requesting greater than $250,000 for renewable energy systems, and/or greater than $125,000 for energy efficiency improvements a maximum score of 90 points is possible. For grant applications requesting $250,000 or less for renewable energy systems and/or $125,000 or less for energy efficiency improvements, an additional 10 points may be awarded such that a maximum score of 100 points is possible. Due to the competitive nature of this program, applications are competed based on submittal date. The submittal date is the date the Agency receives a complete application. The complete application date is the date the Agency receives the last piece of information that allows the Agency to determine eligibility and to score, rank, and compete the application for funding.

(a) Funds for renewable energy system and energy efficiency improvements grants of $20,000 or less will be allocated to the States. Eligible applications must be submitted by April 30, 2018, in order to be considered for these set-aside funds. Approximately 50 percent of these funds will be made available for those complete applications the Agency receives by October 31, 2017, and approximately 50 percent of the funds for those complete applications the Agency receives by April 30, 2018. All unused State allocated funds for grants of $20,000 or less will be pooled to the National Office.

(b) Eligible applications received by April 30, 2018, for renewable energy system and energy efficiency improvements grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications of $20,000 or less from other States at a national competition. Obligations of these funds will take place prior to June 29, 2018.

(c) Eligible applications for renewable energy system and energy efficiency improvements, regardless of the amount of the funding request, received by April 30, 2018, can compete for unrestricted grant funds. Unrestricted grant funds will be allocated to the States. All unused State allocated unrestricted grant funds will be pooled to the National Office.

(d) National unrestricted grant funds for all eligible renewable energy system and energy efficiency improvements grant applications received by April 30, 2018, which include grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications from other States at a final national competition.

(2) *Renewable energy systems and energy efficiency improvements guaranteed loan applications.* Renewable energy systems and energy efficiency improvements guaranteed loan applications will be scored in accordance with 7 CFR 4280.135 and selections will be made in accordance with 7 CFR 4280.139. The National Office will maintain a reserve for renewable energy system and energy efficiency improvements guaranteed loan funds. Applications will be reviewed and processed when received. Those applications that meet the Agency's underwriting requirements, are credit worthy, and score a minimum of 40 points will compete in national competitions for guaranteed loan funds periodically. All unfunded eligible guaranteed loan-only applications received that do not score at least 40 points will be competed against other guaranteed loan-only applications from other States at a final national competition, if the guaranteed loan reserves have not been completely depleted, on September 3, 2018. If funds remain after the final guaranteed loan-only national competition, the Agency may elect to utilize budget authority to fund additional grant-only applications.

(3) *Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications.* Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications will be scored in accordance with 7 CFR 4280.120 and selections will be made in accordance with 7 CFR 4280.121. For combined grant and guaranteed loan applications requesting grant funds of $250,000 or less for renewable energy systems, or $125,000 or less for energy efficiency improvements, a maximum score of 100 points is possible. For combined grant and guaranteed loan applications requesting grant funds of more than $250,000 for renewable energy systems, or more than $125,000 for energy efficiency improvements, a maximum score of 90 points is possible.

Renewable energy system and energy efficiency improvements combined grant and guaranteed loan applications will compete with grant-only applications for grant funds allocated to their State. If the application is ranked high enough to receive State allocated grant funds, the State will request funding for the guaranteed loan portion of any combined grant and guaranteed

loan applications from the National Office guaranteed loan reserve, and no further competition will be required. All unfunded eligible applications for combined grant and guaranteed loan applications that are received by April 30, 2018, and that are not funded by State allocations can be submitted to the National Office to compete against other grant and combined grant and guaranteed loan applications from other States at a final national competition.

(4) *Energy audit and renewable energy development assistance grant applications.* Energy audit and renewable energy development assistance grants will be scored in accordance with 7 CFR 4280.192 and selections will be made in accordance with 7 CFR 4280.193. Energy audit and renewable energy development assistance grant funds will be maintained in a reserve at the National Office. Applications received by January 31, 2018 will compete for funding at a national competition, based on the scoring criteria established under 7 CFR 4280.192. If funds remain after the energy audit and renewable energy development assistance national competition, the Agency may elect to transfer budget authority to fund additional renewable energy system and energy efficiency improvements grants from the National Office reserve after pooling.

C. Size of Agricultural Producer or Rural Small Business.

The criterion noted in 7 CFR 4280.120 (d) which allows for a maximum of 10 points to be awarded based on the size of the Applicant's agricultural operation or business concern, as applicable, compared to the SBA Small Business size standards categorized by NAICS found in 13 CFR 121.201, is being removed for applications for renewable energy systems or energy efficiency improvements effective as of the date of this publication.

D. *State Director and Administrator Points.* The criterion noted in 7 CFR 4280.120(g) allows for the State Director and the Administrator to take into consideration paragraphs V.D.(1) through (5) below in the awarding of up to 10 points for eligible renewable energy systems and energy efficiency improvement grant applications submitted in Federal FY 2018:

(1) May allow for applications for an under-represented technology to receive additional points.

(2) May allow for applications that help achieve geographic diversity to receive additional points. This may include priority points for smaller grant requests which enhances geographic diversity.

(3) May allow for applicants who are members of unserved or under-served populations to receive additional points if one of the following criteria are met:

(a) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have veteran status; or

(b) Owned by a member of a socially-disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that the owners of the project are members of a socially-disadvantaged group.

(4) May allow for applications that further a Presidential initiative, or a Secretary of Agriculture priority, including Federally declared disaster areas, to receive additional points.

(5) The proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment.

E. *Other Submission Requirements.* Grant-only applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance may be submitted at any time. In order to be considered for funds, complete applications must be received by the appropriate USDA Rural Development State Office in which the applicant's proposed project is located, or via *www.grants.gov,* as identified in Section IV.C., of this Notice.

(1) *Insufficient funds.* If funds are not sufficient to fund the total amount of an application:

(a) For State allocated funds:

(i) The applicant must be notified that they may accept the remaining funds or submit the total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(ii) If two or more grant or combination applications have the same score and remaining funds in the State allocation are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or submit their total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(b) The applicant notification for national funds will depend on the competition as follows:

(i) For an application requesting a grant of $20,000 or less or a combination application where the grant amount is $20,000 or less from set-aside pooled funds, the applicant must be notified that they may accept the remaining funds, or submit the total request to compete in the unrestricted state competition. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. A declined partial award counts as a competition.

(ii) For an application requesting a grant of $20,000 or less or a combination application where the grant amount is $20,000 or less from unrestricted pooled funds, in which this is the final competition or for those applications requesting grants of over $20,000 and combined grant and guaranteed loan application, the applicant must be notified that they may accept the remaining funds or their grant application will be withdrawn. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(iii) If two or more grant or combination applications have the same score and remaining funds are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or be notified in accordance with V.D.(1)(b)(i) or (ii), as applicable.

(iv) At its discretion, the Agency may instead allow the remaining funds to be carried over to the next Federal FY rather than selecting a lower scoring application(s) or distributing funds on a pro-rata basis.

(2) *Award considerations.* All award considerations will be on a discretionary basis. In determining the amount of a renewable energy system or energy efficiency improvements grant or loan guarantee, the Agency will consider the six criteria specified in 7 CFR 4280.114(e) or 7 CFR 4280.129(g), as applicable.

(3) *Notification of funding determination.* As per 7 CFR 4280.111(c) all applicants will be informed in writing by the Agency as to

the funding determination of the application.

VI. Federal Award Administration Information

A. *Federal Award Notices.* The Agency will award and administer renewable energy system and energy efficiency improvements grants, guaranteed loans in accordance with 7 CFR 4280.122, and 7 CFR 4280.139, as applicable. The Agency will award and administer the energy audit and renewable energy development assistance grants in accordance with 7 CFR 4280.195. Notification requirements of 7 CFR 4280.111, apply to this Notice.

B. *Administrative and National Policy Requirements.*

(1) *Equal Opportunity and Nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the U.S. Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(2) *Civil Rights Compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(3) *Environmental Analysis.* Environmental procedures and requirements for this subpart are specified in 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(4) *Appeals.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4280.105.

(5) *Reporting.* Grants, guaranteed loans, combination guaranteed loans and grants, and energy audit and energy audit and renewable energy development assistance grants that are awarded are required to fulfill the reporting requirements as specified in Departmental Regulations, the Grant Agreement, and in 7 CFR part 4280 subpart B and paragraphs VI.B.(5)(a) through (d) of this Notice.

(a) Renewable energy system and energy efficiency improvements grants that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.123.

(b) Guaranteed loan applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.143.

(c) Combined guaranteed loan and grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.165(f).

(d) Energy audit and renewable energy development assistance grants grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.196.

VII. Federal Awarding Agency Contacts

For further information contact the applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *http://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Maureen Hessel, Business Loan and Grant Analyst, USDA Rural Development, Energy Division, 1400 Independence Avenue SW, Stop 3225, Room 6866, Washington, DC 20250. Telephone: (202) 401–0142. Email: *maureen.hessel@wdc.usda.gov.*

VIII. Other Information

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvements grants and guaranteed loans, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050. The information collection requirements associated with energy audit and renewable energy development assistance grants have also been approved by OMB under OMB Control Number 0570–0059.

B. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: March 7, 2018.

Bette Brand,

Administrator, Rural Business–Cooperative Service.

[FR Doc. 2018–05008 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Montana Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Montana Advisory Committee (Committee) to the Commission will be held at 11:00 a.m. (Mountain Time) Thursday, March 15, 2018. The purpose of the meeting is for the Committee to discuss preparations to hear testimony on border town discrimination.

DATES: The meeting will be held on Thursday, March 15, 2018 at 11:00 a.m. MT.

Public Call Information:

Dial: 888–516–2447.
Conference ID: 8154017.

FOR FURTHER INFORMATION CONTACT: Angelica Trevino at *atrevino@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–516–2447, conference ID number: 8154017. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=259.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Rollcall
II. Approval of minutes from February 1, 2018 meeting
III. Discussion of panelists and logistics for hearing testimony on border town discrimination
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee preparing for its upcoming public meeting to hear testimony.

Dated: March 7, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04977 Filed 3–12–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Montana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a community forum of the Montana Advisory Committee to the Commission will convene at 9:00 a.m. (MDT) on Thursday, March 29, 2018, at the Hardin Middle School, 611 5th Street W, Hardin, MT 59034. The purpose of the community forum is to gather information from federal and tribal government officials and others regarding bordertown discrimination in Montana. Briefing topics will include discrimination that impacts Native Americans in the areas of education, employment, services, public accommodations, law enforcement, and the legal system.

DATES: The meeting will be held on Thursday, March 29, 2018, from 9:00 a.m. to 5:00 p.m. (MDT).

Location: Hardin Middle School, 611 5th Street W, Hardin MT 59034.

Public Call Information: Dial: 1–888–293–6960, Conference ID: 4985239.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or (312) 353–8311.

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

Time will be set aside at the community forum from 4:00 p.m.–5:00 p.m. so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, April 30, 2018. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012, faxed to (213) 894–0508, or emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Western Regional Office at (213) 894–3437. Persons who plan to attend the community forum and require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Rocky Mountain Regional Office at least ten

(10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/committee.aspx?cid=259&aid=17* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Western Regional Office at the above phone number, email or street address.

Agenda

Smudging Ceremony
Welcome and Introductions:
  Gwen Kircher, Chair, Montana Advisory Committee
Community Forum
  Montana Advisory Committee
  Government and Tribal Officials, Advocates, Experts

Dated: March 7, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04978 Filed 3–12–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee To Discuss the Hearing on Access to Voting in the State of Alabama, Which Was Held in Montgomery, Alabama on February 22, 2018

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Friday, March 23, 2018, at 11:00 a.m. (Central) for the purpose discussing the hearing on Access to Voting in Alabama, and assessment of the need for further testimony.

DATES: The meeting will be held on Friday, March 23, 2018, at 11:00 a.m. (Central).

Public Call Information: Dial: 877–879–6207, Conference ID: 2611734.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–879–6207, conference ID: 2611734. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

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

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of the hearing on Access to Voting in Alabama
Discussion on additional testimony
Next Steps
Public Comment
Adjournment

Dated: March 7, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04976 Filed 3–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2018]

Foreign-Trade Zone (FTZ) 61—San Juan, Puerto Rico; Notification of Proposed Production Activity, Janssen Ortho LLC (Pharmaceuticals), Gurabo, Puerto Rico

Janssen Ortho LLC (Janssen) submitted a notification of proposed production activity to the FTZ Board for its facility in Gurabo, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 27, 2018.

Janssen already has authority to produce certain pharmaceutical products within Subzone 61N. The current request would add a finished product and a foreign status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Janssen from customs duty payments on the foreign-status material/component used in export production. On its domestic sales, for the foreign-status material/component noted below and those in the existing scope of authority, Janssen would be able to choose the duty rate during customs entry procedures that applies to Erleada™ (apalutamide 60 mg oral tablets) (duty-free). Janssen would be able to avoid duty on foreign-status components which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is apalutamide API (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 23, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: March 6, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–05025 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–45–2018]

Foreign-Trade Zone 138—Franklin County, Ohio; Application for Subzone; International Converter, Inc., Caldwell, Ohio

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Columbus Regional Airport Authority, grantee of FTZ 138, requesting subzone status for the facility of International Converter, Inc. (IC), located in Caldwell, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 7, 2018.

The proposed subzone (10.29 acres) is located at 17153 Industrial Highway, Caldwell, Noble County. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–13–2018). The proposed subzone would be subject to the existing activation limit of FTZ 138.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 23, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 7, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 7, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–05024 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of subject merchandise by Filmag Italia Spa (Filmag) were not made at less than normal value during the period of review (POR) February 1, 2016, through January 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 13, 2018.

FOR FURTHER INFORMATION CONTACT: John Drury or Kent Boydston, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–5649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2017, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the AD order on stainless steel butt-weld pipe fittings (SSBW pipe fittings) from Italy for the period February 1, 2016, through January 31, 2017.[1] Commerce initiated a review with respect to one company, Filmag. On October 31, 2017, Commerce extended the preliminary results of review until January 2, 2018.[2] On December 28, 2017, Commerce extended the preliminary results of review until February 28, 2018.[3]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now March 5, 2018.[4]

Scope of the Order

The merchandise covered by the order is certain stainless steel butt-weld pipe fittings from Italy.[5] Stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the order are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017).

[2] *See* Memorandum to James Maeder, Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from John K. Drury, International Trade Compliance Analyst, Office VI, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,'' dated October 31, 2017.

[3] *See* Memorandum to Edward Yang, Senior Director, Office VII, from Kent Boydston, International Trade Compliance Analyst, Office VI, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,'' dated December 28, 2017.

[4] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[5] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001).

Enforcement and Compliance, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, titled ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Butt-Weld Pipe Fittings from Italy; 2016–2017'' (Preliminary Decision Memorandum), which is issued concurrent with these results and hereby adopted by this notice.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price has been calculated in accordance with section 772 of the Act. Normal value has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that, for the period February 1, 2016, through January 31, 2017, the following dumping margin exists:

Manufacturer/exporter	Weighted-average margin (percent)
Filmag Italia Spa	0.00

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce in response to these preliminary results no later than 30 days after the publication of these preliminary results.[7] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[8]

Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10] Case and rebuttal briefs must be served on interested parties.[11] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[12] Parties should confirm the date, time, and location of the hearing by telephone two days before the scheduled date.

Commerce intends to publish the final results of this administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[13]

Assessment Rates

Upon issuance of the final results in this administrative review, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[14] If Filmag's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer- or customer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review to the total customs value of the sales used to calculate those duties in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP liquidate the appropriate entries without regard to duties in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [15]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Filmag will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent review period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 26.59 percent, the rate established in the

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d)(1) and (2).

[9] *See* 19 CFR 351.309(c)(2).

[10] *See generally* 19 CFR 351.303.

[11] *See* 19 CFR 351.303(f).

[12] *See* 19 CFR 351.310(d).

[13] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

[14] *See* 19 CFR 351.212(b)(1).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

investigation of this proceeding.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 review period. 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 5, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Date of Sale
4. Comparisons to Normal Value
   A. Product Comparisons
   B. Determination of Comparison Method
   C. Export Price
   D. Normal Value
   1. Home Market Viability
   2. Level of Trade
   3. Cost of Production
   4. Calculation of Normal Value Based on Comparison Market Prices
   5. Price-to-Constructed Value Comparison
   E. Currency Conversion
5. Recommendation

[FR Doc. 2018–05022 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG070

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice.

SUMMARY: This notice advises the public that a direct take permit has been issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA) for a program rearing and releasing summer steelhead in the Wenatchee River basin of Washington state (Columbia River basin). The permit is issued to the Public Utility District of Chelan County and the Washington Department of Fish and Wildlife.

DATES: The permit was issued on December 26, 2017, subject to certain conditions set forth therein. Subsequent to issuance, the necessary countersignatures by the applicants were received. The permit expires on December 31, 2027.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd. #1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Emi Kondo at (503) 736–4739 or by email at *emi.kondo@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant unit (ESU)/distinct population segment (DPS):

Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Upper Columbia River.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 8, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–05027 Filed 3–12–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0005]

Proposed Collection; Comment Request

AGENCY: U.S. Army Public Health Center (APHC), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Public Health Center (APHC) 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 May 14, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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 Army Public Health Center (APHC), ATTN: Dr. Coleen Baird, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403, or call APHC Environmental Medicine Division at (410) 436–2714.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of Health Status of an Infantry Battalion Following Deployment in Support of Operation Iraqi Freedom in 2004–2005; OMB Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to assess and evaluate the self-reported post-deployment health status of selected soldiers who operated in the

[16] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy,* 65 FR 81830 (December 27, 2000).

vicinity of Mosul, Iraq in 2004 (*e.g.,* 1–24 Infantry Battalion). The data collected from the survey will be used to compare the health of current and former U.S. Army personnel after their initial deployment in support of Operation Iraqi Freedom (OIF) to that of a subset of Millennium Cohort Study participants. This evaluation is being conducted at the request of the Army Chief of Staff.

Affected public: Individuals or Households.

Annual burden hours: 3,500.

Number of respondents: 3,500.

Responses per respondent: 1.

Annual responses: 3,500.

Average burden per response: 60 minutes.

Frequency: One time.

Respondents are former soldiers who deployed in support of OIF. The post-deployment health survey will record self-reported health topics, including medical conditions, health behaviors, and exposures that may have affected the health of soldiers and veterans. The data from the completed survey will be used to compare the health status of members of the 1–24 Infantry Battalion (1–24 IN) who deployed to Mosul, Iraq in 2004–2005 and a similar exposure group consisting of other personnel in the 1st Stryker Brigade Combat Team (SBCT) to a comparable set of soldiers and veterans participating in a separate and not related Millennium Cohort Study. A deployment and environmental health surveillance investigation conducted by the APHC in 2014 was unable to discern etiologic elements connecting the multitude of health conditions and symptoms experienced by a small subset of the 1–24 IN. Deployment-associated environmental exposures which may have increased the risk of developing these conditions were not identified; however, a comprehensive comparative evaluation that includes self-reported data and all former members of the 1–24 IN who served in Mosul has not been conducted.

Dated: March 8, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–05040 Filed 3–12–18; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0086]

Notice of Availability for Finding of No Significant Impact for the Environmental Assessment Addressing Defense Logistics Agency Disposition Services Relocation and Expansion at Defense Supply Center Richmond, Virginia

AGENCY: Defense Logistics Agency (DLA), Department of Defense.

ACTION: Notice of availability (NOA).

SUMMARY: On August 17, 2016, DLA published a NOA in the **Federal Register** announcing the publication of the Environmental Assessment (EA) Addressing Defense Logistics Agency Disposition Services Relocation and Expansion at Defense Supply Center Richmond, Virginia. The EA was available for a 30-day public comment period that ended September 16, 2016. DLA considered all comments prior to making the determination to proceed with this Finding of No Significant Impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Ira Silverberg at 703–767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *ira.silverberg@dla.mil.*

SUPPLEMENTARY INFORMATION: The EA was prepared as required under the National Environmental Policy Act (NEPA) of 1969. In addition, the EA complied with DLA Regulation 1000.22. DLA completed an EA to address the potential environmental consequences associated with the Proposed Action at Defense Supply Center Richmond. This FONSI incorporates the EA by reference and summarizes the results of the analyses in the EA. Additionally, this FONSI documents the decision of DLA to implement the Proposed Action at Defense Supply Center Richmond. DLA has determined that the Proposed Action is not a major federal action significantly affecting the quality of the human environment within the context of NEPA and that no significant impacts on the human environment are associated with this decision.

DLA received two comments during the 30-day public comment period. An anonymous comment, dated September 13, 2016, concurred with DLA that the Proposed Action would not result in a significant impact. The Virginia Department of Environmental Quality (DEQ) coordinated review of the EA by state agencies, planning district commissions, and Chesterfield County and provided a consolidated comment letter dated September 15, 2016. The Virginia DEQ consolidated comment letter noted the EA did not address potential impacts to land analogous to Chesapeake Bay Preservation Areas. On September 22, 2017, DLA responded to the Virginia DEQ consolidated comment letter. DLA's response letter noted that DLA conducted a wetland delineation, stream assessment, and resource protection area (RPA) delineation and submitted a RPA Designation Application to Chesterfield County requesting redesignation of the RPA within a portion of the proposed 18.2-acre outdoor storage area on March 31, 2017. Chesterfield County confirmed DLA's perennial stream flow determination and RPA designations on April 14, 2017.

DLA determined that the Proposed Action would be consistent, to the maximum extent practicable, with the enforceable policies of Virginia's Coastal Zone Management Program and submitted a coastal zone consistency determination for Virginia DEQ review on June 9, 2016. On August 16, 2016, Virginia DEQ concurred that the Proposed Action would be consistent with Virginia's Coastal Zone Management Program provided DLA obtains all applicable permits and approvals.

The Proposed Action would take place within the Bellwood-Richmond Quartermaster Depot Historic District, which is eligible for listing in the National Register of Historic Places. Pursuant to the National Historic Preservation Act, DLA contacted the State Historic Preservation Officer to conduct Section 106 consultation for the Proposed Action on September 25, 2015. In a letter dated November 2, 2015, the State Historic Preservation Office concurred that the Proposed Action would not adversely affect historic properties.

The EA includes an appendix with the public's comments and DLA's response, coastal zone consistency documentation, and State Historic Preservation Office consultation documents. The revised EA is available electronically at the Federal eRulemaking Portal at *http://www.regulations.gov* within Docket ID: DOD–2016–OS–0086.

Purpose and Need for Action: The purpose of the Proposed Action is to improve the efficiency of DLA Disposition Services operations in the Eastern United States. The Proposed Action is necessary, because the DLA Disposition Services disposal network in the Eastern United States has

experienced increased customer wait times, insufficient loading bays, workload and productivity imbalances between sites, aging facilities, and a lack of process optimization since DLA Distribution and DLA Disposition Services merged materiel receipt, storage, and distribution functions.

Proposed Action and Alternatives: Under the Proposed Action, DLA would: (1) Redesign the DLA Disposition Services mid-Atlantic disposal network. This will divert incoming excess military property from DLA Disposition Services at Fort Meade, Fort Bragg, Norfolk, and Susquehanna to DLA Disposition Services at Richmond. (2) Expand DLA Disposition Services at Richmond to a full-service operation (*i.e.,* receive, store, distribute, and sell excess military equipment; documentation of hazardous materials management; demilitarization; and scrap operations). The expansion increases the warehouse footprint from 60,000 to 340,000 square feet (an addition of 280,000 square feet) and increases the outdoor storage area footprint from 34 to 60 acres (an addition of 26 acres). (3) Create an operational test bed for research, development, testing, and evaluation of standardized disposal practices at DLA Disposition Services at Richmond.

Description of the No Action Alternative: The No Action Alternative avoids relocation, or expansion of DLA Disposition Services at Richmond. DLA Disposition Services would continue to operate with extensive customer wait times, insufficient loading bays, workload and productivity imbalances between sites, aging facilities, and a lack of process optimization. The No Action Alternative would not meet the purpose of and need for the Proposed Action.

Potential Environmental Impacts: No significant effects on environmental resources are expected from the Proposed Action. Insignificant, adverse effects on land use, *e.g.,* noise, air quality, geological resources, water resources, biological resources, cultural resources, infrastructure and transportation, hazardous materials and wastes, and health and safety are to be expected. Insignificant and beneficial effects on infrastructure and socioeconomics are also to be expected. The EA covers details of the environmental consequences, which is hereby incorporated by reference.

Determination: DLA has determined that implementation of the Proposed Action will not have a significant effect on the human environment. DLA interprets the human environment as the natural and physical environment and the relationship of people with that environment. DLA based this determination on an analysis of uncertain or controversial impacts; unique or unknown risks; and cumulative impacts of the proposed action. Implementation of the Proposed Action will not violate any Federal, State, or local laws.

Mr. Phillip R. Dawson, Acting Director, DLA Installation Management, concludes that implementing the Proposed Action at the Defense Supply Center Richmond does not constitute a major federal action that would significantly affect the quality of the environment within the context of NEPA. This decision is based on the results of the analyses performed during the EA preparation as well as comments received from the public.

Therefore, an environmental impact statement for the Proposed Action is not required.

Dated: March 8, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–05055 Filed 3–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–79]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young, (703) 697–9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697–9217, *kathy.a.valadez.civ@mail.mil;* DSCA/DSA–RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–79 with attached Policy Justification and Sensitivity of Technology.

Dated: March 8, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 02 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-79, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $45 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Japan

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$40 million
Other	$5 million
Total	$45 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twenty-four (24) MK 15 Phalanx Close-in Weapon System (CIWS) Block IB Baseline 1 to MK 15 Phalanx Block IB Baseline 2 Conversion Kits.

Non-MDE:

Also included is support equipment, spare parts, publications, software and associated support, and logistical support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (JA–P–NBE)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* March 2, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—MK 15 Phalanx Close-in Weapon System (CIWS) Block IB Baseline 2 Conversion Kits

The Government of Japan has requested to buy twenty-four (24) MK 15 Phalanx Close-in Weapon System (CIWS) Block IB Baseline 1 to MK 15 Phalanx Block IB Baseline 2 conversion kits. Also included is support equipment, spare parts, publications, software and associated support, and logistical support services, and other related elements of logistical and program support. The estimated total case value is $45 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a major ally that has been, and continues to be, a force for political stability and economic progress in the Asia-Pacific region.

The proposed sale will improve Japan's capability in current and future defensive efforts. Japan will use the enhanced capability as a deterrent to regional threats and to strengthen homeland defense.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the permanent assignment of additional U.S. Government or contractor representatives in Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–79

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The CIWS Block IB Baseline 2 represents an increase in threat acquisition and firepower accuracy over previous Block 1 Baseline configurations. The Baseline 2 variant includes a radar improvement upgrade and an electro-optical sensor to improve weapon system performance against low-observable, sea-skimming threats, and provides improved capability to concentrate hard-kill ordnance in a tighter pattern on the threat. The CIWS mount and spare hardware are UNCLASSIFIED. The radar improvement/upgrade is the most sensitive portion of the Baseline 2 configuration.

2. The CIWS Block 1B Baseline 2 systems and upgrade kits will result in the transfer of a highly accurate close-in engagement technology and ship self-defense capability. The equipment, hardware, and the majority of documentation are UNCLASSIFIED. The embedded software and operational performance are classified CONFIDENTIAL. The seeker/electro-optical control section and the target detector are UNCLASSIFIED, but contain a sensitive state-of-the-art technology. Technical Manuals used to support the operation and provisioning of organizational-level maintenance are CONFIDENTIAL. The technical and operational data identified above is classified to protect vulnerabilities, design and performance parameters, and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of specific hardware, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Japan can provide substantially the same degree of protection for sensitive technology being released as the U.S. Government. This proposed sustainment program is necessary to the furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Japan.

[FR Doc. 2018–05035 Filed 3–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice; correction.

SUMMARY: On March 2, 2018, we published in the **Federal Register** a notice inviting applications for new awards for fiscal year (FY) 2018 for CSP—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools, Catalog of Federal Domestic Assistance (CFDA) numbers 84.282B and 84.282E. This correction notice provides a link to the application submission instructions.

DATES: This correction is applicable March 13, 2018.

FOR FURTHER INFORMATION CONTACT: Eddie Moat, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W259, Washington, DC 20202–5970. Telephone: (202) 401–2266 or by email: *eddie.moat@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

On March 2, 2018, we published in the **Federal Register** a notice inviting applications for new awards for FY 2018 for CSP—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (83 FR 8974). This correction notice provides a direct link to the application submission instructions.

Correction

In FR Doc. 2018–04294, we are revising the paragraph beginning on page 8979 in the second column, at the bottom of the page, under the heading ''IV. Application and Submission Information,'' to provide the link to the application submission instructions: 1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official

edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 8, 2018.

Margo Anderson,

Acting Deputy Assistant Secretary for Innovation and Improvement.

[FR Doc. 2018–05061 Filed 3–12–18; 8:45 am]

BILLING CODE 4000–01–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:

Filings Instituting Proceedings

Docket Number: PR18–35–000.

Applicants: Enable Oklahoma Intrastate Transmission, LLC.

Description: Tariff filing per 284.123(b),(e)+(g): Enable Revised Fuel Percentages April 1, 2018 through March 31, 2019 to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 201802285114.

Comments Due: 5 p.m. ET 3/21/18.

284.123(g) Protests Due: 5 p.m. ET 4/30/18.

Docket Number: PR18–36–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH SOC Rate Change Effective 3–1–2018.

Filed Date: 3/5/18.

Accession Number: 201803055010.

Comments/Protests Due: 5 p.m. ET 3/26/18.

Docket Numbers: RP18–481–000.

Applicants: Pivotal Utility Holdings, Inc., Elkton Acquisition Corp.

Description: Joint Petition for Temporary Waiver of Commission Capacity Release Regulations and Policies, et al.

Filed Date: 2/27/18.

Accession Number: 20180227–5193.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–482–000.

Applicants: Pivotal Utility Holdings, Inc., ETG Acquisition Corp.

Description: Joint Petition for Temporary Waiver of Commission Capacity Release Regulations and Policies, et al.

Filed Date: 2/27/18.

Accession Number: 20180227–5194.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–550–000.

Applicants: Noble Energy, Inc., Fieldwood Energy LLC.

Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Related Tariff Provisions.

Filed Date: 3/5/18.

Accession Number: 20180305–5380.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–417–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing Compliance Filing to RP18–417–000 to be effective 3/5/2018.

Filed Date: 3/6/18.

Accession Number: 20180306–5150.

Comments Due: 5 p.m. ET 3/19/18.

Docket Numbers: RP18–551–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Tenaska Marketing Ventures to be effective 4/1/2018.

Filed Date: 3/6/18.

Accession Number: 20180306–5046.

Comments Due: 5 p.m. ET 3/19/18.

Docket Numbers: RP18–552–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Contracts April—October 2018 to be effective 4/1/2018.

Filed Date: 3/6/18.

Accession Number: 20180306–5074.

Comments Due: 5 p.m. ET 3/19/18.

Docket Numbers: RP18–553–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: § 4(d) Rate Filing: DECP—Liquefaction Project Implementation (RP18–419) Update to be effective 4/1/2018.

Filed Date: 3/6/18.

Accession Number: 20180306–5143.

Comments Due: 5 p.m. ET 3/19/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04991 Filed 3–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 15, 2018, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *http://ferc.capitolconnection.org/* using the *eLibrary* link, or may be examined in the Commission's Public Reference Room.

1041ST—MEETING

[Regular meeting; March 15, 2018; 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD18–1–000	Agency Administrative Matters.
A–2	AD18–2–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM18–12–000	Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates.
E–2	EL18–72–000	Alcoa Power Generating Inc.-Long Sault Division.
	EL18–73–000	Alcoa Power Generating Inc.-Tapoco Division.
	EL18–75–000	Avista Corporation.
	EL18–76–000	Black Hills/Colorado Electric Utility Company, L.P.
	EL18–77–000	Central Hudson Gas & Electric Corporation.
	EL18–79–000	Cheyenne Light, Fuel and Power Company.
	EL18–89–000	Consolidated Edison Company of New York, Inc.
	EL18–90–000	Cube Yadkin Transmission LLC.
	EL18–91–000	DATC Path 15, LLC.
	EL18–93–000	Deseret Generation and Transmission Co-operative, Inc.
	EL18–95–000	El Paso Electric Company.
	EL18–96–000	Electric Energy, Inc.
	EL18–97–000	Essential Power Rock Springs, LLC.
	EL18–98–000	Florida Power & Light Company.
	EL18–101–000	Monongahela Power Company. Potomac Edison Company. West Penn Power Company.
	EL18–102–000	Nevada Power Company. Sierra Pacific Power Company.
	EL18–103–000	New York State Electric & Gas Corporation.
	EL18–104–000	NorthWestern Corporation.
	EL18–105–000	Ohio Valley Electric Corporation.
	EL18–107–000	Orange & Rockland Utilities, Inc.
	EL18–108–000	Pacific Gas and Electric Company.
	EL18–109–000	Portland General Electric Company.
	EL18–110–000	Rochester Gas and Electric Corporation.
	EL18–111–000	Rockland Electric Company.
	EL18–112–000	Sky River LLC.
	EL18–113–000	Smoky Mountain Transmission LLC.
	EL18–115–000	Startrans, IO, LLC.
	EL18–117–000	The Dayton Power & Light Company.
	EL18–118–000	Trans Bay Cable LLC.
	EL18–119–000 (not consolidated)	Tucson Electric Power Company.
E–3	EL18–62–000	AEP Appalachian Transmission Company, Inc. AEP Indiana Michigan Transmission Company, Inc. AEP Kentucky Transmission Company, Inc. AEP Ohio Transmission Company, Inc. AEP West Virginia Transmission Company, Inc.
	EL18–63–000	AEP Oklahoma Transmission Company, Inc. AEP Southwestern Transmission Company, Inc.
	EL18–64–000	Baltimore Gas and Electric Company.
	EL18–65–000	Black Hills Power, Inc.
	EL18–66–000	Citizens Sunrise Transmission LLC.
	EL18–67–000	San Diego Gas & Electric Company.
	EL18–68–000	Transource Maryland, LLC.
	EL18–69–000	Transource Pennsylvania, LLC.
	EL18–70–000	Transource West Virginia, LLC.
	EL18–71–000 (not consolidated)	UNS Electric, Inc.
E–4	EL18–20–000	Indicated SPP Transmission Owners v. Southwest Power Pool, Inc.
E–5	EC17–126–000	South Central MCN LLC.
E–6	ER18–99–000	Southwest Power Pool, Inc.
E–7	ER18–840–000	Public Service Company of Colorado.
E–8	ER18–783–000	MISO Transmission Owners.
E–9	OMITTED.	
E–10	EL10–65–005	Louisiana Public Service Commission v. Entergy Corporation. Entergy Services, Inc. Entergy Louisiana, LLC. Entergy Arkansas, Inc. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Gulf States Louisiana, L.L.C. Entergy Texas, Inc.

1041ST—MEETING—Continued

[Regular meeting; March 15, 2018; 10:00 a.m.]

Item No.	Docket No.	Company
	ER14–2085–001, ER11–3658–001, ER12–1920–001, ER13–1595–001, (consolidated).	Entergy Services, Inc.
	GAS	
G–1	RM18–11–000	Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate.
G–2	PL17–1–000	Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs.
G–3	IS08–390–008, IS08–390–009	SFPP, L.P.
G–4	IS09–437–008, IS09–437–009, IS09–437–010, IS10–572–005, IS10–572–006, IS10–572–007.	SFPP, L.P.
G–5	IS11–444–002	SFPP, L.P.
G–6	OR11–13–000	ConocoPhillips Company v. SFPP, L.P.
	OR11–16–000	Chevron Products Company v. SFPP, L.P.
	OR11–18–000	Tesoro Refining and Marketing Company v. SFPP, L.P.
G–7	OR14–35–002	HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways, Inc., Valero Marketing and Supply Company, and Western Refining Company, L.P. v. SFPP, L.P.
	OR14–36–002	Chevron Products Company v. SFPP, L.P.
G–8	RP18–442–000	Dominion Energy Overthrust Pipeline, LLC.
G–9	RP18–441–000	Midwestern Gas Transmission Company.
G–10	OR18–8–000	Blue Racer NGL Pipelines, LLC.
	HYDRO	
H–1	P–2114–293	Public Utility District No. 2 of Grant County, Washington.
H–2	P–2082–062, P–14803–000	PacifiCorp.
H–3	P–2426–229	California Department of Water Resources and Los Angeles Department of Water and Power.
H–4	P–13762–003	FFP Missouri 15, LLC.
	P–13753–003	FFP Missouri 16, LLC.
H–5	P–2485–074, P–1889–086	FirstLight Hydro Generating Company.
	CERTIFICATES	
C–1	CP17–409–000	DTE Midstream Appalachia, LLC.
C–2	OMITTED.	
C–3	CP17–74–000	National Fuel Gas Supply Corporation.

Dated: March 8, 2018.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2018–05103 Filed 3–9–18; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a

summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. EL18–61–000	2–20–2018	Robert E. Rutkowski.
2. CP15–558–000	2–20–2018	Mass Mailing.[1]
3. CP15–558–000	2–21–2018	Dean Escue.
4. CP15–558–000	2–21–2018	Judi Roggie.
5. CP15–558–000	2–21–2018	Karyl Patterson.
6. CP15–558–000	2–22–2018	Polly M. Clark and Martin J. Zaleshar Jr.
7. CP15–558–000	2–26–2018	Mass Mailing.[2]
8. CP15–558–000	2–28–2018	Mass Mailing.[3]
9. CP15–558–000	3–1–2018	Mass Mailing.[4]
10. CP15–558–000	3–5–2018	Mass Mailings.[5]
Exempt		
1. CP16–9–000	2–22–2018	U.S. House Representative Stephen F. Lynch.
2. CP17–40–000	2–22–2018	U.S. Congress.[6]
3. P–2413–000	2–23–2018	U.S. House Representative Jody Hice.
4. P–2660–029	2–26–2018	U.S. Congress.[7]
5. P–2100–000	2–27–2018	Sutter County, California Board of Supervisors.
6. CP17–41–000	3–5–2018	FERC Staff.[8]

[1] Seven letters have been sent to FERC Commissioners and staff under this docket number.
[2] Two letters have been sent to FERC Commissioners and staff under this docket number.
[3] Two letters have been sent to FERC Commissioners and staff under this docket number.
[4] Four letters have been sent to FERC Commissioners and staff under this docket number.
[5] Eleven letters have been sent to FERC Commissioners and staff under this docket number.
[6] House Representatives Darin LaHood and Rodney Davis.
[7] Senators Angus S. King, Jr. and Susan M. Collins. House Representative Bruce Poliquin.
[8] Telephone Call Summary for call on February 28, 2018 with Eagle LNG and Environmental Resources Management.

Dated: March 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04990 Filed 3–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–64–000.

Applicants: Boston Energy Trading and Marketing LLC.

Description: Application of Boston Energy Trading and Marketing LLC for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action.

Filed Date: 3/6/18.

Accession Number: 20180306–5152.

Comments Due: 5 p.m. ET 3/27/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3307–001.

Applicants: NRG Energy Center Dover LLC.

Description: Compliance filing: Informational Filing Regarding Upstream Change in Control to be effective N/A.

Filed Date: 3/7/18.

Accession Number: 20180307–5080.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER16–1250–004; ER10–2822–012; ER10–2824–001; ER10–2825–002; ER10–2831–002; ER10–2957–002; ER10–2995–002; ER10–2996–001; ER10–2998–001; ER10–2999–001; ER10–3000–001; ER10–3009–003; ER10–3013–002; ER10–3014–001; ER10–3029–001; ER11–2196–009; ER10–1776–001; ER17–1243–001; ER17–1769–002.

Applicants: Avangrid Renewables, LLC, Atlantic Renewable Projects II LLC, Big Horn Wind Project LLC, Big

Horn II Wind Project LLC, Colorado Green Holdings LLC, Hay Canyon Wind LLC, Juniper Canyon Wind Power LLC, Klamath Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Klondike Wind Power II LLC, Klondike Wind Power III LLC, Leaning Juniper Wind Power II LLC, Pebble Springs Wind LLC, San Luis Solar LLC, Solar Star Oregon II, LLC, Star Point Wind Project LLC, Twin Buttes Wind LLC, Twin Buttes Wind II LLC.

Description: Notice of Change in Status Regarding Generation-Only Balancing Authority Formation of Avangrid Renewables, LLC, et. al.

Filed Date: 3/5/18.

Accession Number: 20180305–5404.

Comments Due: 5 p.m. ET 3/26/18.

Docket Numbers: ER17–2290–003.

Applicants: Old Dominion Electric Cooperative.

Description: Compliance filing: Wildcat Point Revised Rate Schedule Compliance Filing to be effective 2/15/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5076.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–337–000.

Applicants: PacifiCorp.

Description: Report Filing: City of Hurricane Refund Report to be effective N/A.

Filed Date: 3/7/18.

Accession Number: 20180307–5044.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–971–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendment to Silicon Valley Power NRS and Los Esteros TFAs (SA 343) to be effective 8/1/2017.

Filed Date: 3/7/18.

Accession Number: 20180307–5000.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–974–000.

Applicants: NTE Carolinas, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 4/1/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5081.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–975–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Revision to OATT Formula Transmission Rate to Update Tax Rate and Flow Back ADIT to be effective 5/7/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5098.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–976–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–03–07_SA 3101 Summit Lake Wind-ATC GIA (J711) to be effective 2/21/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5107.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–977–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL Revision to the Large Generator Interconnection Agreement to be effective 3/8/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5111.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–978–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL Iguana Solar Large Generator Interconnection Agreement to be effective 3/8/2018 .

Filed Date: 3/7/18.

Accession Number: 20180307–5112.

Comments Due: 5 p.m. ET 3/28/18.

Docket Numbers: ER18–979–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–03–07_SA 3102 UMERC-Summit Lake-ATC MPFCA (J704 J711) to be effective 2/21/2018.

Filed Date: 3/7/18.

Accession Number: 20180307–5113.

Comments Due: 5 p.m. ET 3/28/18.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF17–987–000.

Applicants: North American BioFuels, LLC.

Description: Refund Report of North American BioFuels, LLC.

Filed Date: 3/5/18.

Accession Number: 20180305–5413.

Comments Due: 5 p.m. ET 3/26/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04989 Filed 3–12–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0022 and –0027)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection, as required by the Paperwork Reduction Act of 1995. On December 28, 2017, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. One comment was received and was generally supportive of the requirements in the rule but did not address the paperwork burden for this information collection. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before April 12, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza, Counsel, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: On December 28, 2017, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. One comment was received and was generally supportive of the requirements in the rule but did not address the paperwork burden for this information collection. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

Proposal to renew the following currently approved collections of information:

1. *Title:* Uniform Application and Termination Notice for Municipal Securities Principal or Representative Associated with a Bank Municipal Securities Dealer.

OMB Number: 3064–0022.

Form Number: MSD–4 and MSD–5

Affected Public: Individuals and Insured state nonmember banks and state savings associations.

Burden Estimate:

Source and burden type	Number of respondents	Annual frequency	Total responses	Average time per response	Estimated annual burden (hours)
Form MSD–4 *Reporting*	2	On Occasion	2	60 Minutes	2
Form MSD–5 *Reporting*	2	On Occasion	2	15 Minutes	0.5

Total Estimated Annual Burden: 2.5 Hours.

There is no change in the method or substance of the collection. The overall reduction in burden hours is a result of economic fluctuation. In particular, the number of respondents has decreased while the reporting frequency and the estimated time per response remain the same.

General Description of Collection: The 1975 Amendments to the Securities Exchange Act of 1934 established a comprehensive framework for the regulation of the activities of municipal securities dealers. Under Section 15B(a) of the Securities Exchange Act, municipal securities dealers which are banks, or separately identifiable departments or divisions of banks engaging in municipal securities activities, are required to be registered with the Securities and Exchange Commission in accordance with such rules as the Municipal Securities Rulemaking Board (MSRB), a rulemaking authority established by the 1975 Amendments, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

One of the areas in which the Act directed the MSRB to promulgate rules is the qualifications of persons associated with municipal securities dealers as municipal securities principals and municipal securities representatives. The MSRB Rules require persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, require the municipal securities dealers to obtain the information from such persons. Generally, the information required to be furnished relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements.

The FDIC and the other two Federal bank regulatory agencies, the Comptroller of the Currency, and the Federal Reserve Board, have prescribed Forms MSD–4 to satisfy these requirements and have prescribed Form MSD–5 for notification by a bank municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reason for such termination. State nonmember banks and state savings associations that are municipal security dealers submit these forms, as applicable, to the FDIC as their appropriate regulatory agency for each person associated with the dealer as a municipal securities principal or municipal securities representative.

2. *Title:* Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Form Number: 6342/12.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

Source and burden type	Number of respondents	Annual frequency	Total responses	Average time per response	Estimated annual burden (hours)
Form 6342/12 *Reporting*	1	On Occasion	1	0.42	0.42

There is no change in the method or substance of the collection. There is an overall reduction in burden hours which is the result of (1) economic fluctuation reflected by a decrease in the number of FDIC-supervised institutions and (2) a decrease in the number of requests for deregistration of a registered transfer agent forms submitted to the FDIC.

General Description of Collection: Under the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), an insured nonmember bank (or a subsidiary of such a bank) that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC. The FDIC requires such banks to file FDIC Form 6342/12 as the written notice of withdrawal.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information

technology. All comments will become a matter of public record.

Dated at Washington, DC, on March 7, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–04957 Filed 3–12–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *Ameris Bancorp, Moultrie, Georgia;* to merge with Hamilton State Bancshares, Inc., and thereby indirectly acquire Hamilton State Bank, both of Hoschton, Georgia.

Board of Governors of the Federal Reserve System, March 7, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–04952 Filed 3–12–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2018.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Roger L. Dirlam, Honesdale, Pennsylvania, Honesdale, Pennsylvania, the Honat Employee Stock Ownership Plan, Honesdale, Pennsylvania, and Charles Curtin, Clarks Summit, Pennsylvania, Katherine Bryant, Honesdale, Pennsylvania, and Luke Woodmansee, Starlight, Pennsylvania, as trustees of the ESOP;* to each retain more than 10 percent of the voting shares of Honat Bancorp, Inc., Honesdale, Pennsylvania, and thereby retain shares of The Honesdale National Bank, Honesdale, Pennsylvania.

B. *Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Alex Lin, Hong Kong, Hong Kong, Hiu Kwan Kwok, Cyber Port, Hong Kong, Jun Yang, Tianjin, China, and Yongyan Liu, Chaoyang, Beijing, China;* to retain voting shares of My Anns Corporation, and thereby retain shares of Piqua State Bank, both of Piqua, Kansas.

Board of Governors of the Federal Reserve System, March 8, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–05009 Filed 3–12–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 27, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kelly Arnold, Wichita, Kansas;* to acquire voting shares of Ramona Bankshares, Inc., and thereby acquire shares of Hillsboro State Bank, both of Hillsboro, Kansas, and to be approved as a member of the Arnold Family Group, which acting in concert controls Ramona Bankshares.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Basswood Capital Management, LLC; Basswood Opportunity Partners, LP, Basswood Financial Fund, LP, Basswood Enhanced Long Short Fund, LP, and Basswood Financial Long Only Fund, LP, funds for which Basswood Partners, LLC, serves as General Partner and Basswood Capital Management, LLC, serves as Investment Manager; Basswood Opportunity Fund, Inc., and Basswood Financial Fund, Inc., funds for which Basswood Capital Management, LLC, serves as Investment Manager; Basswood Capital Management, LLC, as investment adviser to five managed accounts; and Bennett Lindenbaum and Matthew Lindenbaum, as Managing Members of*

Basswood Partners, LLC, Basswood Enhanced Long Short GP, LLC, and Basswood Capital Management, LLC; all of New York, New York; to retain and acquire voting shares of American River Bankshares, Rancho Cordova, California, and thereby indirectly retain and acquire shares of American River Bank, Sacramento, California.

Board of Governors of the Federal Reserve System, March 7, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–04953 Filed 3–12–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *RCB Holding Company, Inc., Claremore, Oklahoma;* to acquire 100 percent of the voting shares of Central Bank and Trust Co., Hutchinson, Kansas.

Board of Governors of the Federal Reserve System, March 8, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–05010 Filed 3–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–2018–1091; Docket No. CDC–2018–0022]

Proposed Data Collection Submitted for Public Comment and Recommendations

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

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Using Qualitative Methods to Understand Issues in HIV Prevention, Care and Treatment in the United States.'' CDC's goal for this generic information collection mechanism is to conduct qualitative studies to quickly identify barriers and facilitators to HIV prevention, care and treatment in specific regions with high HIV burden in the US.

DATES: CDC must receive written comments on or before May 14, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0022 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Using Qualitative Methods to Understand Issues in HIV Prevention, Care and Treatment in the United States (OMB Control Number 0920–1091; expires 12/31/2018)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC's National Center on HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Division of HIV/AIDS Prevention (DHAP) seeks a three–year extension to conduct qualitative studies to quickly identify barriers and facilitators to HIV prevention, care and treatment in specific regions with high HIV burden in the US. Proposed activities remain consistent with the national HIV prevention goals, the CDC Division of HIV/AIDS Prevention (DHAP) Strategic Plan, and DHAP's High-impact HIV Prevention approach.

The purposes for each data collection study supported under this umbrella generic information collection plan will be to understand specific barriers and facilitators to local HIV prevention, care and treatment in the United States and territories. For example, each study will seek to identify ways to improve programmatic activities along the continuum of HIV prevention, treatment and care for different populations residing in different geographic settings with greatest burden of HIV.

The target populations for the studies include, but are not limited to: (1) Persons living with HIV who are in treatment; (2) persons living with HIV who are out of treatment and who may or may not be seeking treatment at healthcare facilities; (3) persons at high risk for HIV acquisition (HIV negative) and HIV transmission (HIV positive); (4) persons from groups at high risk for HIV including gay, bisexual and other MSM, transgender persons, and injection and non-injection drug users; (5) persons from racial and ethnic minorities; and (6) healthcare providers or other professionals who provide HIV prevention, care and treatment services. Other populations may include individuals who provide non-HIV services or otherwise interact with persons living with HIV or persons at risk for HIV acquisition.

Studies will only provide local contextual information about the barriers and facilitators to HIV prevention, care, and treatment experienced by specific communities at risk for acquiring HIV infection, by HIV-positive persons across the HIV care continuum, and by organizations or individuals providing HIV prevention, care, treatment, and related support services.

Data collection methods used in any of the specific studies primarily will consist of rapid qualitative assessment methodologies, such as semi-structured and in-depth qualitative interviews, focus groups; direct observations; document reviews; and short structured surveys. Data will be analyzed using well-established qualitative analysis methods, such as coding interviews for themes about barriers and successes to HIV prevention, care, and treatment. Structured response surveys will be analyzed using descriptive statistics and other appropriate statistical methods.

CDC will use the results from each specific data collection study to help identify ways to improve local programmatic activities for specific communities along the continuum of HIV prevention, treatment and care for populations and areas with the greatest HIV burden. CDC will communicate study outcomes to local stakeholders and organizations in positions to consider and implement site-specific improvements in HIV prevention, care, and treatment for each of the study sites examined. For stakeholders, organizations, or agencies outside the local affected communities, all communications will include clear discussion of the limitations of the region-specific, qualitative methods and the non-generalizability of the study outcomes.

For a given year, each separate data collection will range from 30 (minimum) to 200 (maximum) respondents, based on the nature and scope of the research purposes. For example, if there are three data collections, the maximum combined number of expected respondents is 600. In a given year, CDC anticipates the need to screen 1,600 persons to identify 800 eligible persons, of which 600 persons will agree to participate.

CDC anticipates that screener forms will take 5 minutes to complete each, contact information forms will take 1 minute to complete each, and consent forms will take 5 minutes to complete each. CDC anticipates study eligibility for 50 percent of the targeted populations screened. Of eligible persons, 75% will agree to participate.

Brief structured surveys will take 15 minutes to complete. In-depth interviews or focus groups with respondents are expected to take 60 minutes (1 hour) to complete. In-depth interviews or focus groups with healthcare providers are expected to take 45 minutes to complete.

The total annual response burden, based on an average of 600 study respondents per year (assuming three large data collections involving 200 participants each), is 918 hours.

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Public—Adults	Study Screener	1,600	1	5/60	133
General Public—Adults	Contact Information Form	600	1	1/60	10
General Public—Adults	Consent Form	600	1	5/60	50
General Public—Adults	Demographic Survey	500	1	15/60	125
General Public—Adults	Interview Guide	500	1	1	500
General Public—Adults	Provider Demographic Survey	100	1	15/60	25
General Public—Adults	Provider Interview Guide	100	1	45/60	75
Total					918

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–05000 Filed 3–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2017–0114; Docket Number NIOSH–305]

Final National Occupational Research Agenda for Transportation, Warehousing and Utilities

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: NIOSH announces the availability of the final National Occupational Research Agenda for Transportation, Warehousing and Utilities

DATES: The final document was published on March 7, 2018.

ADDRESSES: The document may be obtained at the following link: *https://www.cdc.gov/niosh/nora/sectors/twu/agenda.html*

FOR FURTHER INFORMATION CONTACT: Emily Novicki, M.A., M.P.H, (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop E–20, 1600 Clifton Road NE, Atlanta, GA 30329, phone (404) 498–2581 (not a toll free number).

SUPPLEMENTARY INFORMATION: On December 1, 2017, NIOSH published a request for public review in the **Federal Register** [82 FR 56973] of the draft version of the National Occupational Research Agenda for Transportation, Warehousing and Utilities. No comments were received.

Dated: March 8, 2018.

Frank Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2018–04988 Filed 3–12–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0493]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Utilization of Adequate Provision Among Low to Non-Internet Users

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit either electronic or written comments on the collection of information by April 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910-New and title ''Utilization of Adequate Provision Among Low to Non-internet Users.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Utilization of Adequate Provision Among Low to Non-Internet Users

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Prescription drug advertising regulations require that broadcast advertisements containing product claims present the product's major side effects and contraindications in either audio or audio and visual parts of the advertisement (21 CFR 202.1(e)(1)); this is often called the major statement. The regulations also require that broadcast advertisements contain a brief summary of all necessary information related to side effects and contraindications or that ''adequate provision'' be made for dissemination of the approved package labeling in connection with the broadcast (§ 202.1(e)(1)). The requirement for adequate provision is generally fulfilled when a firm gives consumers the option of obtaining FDA-required labeling or other information via a toll-free telephone number, through print advertisements or product brochures, through information disseminated at health care provider offices or pharmacies, and through the internet (Ref. 1). The purpose of including all four elements is to ensure that most of a potentially diverse audience can access the information.

Internet accessibility is increasing, but many members of certain demographic groups (*e.g.,* older adults, low socioeconomic status individuals) nonetheless report that the internet is inaccessible to them either as a resource or due to limited knowledge, and so a website alone may not adequately serve all potential audiences (Refs. 2 and 3). Similarly, some consumers may prefer to consult sources other than a health care provider to conduct initial research, for privacy reasons or otherwise (Refs. 1, 4, and 5). In light of these considerations, the toll-free number and print ad may provide special value to consumers who are low to non-internet users and/or those who value privacy when conducting initial research on a medication, though not necessarily unique value relative to one another. As such, a primary purpose of this research is to examine the value of including both the toll-free number and print ad as part of adequate provision in direct-to-consumer (DTC) prescription drug broadcast ads. We will also investigate the ability and willingness of low to non-internet users to make use of internet resources if other options were unavailable. These questions will be assessed using a survey methodology administered via telephone.

In addition, building on concurrent FDA research regarding drug risk

information,[1] we will assess risk perceptions as influenced by opening statements that could be used to introduce risks in DTC prescription drug broadcast ads. Opening statements may be used to frame risk information that follows. As such, consumers may interpret the likelihood, magnitude, and duration of risks differently depending on how those risks are introduced (Refs. 6–9). The intended outcome of this component of the research is to evaluate the influence of these opening statements within a sample of low to non-internet users. This research question will be addressed using a 1 × 3 between-subjects experimental design embedded in the previously mentioned survey. This particular component of the research will serve as an exploratory test intended to inform FDA's future research efforts.

Sampling Frame. Given that older adults (*i.e.,* those aged 65 and older) are among the largest consumers of prescription drugs (Ref. 10) and that approximately 41 percent of older adults do not use the internet (Ref. 2), investigating use of adequate provision in this population is especially important. Also of concern, 34 percent of those with less than a high school education do not use the internet, 23 percent of individuals with household incomes lower than $30,000 per year do not use the internet, and 22 percent of individuals living in rural areas do not use the internet (Ref. 2). These estimates capture non-internet users, and so consideration of low-internet users warrants additional concern. Consistent with these citations, the present research will utilize a nationally representative sample of low to non-internet users from these and other relevant demographic groups.

Data collection will utilize a random digit dialing (RDD) sample that has been pre-identified as being a non-internet household, or having at least one non-internet using member. This sample solution is ideal because it relies on a dual-frame (landline and cell phone) probability sample, yet has the advantage of prior knowledge of those who are likely to be low to non-internet users (re-screening will verify this). The Social Science Research Solutions (SSRS) Omnibus, within which this survey will be embedded, utilizes a sample designed to represent the entire adult U.S. population, including Hawaii and Alaska, and including bilingual (Spanish-speaking) respondents. As reflected in the overall population of low to non-internet users, we intend to collect a small sample of Spanish-speaking individuals, which comprise a subsample of the regular landline and cell phone RDD sampling frames. We will also screen for past and present prescription drug use in order to ensure a motivated sample.

Survey Protocol. This survey will be conducted by telephone on landline and cell phones, with an expected 50 to 60 percent of interviews conducted on cell phones. Interviewing for the pretest and main study will be conducted via SSRS's computer-assisted telephone interviewing system. We expect to achieve a roughly 40 percent survey completion rate from the pre-identified respondents to be sampled in this study, given an 8-week field period and a maximum of 10 attempts to reach respondents. The original SSRS Omnibus from which this sample is derived receives an approximately 8 to 12 percent response rate. These are not uncommon response rates for high-quality surveys and have been found to yield accurate estimates (Refs. 11 and 12).

As communicated earlier, the primary focus of interview questions concern the ability and willingness of low to non-internet users to utilize the various components of adequate provision, particularly the toll-free number and print ad components. In addition to these questions, experimental manipulations will be embedded in the survey as an exploratory test to assess the impact of opening statements that could be used to introduce risks in DTC prescription drug broadcast ads, which is a related concept. To form the experimental manipulations, participants will be presented with a statement of major risks and side effects (''the major statement'') drawn from a real prescription drug product, but modified to include only serious and actionable risks. Preceding this description of major risks will be one of three opening statements: (1) ''[Drug] can cause severe, life threatening reactions. These include . . .''; (2) ''[Drug] can cause serious reactions. These include . . .''; or (3) ''[Drug] can cause reactions. These include . . .'' All risk statements will conclude with the following language: ''This is not a full list of risks and side effects. Talk to your doctor and read the patient labeling for more information.'' Participants will be randomly assigned to experimental condition, and all manipulations will be pre-recorded to allow for consistent administration. Following exposure to these manipulations, participants will respond to several questions designed to assess risk perceptions.

Before the main study, we will execute a pretest with a sample of 25 participants from the same sampling frame as outlined. The pretest questionnaire will take approximately 15 minutes to complete. The goal of the pretest will be to assess the questionnaire's format and the general protocol to ensure that the main study is ready for execution. To test the protocol among the target groups, we will seek to recruit a mix of participants based on demographic and other characteristics of interest. We do not plan to use incentives for the pretest or main study portions of this survey. However, upon request, cell phone respondents may be offered $5 to cover the cost of their cell phone minutes.

Questionnaire development is an iterative process and so the main study questionnaire will include any changes from pretesting, as well as other outcomes, such as OMB and public comments. Like pretesting, the main study questionnaire should take approximately 15 minutes to complete. Based on a power analyses, the main study sample will include approximately 1,996 participants. This sample size will allow us to draw statistical comparisons between the various demographic groups in the sample.

Measurement and Planned Analyses. Consistent with the larger purpose of the study, survey questions will examine access, technical ability, and willingness to use adequate provision options; preference for and experience using adequate provision options; privacy concerns; and potentially other secondary questions of interest. In addition, to assess the impact of the experimental manipulations, survey questions will assess perceived risk likelihood, perceived risk magnitude, and perceived risk duration. Demographic information will also be collected. To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance. A copy of the draft questionnaire is available upon request.

In the **Federal Register** of June 12, 2017 (82 FR 26934), FDA published a 60-day notice requesting public comment on the proposed collection of information. Comments received along with our responses to the comments are provided below. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if

[1] *https://www.federalregister.gov/documents/2015/01/13/2015-00269/agency-information-collection-activities-submission-for-office-of-management-and-budget-review.*

not fully captured by our paraphrasing. The following acronyms are used here: FRN = **Federal Register** Notice; DTC = direct-to-consumer; FDA and ''The Agency'' = Food and Drug Administration; OPDP = FDA's Office of Prescription Drug Promotion.

Comment 1a, regulations.gov tracking number 1k1–8y16–3nqx (summarized): The commenter expresses support for FDA's collective research and welcomes the Agency's current proposed survey examining adequate provision.

Response to Comment 1a: We appreciate and thank the commenter for their support.

Comment 1b (verbatim): Throughout the main survey questionnaire, some questions ask about ability to obtain information on prescription drugs after seeing an advertisement on television. These questions presume access to a television. If understanding this process of first seeing an ad on TV then searching for information is the key objective, we suggest in the screening criteria ensuring all respondents have access to a TV and/or watch television on a regular basis.

Response to Comment 1b: We have added a screening question to confirm that participants watch television at least occasionally.

Comment 1c (verbatim): As currently outlined, the sample frame is relatively broad in that it includes those who possibly do not have experience with prescription medications or experience searching for prescription medication information. Respondents without experience in this area could provide speculative responses to many questions, and thus, [the commenter] suggests that they are outside of the scope. To address this, we recommend adding a screening question or questions to include only those who have had at least one medical condition which has required prescription medication within the last 12 months.

Response to Comment 1c: To ensure a motivated sample, we included a question to screen for past or present prescription drug use.

Comment 1d (verbatim): The purpose of the secondary objective of the study pertaining to risk statements is not entirely clear. Since the sample frame is not restricted to those who suffer from a condition which could be helped by the mock drug, responses have the possibility to be speculative and reflect bias of people coming in to the study rather than what is intended. For instance, respondents who happen to be within a population targeted by the major statements are reasonably more likely to report a higher likelihood of experiencing a stated side effect and reporting a higher seriousness of them, biasing experiment responses.

Response to Comment 1d: The secondary objective of the study is designed to assess the impact of opening statements that could be used to introduce risks in DTC prescription drug broadcast ads. This objective complements previously published research and adds value by newly investigating the impact of framing statements among a sample of low to non-internet users. Our approach involves random assignment to experimental conditions which should lead to approximately equal numbers of diagnosed versus undiagnosed individuals in each of the conditions, lessening any concern about bias. Nonetheless, please understand that this secondary objective is intended to provide a *preliminary* assessment of the stated research questions for development purposes. Procedurally, this objective will involve only a brief presentation of a short audio broadcast followed by three questions, allowing us to gather this valuable information with very low burden to participants who are already engaged in our larger survey regarding adequate provision.

Comment 1e (verbatim): Additionally, information gained from the experimental manipulations (E–1 through E–3) will only be applicable to hearing the opening and major statement presented over the phone, rather than versus being read through print or online. Interpretations and understanding of this info could differ between the media. While this could possibly be a useful supplement to current knowledge, the learnings will likely not be directly applicable to the other media. If comparison of interpretation between the media is the goal of this section, [the commenter] suggests a stand-alone study would better address that goal rather than an addendum to this one.

Response to Comment 1e: We appreciate this limitation of our preliminary assessment and intend to take it into consideration when interpreting results.

Comment 1f (verbatim): Screener: The current screener terminates cell phone users who have not browsed the internet in the past month (S I). It is not readily apparent why this group should not participate in the survey. We would suggest that the termination criteria be removed from this question as it may make incremental improvement to response rates.

Response to Comment 1f: The screener only excludes cell phone users (T1 = 2) who choose ''don't know'' (− 98) or refuse the question (− 99) (S1 < 0).

Comment 1g (verbatim): As is, it is unclear what an independent variable for the questionnaire is intended to be. One possibility [the commenter] suggests is including a question aimed at understanding the overall preference for source of information, which would serve as the independent variable in the study or could be combined with the ability and access questions to make a composite variable. *(e.g.,* ''What is your preferred medium in which to receive prescription drug information: Print ads for the drug; the manufacturer's phone number or website; or asking your healthcare provider?'')

Response to Comment 1g: Please refer to the instruction set preceding question 3. Our questionnaire attempts to learn about patient preferences through questions about participant likelihood to seek information via the various available sources, as well as past use, ability, and willingness, among other constructs. We believe these constructs to provide adequate assessment of consumer preference to obtain additional information via the various available sources. Moreover, we note that another commenter (see Comment 3n) takes the position that we should not inquire about patient preferences. We have considered both of the perspectives when deciding upon potential revisions.

Comment 1h (verbatim): Throughout the survey, [the commenter] suggests defining each point on the 5 point scales used to avoid confusion by respondents. In our consumer research efforts, we customarily use 5 point scales that are defined at each point, such as 'Excellent, Very Good, Good, Poor, and Very Poor'.

Response to Comment 1h: We concur that defining each point on 5 point scales helps mitigate confusion and have revised the questionnaire to define each point of scales.

Comment 1i (verbatim): It seems inappropriate to use a Likert scale to answer ''Q1: Access to sources of information'', as it would seem access could be defined more narrowly—No access, some access, or complete access. We suggest using the pre-test to examine this question in particular to ensure either that the current scale is interpreted correctly or determine an appropriate re-wording. Additionally, it could be helpful to include the more specific options as distinct answer choices (*e.g.* an option for internet at a public library and a separate option for internet at a coffee shop) in order to provide more granular information which could be useful to the FDA as

well as industry as a whole. We suggest using the pre-test to produce a full list of options as well as any appropriate re-wordings.

Response to Comment 1i: We agree that defining access more narrowly may be sufficient for this question and so we have adopted this approach in our revised survey. We will also evaluate responses to this narrowed scale in our analysis of pretest data. We also appreciate the value of assessing locations of access; however, we consider such questions to be of lesser relevance to our key objectives, and we have sought to limit the duration of the survey to less than 15 minutes. Consequently, we do not adopt this recommendation.

Comment 1j (verbatim): Throughout the survey, we suggest adding in ''Talked with your doctor'' as an answer choice among the options for sources of information. Physicians are a major source of product information and ''talking with a doctor'' are what drug advertisements generally suggest to consumers, so inclusion of this option is appropriate.

Response to Comment 1j: We agree that health care providers are one important source for adequate provision. Nonetheless, the current investigation is designed to assess the utility of the various options for disseminating additional product risk information, and speaking with a health care provider is not under reevaluation. Consequently, we ask participants to respond under the premise that they are seeking information prior to approaching a health care professional.

Comment 1k (verbatim): As currently worded, question 13 has the possibility to lead the respondent by stating that ''Some people change their approach . . .'' The current wording could bias respondents to be overly critical. [The commenter] would suggest either changing the question or adding in a new question prior to the current Q 13 to ascertain a rating of the level of privacy offered by each information source. This new question would provide the respondents current perceptions of privacy, something which the survey omits. For example, a newly worded question could be as follows: ''On a 5-point scale, in which 1 is Very Low Privacy and 5 is Very High Privacy, what is the level of privacy offered by each of the following information sources when getting full prescription-drug product information?'' The current question 13 could then follow this question.

Response to Comment 1k: Our intention with this question (and its wording) is to facilitate comparisons between baseline likelihood to use the various sources of adequate provision (see Q3) and likelihood to use the various options in cases where privacy is a concern. By stating ''Some people change their approach . . . '' we hoped to give participants permission to respond differently than they had in the earlier question, if they felt a change in their response was appropriate. Nonetheless, we recognize that this language could be leading and so we have eliminated it from our revised questionnaire. We are hopeful that the revised question will still allow us to draw the intended comparisons.

Comment 1l (verbatim): In addition to our concerns regarding the goal of the experiment questions (E 1–E2), the purpose in the variations of the major statements is unclear. The objectives state that varying opening statements (E I) are the secondary focus of this research, not major statements. We suggest choosing an appropriate major statement in the pre-tests and then using that in the broader fielding of the study.

Response to Comment 1l: The purpose of varying the major statements was to add to the generalizability of our findings. The revised version of our survey adopts this commenter's recommendation and includes only one version of the major statement.

Comment 1m (verbatim): We suggest adding a ''Don't know'' option for EI–E3 as respondents might not be able to assess how long lasting, serious, or likely the side effects would be. The current range of answer choices may force inaccurate or speculative responses; a ''Don't Know'' answer would be a legitimate choice and informative for the study. Our standard practice is to provide a ''Don't Know'' option whenever it could be a valid answer.

Response to Comment 1m: The items used in this section were developed through scale validation research and thus we prefer to retain them in their original form. Nonetheless, we have added labels to each point on the scales in response to Comment 1h, and the midpoint (''neutral'') of these scales may be treated similarly to a ''Don't Know'' option.

Comment 2a, regulations.gov tracking number 1k1–8xz6–t7bj (verbatim): The practical utility of this study is unclear. Currently, industry is broadly executing on making labeling available via both IN [internet] and non-IN based options to a diverse audience. Historically, there were many options available to enable patients to locate drug-related labeling, even before the IN became available. When added to the three options mentioned above, the IN provides patients with a fourth option, one that is increasingly at a patient's fingertip via tablet, cell phone, or laptop. Hence, it is unclear how results from this study will enhance consumer access to information or be applied to modify current practices.

Response to Comment 2a: As stated in the 60-day FRN (82 FR 26934), our intention is to assess the utility of the various sources of adequate provision among a sample of low to non-internet users. For example, it may not be necessary to include both a print ad reference and toll free number reference. We have received inquiries along these lines from stakeholders. Additionally, we may find that low to non-internet users would be willing to use the internet themselves or with the help of a friend or family member if non-internet options were unavailable. This research will provide insights to inform our approach to the adequate provision requirement.

Comment 2b (verbatim): The sampling frame focuses on those ''not likely to have IN access'' as defined by FDA and includes older adults, with less than a high school education, who make less than $30,000/year, and live in rural areas; it also includes bilingual Spanish speakers. Yet it is not clear how persons not likely to have IN access would be able to inform FDA about how they would behave if they had access to the IN and other options were not available. Rather than speculate about how their behavior might change if faced with IN access and no other options, it would be better to design a study that focuses on understanding the effectiveness of non-IN options to provide information in general.

Response to Comment 2b: To be clear, we intend to sample from the above referenced populations separately, as opposed to sampling from one population with all these attributes.

As indicated in the 60-day FRN (82 FR 26934), we do intend to assess the effectiveness of non-internet options. However, as a secondary objective, it seems to us worthwhile to also consider how low to non-internet users may respond if non-internet options were unavailable. As another commenter indicates (see Comment 3b), internet use is widespread and technological sources of adequate provision may suffice (when combined with recommendation to speak to a health care professional). We hope to shed light on this question through our research.

Comment 2c (verbatim): Questions 1–5 and 13: The current choices do not assess the respondent's willingness or ability to visit their healthcare provider

to obtain the approved package labeling. This option should be added.

Response to Comment 2c: Please refer to Comment 1j and our associated response.

Comment 2d (verbatim): Question 15: Given the length of the package labeling making it impractical to receive the information verbally, it would be likely that callers would prefer an option, *Mail the prescription drug product information to me,* even when faced with privacy concerns.

Response to Comment 2d: This response option has been added to our revised questionnaire.

Comment 2e (verbatim): Instructions for Experimental Manipulations, E1/E2: E2 includes three different versions of the major statements. If the intended outcome of this component of the research is to evaluate the influence of these opening statements within a sample of low to non-IN users, and risk perceptions will be assessed as influenced by opening statements that could be used to introduce risks, it is unclear why the major statements (E2: A, B, C) differ when assessing whether or not opening statements (E1: 1, 2, 3) influence risk perceptions.

Response to Comment 2e: Please refer to Comment 1l and our associated response.

Comment 3a, regulations.gov tracking number 1k1–8y13–m7td: FDA is conducting too much research without ''articulating a clear, overarching research agenda or adequate rationales on how the proposed research related to the goal of further protecting public health.'' ''The Agency should publish a comprehensive list of its prescription drug advertising and promotion studies from the past five years and articulate a clear vision for its research priorities for the near future.''

Response to Comment 3a: OPDP's mission is to protect the public health by helping to ensure that prescription drug information is truthful, balanced, and accurately communicated, so that patients and health care providers can make informed decisions about treatment options. OPDP's research program supports this mission by providing scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that we believe are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest FRNs and peer-reviewed publications produced by our office. The website maintains information on all studies we have conducted, dating back to a DTC survey conducted in 1999.

Comment 3b; the commenter provided a summary of their comments followed by a more detailed description of the same comments. For brevity, only the summary of comments (verbatim) is provided below. Full comments may be accessed at regulations.gov via tracking number 1k1–8y13–m7td.

First, FDA's proposed research appears to offer limited practical utility in several ways:

- The Agency proposes research based on an outdated, 18-year-old guidance document that fails to recognize adequately the societal and technological changes of the last two decades, including the many options now available to satisfy the adequate provision requirement.
- FDA regulations require adequate, not complete, provision. Given the prevalence of the internet and smartphones across all U.S. demographic groups, we believe that biopharmaceutical manufacturers can satisfy adequate provision simply through information dissemination at health care provider offices or pharmacies, a 1–800 number, and/or the internet.
- FDA fails to recognize existing research that demonstrates the pervasiveness of the internet and smartphones in the United States. This research limits any potential utility of the proposed study. The Agency's proposal mainly relies on data from six to 16 years ago. The smartphone is dramatically increasing internet connectivity for traditionally low to non-internet use demographic groups. Further, FDA does not acknowledge that older adults (with or without internet access) tend to rely on others, including family and health care personnel, for drug information.

Response to Comment 3b: FDA recognizes that a large proportion of the U.S. population utilizes the internet. It is specifically for this reason that we are conducting research to inform our current guidance recommendations. Nonetheless, as indicated in the 60-day FRN (82 FR 26934), certain segments of the U.S. population are unlikely to use the internet. For example, 41 percent of individuals aged 65 and older do not use the internet, yet are the largest consumers of prescription drugs. As the commenter states, some individuals from this demographic rely on others to obtain drug information, but this perspective does not take into account the desire for privacy in obtaining such information, or the availability of these other individuals. The proposed research will provide empirical assessment of how vulnerable populations such as older adults may be impacted by changes to regulatory policy.

The assertion that the requirement for ''adequate'' provision can be fulfilled by disseminating information through ''health care provider offices or pharmacies, a 1–800 number, and/or the internet'' may be correct, and FDA invites the commenter to submit data supportive of this perspective. FDA maintains a science-based approach to its regulatory decisionmaking, and as such, the current research is designed to inform our thinking in this area.

We disagree with the assertion that our proposal relied mainly on data from 6 to 16 years ago. A more careful review of the FRN will show that our key citations range from 2013 to the present. By necessity, we also cite the relevant 1999 guidance, as well as a few other references which speak to general patterns of human behavior.

Comment 3c (summarized): The commenter recommends removal of the second proposed study concerning opening statements to frame risk information on the grounds that (a) questions regarding adequate provision may impact responding in the second

proposed study and (b) a low to non-internet user sample is not sufficiently diverse.

Response to Comment 3c: Please refer to Comment 1d and our associated response.

Comment 3d (summarized): The commenter provides several recommendations pertaining to subject enrollment. The first comment on this topic ''recommends that FDA ensure that the subject sample includes representative portions of alleged subpopulations of low to non-internet users, including older adults, low socioeconomic status individuals, people with less than a high school education, and individuals living in rural areas.''

Response to Comment 3d: To obtain a nationally representative sample of the target population of adult low to non-internet users who are also prescription drug users, the research team will use a sample sourced from a dual frame. This approach involves using a random digit dialing sample that has been pre-identified as being a non-internet household (or having at least one non-internet using member). The demographics within this frame of low to non-internet users fall within the expected range of subpopulations with respect to older adults, low socioeconomic status, and people with less than a high school education or some college. The sample is designed to represent the adult U.S. population (including Hawaii and Alaska) and will include rural areas. This sample solution is ideal because it relies on a dual-frame probability-sample, yet has the advantage of already knowing who are likely to be low to non-internet users.

Comment 3e (summarized): In the second comment pertaining to subject enrollment, the commenter recommends that participants reached via smartphone not be included in the sample.

Response to Comment 3e: We agree that smartphone use is increasing internet access for traditionally low to non-internet use demographics and appreciate the importance of confirming our sample are low to non-internet users. Notwithstanding, we are screening based on self-reported internet browsing, such that individuals who report browsing the internet three or more times in the past month—regardless of medium—will not be asked to participate in the survey. Further, the current approach supports that only households which have been pre-identified as having at least one non-internet using member will be screened for participation, adding an additional layer of assurance that only low to non-internet users will be asked to participate in the questionnaire.

Comment 3f (summarized): In the third comment pertaining to subject enrollment, the commenter recommends collecting data in-person because data collection via phone may impact responses regarding the 1–800 number.

Response to Comment 3f: We acknowledge that in-person data collection would add value to the proposed research but cost implications bar us from pursuing it. We will consider implications of our protocol for survey administration when interpreting results.

Comment 3g (summarized): In the final comment pertaining to subject enrollment, the commenter indicates agreement with the proposed approach to screen for past and present prescription drug use in order to ensure a motivated sample.

Response to Comment 3g: We appreciate the support for this planned approach.

Comment 3h: Remaining comments pertain to the draft study questionnaire. The first comment on this topic suggests that certain items may lead participants to respond in certain ways. Examples (abbreviated for brevity) include:

- The instructions for Q3 of the Main Study Survey state: ''Prescription drugs advertised on television provide only limited product information. For example, not all of the product's risks and side effects are described. Imagine you wanted to obtain additional product information before seeing your health care provider.'' As previously mentioned, while research ''reveal[s] consumers engage in some prescription drug information seeking . . . most takes place *after* visiting a doctor, not before'' (emphasis added [by commenter]). The question prompt does not reflect common practice and may lead to a misleading answer. Both the prompt and question itself should be revised to reflect that subjects may look specifically to their healthcare provider for this information.
- Further, the Main Study Survey introduces questions about privacy by stating: ''Next, I will ask about privacy concerns you might have when getting full prescription-drug product information.'' Such phrasing suggests that a subject should have ''concerns'' in this context. Q12 asks subjects to ''rate the extent to which you *value* privacy . . . '' (emphasis added [by commenter]). Such language suggests subjects should indeed ''value'' privacy.
- The prompt for Q13 is also leading by introducing the question with: ''Some people change their approach to getting information about prescription drugs when privacy is a concern.''

Response to Comment 3h: As the commenter indicates in the first comment, there is evidence to suggest that consumers seek information both before and after visiting with a health care professional. Moreover, the ubiquity of DTC prescription drug advertising suggests that pharmaceutical companies are well aware of the advantages of introducing products to consumers prior to the consumer-health care provider interaction. The proposed research is concerned with how low to non-internet users access full product information prior to approaching a health care professional. As such, we need to provide this context to participants before they can respond regarding their interest and experiences within this context. We disagree that our presentation here is leading as the commenter describes, and consequently, we retain our current approach with these questions.

Likewise, in response to the second comment, we cannot inquire about privacy concerns without referencing privacy concerns. Nonetheless, we have revised Q12 to read ''How much value do you place on privacy . . .''

In response to the third comment, please see Comment 1k and our associated response.

Comment 3i (summarized): The second comment pertaining to the study questionnaire concerned definitions and terms. The commenter states, ''The questionnaires do not define certain key terms (*e.g.,* side effect, risk, serious, reference, full product information, partial information). Subjects may interpret these terms based on different standards. For example, for Q16 of the Main Study Survey, FDA may wish to provide context for what could constitute ''complete prescription-drug product information. FDA should consider providing user-friendly definitions or terms throughout the questionnaires.''

Response to Comment 3i: We appreciate the importance of ensuring uniform interpretation of terms. In cognitive interviews preceding this work, we assessed whether individuals interpret key terms similarly and made revisions where necessary. We have also considered the additional time (burden) that would be required to complete the survey if every term were defined in the pretest and main study. We have targeted to keep the current information collection to under 15 minutes per respondent. With these factors in mind, we have chosen not to provide additional definitions.

Comment 3j (summarized): The third comment pertaining to the study questionnaire concerned the sliding scale format of certain questions: ''FDA should consider replacing the sliding scale format (especially for Q1–Q3 of the Main Study Survey) with a binary or ''Yes-No-Neutral'' scheme. The sliding-scale format is at times confusing in form, inappropriately frames certain questions, and could potentially introduce error.''

Response to Comment 3j: Please see Comment 1i and our associated response.

Comment 3k: The final comments pertaining to the questionnaire were characterized by the commenter as miscellany. The first comment read, ''As previously mentioned in Section II.A, E1–E3 of the Main Study Survey should be eliminated. (reference omitted) Similarly, we would also recommend that elimination of ''Other Questions of Interest'' (Q16–Q20) of the Main Study Survey, which appear to have limited applicability to the study of adequate provision.''

Response to Comment 3k: In regards to E1–E3, please see Comment 1d and our associated response. In regards to Q16–Q20, all these items provide potentially valuable information relevant to the topic of interest, and therefore we prefer to retain them.

Comment 3l: The next comment characterized as miscellany read: ''The Study Screener introduction should not state that the survey is being conducted ''on behalf of the Food and Drug Administration'' and that study results ''will be used in the consideration of important policy decisions.'' These statements could potentially influence subjects' responses to study questions. Instead, this information might be provided at the conclusion of the study.''

Response to Comment 3l: Such statements are intended to communicate the legitimacy of the study to potential participants, and thus validate participation. Upon further consideration, we concur that these statements may potentially influence responses, and we have removed them.

Comment 3m: The next comment characterized as miscellany read: ''The Main Study Survey should include a similar question to Q5, inquiring about if a toll-free number was not available.''

Response to Comment 3m: We acknowledge the potential value of this question, but given the key objectives of the research, and concerns about participant burden, we decline to adopt this recommendation. We have targeted to keep the current information collection to under 15 minutes per respondent.

Comment 3n: Continuing under the miscellany category: ''There are several questions of the Main Study Survey (*e.g.,* questions associated with Instructions_2) that inquire about a subject's preferences regarding the provision of product labeling. We do not understand the utility of these questions. Again, FDA's regulation concerns adequate, not preferred, provision.''

Response to Comment 3n: In deciding upon potential revisions, we have considered both this commenter's views and those of another commenter (see Comment 1g) which recommend utilizing consumer preferences as an independent variable. We agree with the first commenter that consumer preferences are crucial for understanding the issues at hand as articulated in the 60-day FRN (82 FR 26934). Consequently, we have retained these questions.

Comment 3o: The next miscellany comment read: ''Certain questions, like Q4 and Q5 of the Main Study Survey, should include the option of asking a health care provider. Such a choice is part of FDA's adequate provision recommendation in the Guidance Document.''

Response to Comment 3o: Please see Comment 1j and our associated response.

Comment 3p: The next miscellany comment read: ''The ordering of the questions (web page, toll-free number, print ad) of the Main Study Survey could potentially introduce bias. FDA may want to randomize the ordering of questions (*e.g.,* Q6–Q11) to eliminate such bias.''

Response to Comment 3p: We accept this recommendation and will randomize the ordering of questions Q6 to Q11 pertaining to web page, toll-free number, and print ad.

Comment 3q: The final comment characterized as miscellany read: ''Q15 of the Main Study Survey should include an option of mailing information to the customer.''

Response to Comment 3q: Please see Comment 2d and our associated response.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest Screener	63	1	63	.05 (3 minutes)	3.15
Pretest Survey	25	1	25	.25 (15 minutes)	6.25
Main Study Screener	4,990	1	4,990	.05 (3 minutes)	249.5
Main Study Survey	1,996	1	1,996	.25 (15 minutes)	499
Total Hours					757.9

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. U.S. Department of Health and Human Services, Food and Drug Administration (1999). ''Guidance for Industry: Consumer-Directed Broadcast Advertisements.'' Available at *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125039.htm.*

2. Anderson, M. and A. Perrin (2016). ''13% of Americans Don't Use the internet: Who Are They?'' Pew Research Center. Available at *http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/.*

3. U.S. Department of Commerce, U.S. Census Bureau (2013). ''Computer and internet Use in the United States: Population Characteristics.'' Available at *https://www.census.gov/prod/2013pubs/p20-569.pdf.*

4. Fox, S. and L. Rainie (2002). ''Vital Decisions: How internet Users Decide What Information to Trust When They or Their Loved Ones Are Sick. Pew internet & American Life Project.'' Available at *http://www.pewinternet.org/2002/05/22/main-report-the-search-for-online-medical-help/.*
5. DeLorme, D.E., J. Huh, and L.N. Reid (2011). ''Source Selection in Prescription Drug Information Seeking and Influencing Factors: Applying the Comprehensive Model of Information Seeking in an American Context.'' *Journal of Health Communication,* 16: pp. 766–787.
6. O'Donoghue, A.C., H.W. Sullivan, K.J. Aikin, et al. (2014). ''Important Safety Information or Important Risk Information? A Question of Framing in Prescription Drug Advertisements.'' *Therapeutic Innovation and Regulatory Science,* 48: pp. 305–307. doi: 10.1177/2168479013510306
7. Kahneman, D. (2011). *Thinking, Fast and Slow.* New York, NY: Farrar, Straus, and Giroux.
8. Rothman, A.J. and P. Salovey (1997). ''Shaping Perceptions To Motivate Healthy Behavior: The Role of Message Framing.'' *Psychological Bulletin,* 121: pp. 3–19.
9. Armstrong, K., J.S. Schwartz, G. Fitzgerald, et al. (2002). ''Effect of Framing as Gain Versus Loss on Understanding and Hypothetical Treatment Choices: Survival and Mortality Curves.'' *Medical Decision Making,* 22: pp. 76–83.
10. National Center for Health Statistics (2016). ''Health, United States, 2015: With Special Feature on Racial and Ethnic Health Disparities.'' Hyattsville, MD.
11. Brick, J.M. and D. Williams (2013). ''Explaining Rising Nonresponse Rates in Cross-Sectional Surveys.'' *The Annals of the American Academy of Political and Social Science,* 645: pp. 36–59.
12. Groves, R.M. (2006). ''Nonresponse Rates and Nonresponse Bias in Household Surveys.'' *Public Opinion Quarterly,* 70: pp. 646–675.
13. Betts, K.R., V. Boudewyns, K.J. Aikin, C. Squire, et al. (2017). ''Serious and Actionable Risks, Plus Disclosure: Investigating an Alternative Approach for Presenting Risk Information in Prescription Drug Television Advertisements.'' *Research in Social & Administrative Pharmacy.* doi: 10.1016/j.sapharm.2017.07.015.

Dated: March 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04996 Filed 3–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1837]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Transfer of a Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Transfer of a Premarket Notification.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Transfer of a Premarket Notification

OMB Control Number 0910-New

The draft guidance ''Transfer of a Premarket Notification (510(k)) Clearance—Questions and Answers'' is intended to provide information on how to notify FDA of the transfer of a 510(k) clearance from one person to another, and the procedures FDA and industry should use to ensure public information in FDA's databases about the current 510(k) holder for a specific device(s) is accurate and up-to-date. The proposed information collection seeks to provide information to notify FDA of the transfer of a premarket notification (510(k)) clearance.

The respondents to this collection of information are 510(k) holders and parties claiming to be 510(k) holders.

In the **Federal Register** of December 22, 2014 (79 FR 76331), FDA published a 60-day notice requesting public comment on the proposed collection of information. While FDA received comments on the draft guidance document, none were related to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Voluntary reporting of transfer of 510(k) clearance on FDA's Unified Registration and Listing System (FURLS) (outside of annual listing reporting requirement)	4,080	1	4,080	0.25	1,020
Submission of 510(k) transfer documentation when more than one party lists the same 510(k)	2,033	1	2,033	4	8,132
Total					9,152

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that 78 percent of 510(k)s are listed outside of the annual registration cycle based on numbers in the FURLS database from fiscal year 2009 through fiscal year 2014. Fiscal year 2008 was left out of this cohort as it was the first year that registrants were required to report the 510(k) number on their listings and, therefore, an unusually high number of listings were created. An average of 5,231 510(k)s have been listed each year since 2008.

Because listing outside of the annual requirement is voluntary, FDA estimates that annually 78 percent of 510(k)s will continue to be listed outside of the annual requirement. FDA estimates that 4,080 510(k)s may be listed outside of the annual registration cycle. FDA estimates that it will take approximately 15 minutes for each listing, for a total reporting burden of 1,020 hours.

FDA estimates it will have 2,033 instances of more than one party claiming to be a 510(k) holder for a specific device as part of annual registration and listing. FDA reached this estimate by identifying the number of unique 510(k) device listings entered in FURLS between fiscal years 2009 and 2014 that conflict with a listing already entered by another party (5,304), dividing that number by the number of years (6), and multiplying by the average number of parties claiming to be the 510(k) holder when there is a conflict in the current FURLS database (2.3). The draft guidance identifies potential documentation a party could submit to FDA to establish the transfer of a 510(k) clearance. FDA estimates it will take a party approximately 4 hours to locate and submit information to establish the transfer of the 510(k) clearance, resulting in 8,132 burden hours for those 2,033 parties claiming to be 510(k) holders. FDA reached this estimate based on its expectation of the amount of time it will take a party to locate the information, copy it, and submit a copy to FDA.

The burden estimate does not include the maintenance of records used to document transferring a premarket notification (510(k)) clearance. Based on available information, FDA believes that the maintenance of these records is a usual and customary part of normal business activities. For example, in the ordinary course of business, supporting documents should be kept to verify asset information for calculating the annual depreciation or calculating gain or loss on sale of an asset on a businesses' tax return. Therefore, this recordkeeping requirement creates no additional paperwork burden.

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 807 (registration and listing) are approved under OMB control number 0910–0625; the collections of information in 21 CFR part 807 subpart E (premarket notification submission) have been approved under OMB control number 0910–0120, and collections of information in 42 CFR 493.17 have been approved under OMB control number 0910–0607.

Dated: March 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04995 Filed 3–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of 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: Advisory Committee on Research on Women's Health.

Closed: April 17, 2018, 2:30 p.m. to 4:45 p.m.

Agenda: To evaluate the Sex/Gender Administrative Supplements program proposed for ORWH's Strategic Plan.

Open: April 18, 2018, 9:00 a.m. to 1:30 p.m.

Agenda: Opening Remarks, Director's Report, NIH Legislative Update, Strategic Plan Update, and Scientific Presentations.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Elizabeth Spencer, R.N., Deputy Director, Office of Research on Women's Health, Executive Secretary, ACRWH, National Institutes of Health, 6707 Democracy Blvd., Room 7W444, Bethesda, MD 20817, 301–402–1770 *elizabeth.spencer@nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 6, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04954 Filed 3–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel—R41 applications.

Date: April 4, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Kimberly Lynette Houston, MD, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892, 301.827.4902, *kimberly.houston@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 10, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Kimberly Lynette Houston, MD, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892, 301.827.4902, *kimberly.houston@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 10, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 13, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 16–17, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

(Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 7, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04961 Filed 3–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on March 26, 2018, 2:00 p.m.–3:00 p.m. (EDT) in a closed teleconference meeting.

The meeting will include discussions and evaluations of grant applications reviewed by SAMHSA's Initial Review Groups, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, the meeting will be closed to the public as determined by the SAMHSA Assistant Secretary for Mental Health and Substance Use in accordance with Title 5 U.S.C § 552b(c)(4) and (6) and Title 5 U.S.C. App. 2, 10(d).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: March 26, 2018, 2:00 p.m.–3:00 p.m. EDT, Closed.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov*.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–04975 Filed 3–12–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0018; OMB No. 1660–0131]

Agency Information Collection Activities: Proposed Collection; Comment Request; Threat and Hazard Identification and Risk Assessment (THIRA)—Stakeholder Preparedness Review (SPR) Reporting Tool

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning this annual requirement for the U.S. Department of Homeland Security (DHS), FEMA to identify current capability levels for all States, Territories, urban areas, and Tribes receiving non-disaster preparedness grant funds administered by DHS.

DATES: Comments must be submitted on or before May 14, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0018. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dante Randazzo, Supervisory Emergency Management Specialist, FEMA, National Preparedness Assessment Division, *Dante.Randazzo@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This package is a revision to the collection titled THIRA/SPR, OMB Control Number: 1660–0131. Although initially titled the State Preparedness Report (SPR), FEMA changed the name of the collection to the THIRA/SPR Unified Reporting Tool to more accurately reflect the information gathered and method of collection. The *Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA),* as amended by the *Implementing Recommendations of the 9/11 Commission Act of 2007,* established an annual requirement for the 56 States and Territories to submit a State Preparedness Report. Because this reporting now includes States, Territories, urban areas, and Tribes, FEMA has revised the name of the report as the Stakeholder Preparedness Review (SPR). States, Territories, urban areas and Tribes receiving non-disaster preparedness grant funds administered by DHS submit the SPR annually, and this encompasses the requirements of the State Preparedness Report while also reflecting the updated reporting needs. The legislation requires a report on current capability levels and a description of targeted capability levels from all States, Territories, urban areas and Tribes receiving non-disaster preparedness grant funds administered by DHS. Each report must also include a discussion of the extent to which target capabilities identified in the applicable State homeland security plan and other applicable plans are unmet, and an assessment of resources needed to meet the preparedness priorities established under PKEMRA Section 646(e), including: (i) An estimate of the amount of expenditures required to attain the preparedness priorities; and (ii) the extent to which the use of Federal assistance during the preceding fiscal year achieved the preparedness priorities. To meet this requirement, States, Territories, Tribes, and urban areas first identify capability targets through the Threat and Hazard Identification and Risk Assessment (THIRA) and then assess against these targets in the SPR. Through the SPR, these jurisdictions estimate their current capabilities, identify and describe gaps between current capabilities and targets, indicate their intended approach for addressing gaps in the future, and report on the impact of Federal grant dollars in building and sustaining capabilities. It is also important to note that completing the THIRA and SPR are allowable expenses under the grant awards.

Collection of Information

Title: Threat and Hazard Identification and Risk Assessment (THIRA)—Stakeholder Preparedness Review (SPR) Reporting Tool.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0131.

FEMA Forms: FEMA Form 008–0–19 (THIRA), Threat and Hazard Identification and Risk Assessment (THIRA) Reporting Tool; FEMA Form 008–0–20 (SPR), Stakeholder Preparedness Review (SPR) Reporting Tool; FEMA Form 008–0–23, THIRA/SPR After-Action Call Questions.

Abstract: The assessment is structured by the 32 core capabilities from the 2015 National Preparedness Goal. States, Territories, urban areas, and Tribes provide information on capability targets, their current capability levels and capability gaps for each core capability. Respondent States, Territories, Tribes and urban areas gather the information and complete the THIRA and SPR following the ''Comprehensive Preparedness Guide (CPG) 201, Third Edition.''

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 113.

Estimated Number of Responses: 113.

Estimated Total Annual Burden Hours: 84,414.

Estimated Total Annual Respondent Cost: $4,328,749.92.

Estimated Respondents' Operation and Maintenance Costs: $12,404,962.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,648,063.63.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: March 7, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–04994 Filed 3–12–18; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2018–0012]

Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: 60-Day Notice and request for comments; Extension of a Currently Approved Collection, 1600–0005.

SUMMARY: The DHS Office of the Chief Procurement Officer, will submit the following Information Collection

Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is necessary for compliance with the HSAR and the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs.

DATES: Comments are encouraged and will be accepted until May 14, 2018. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0012, at:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0012. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Harvey, (202) 447–0956, *Nancy.Harvey@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: DHS collects information, when necessary, when inviting firms to submit bids, proposals, and offers for public contracts for supplies and service. Using solicitation methods such as requests for proposals (RFP), requests for information (RFI), and broad agency announcements (BAA), the Government requests information from prospective offerors such as pricing information, delivery schedule compliance, and evidence that the offeror has the resources (both human and financial) to accomplish requirements. The information collection is necessary for compliance with the HSAR, 48 CFR Chapter 30, and the SBIR and STTR programs, 15 U.S.C. 628. The collections under the HSAR include:

• 3052.209–70 Prohibition on Contracts with Corporate Expatriates (Required in all solicitations and contracts). The offeror must disclose whether it is a foreign incorporated entity that should be treated as an inverted domestic corporation.

• 3052.209–71 Reserve Officer Training Corps and Military Recruiting on Campus (Required in all solicitations and contracts with institutions of higher education) Requires that the Contractor represent that it does not now have, and agrees that during performance of the contract that it will not adopt, any policy or practice described in paragraph (b) of the clause.

• 3052.209–72 Organizational Conflict of Interest, paragraphs (c), (d) and (e) (Required in all solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible). The offeror must disclose whether it is aware of any facts which create any actual or potential organizational conflicts of interest; and, provide information as required by the Government and a mitigation plan relating to the conflict, if applicable.

• 3052.209–74 Limitations on Contractors Acting as Lead System Integrators (Required in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator). The offeror must disclose whether it proposes to perform this contract as a lead system integrator with system responsibility, and whether it has a direct financial interest in the system that is the subject of the solicitation; and, provide evidence, as needed.

• 3052.209–76 Prohibition on Federal Protective Service (FPS) Guard Services Contracts with Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony, paragraphs (a) through (g) (Required in in all solicitations and contracts for FPS guard services). The offeror must disclose whether it is owned, operated or controlled by an individual convicted of any felony. A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Government. The request must include information that is considered personally identifiable information, and any additional information the Government deems necessary.

• 3052.215–70 Key Personnel and Facilities (Required in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities). Before removing or replacing any of the specified individuals or facilities, the offeror must notify the Government, in writing, before the change becomes effective.

• 3052.219–72 Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (Required in all solicitations containing (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program and (FAR) 48 CFR 52.219–9 Small Business Subcontracting Plan). The offeror must provide a signed letter of mentor-protégé agreement, if it wishes to receive credit under the source selection factor.

• 3052.247–70 F.o.b. Origin Information (Required in solicitations as appropriate) the offeror must provide information related to the offeror's shipping point.

The DHS Science and Technology (S&T) Directorate issues BAAs soliciting when white papers and proposals from the public. DHS S&T evaluates white papers and proposals received in response to a DHS S&T BAA using the evaluation criteria specified in the BAA through a peer or scientific review process in accordance with FAR 35.016(d). Unclassified white papers and proposals are typically collected via the DHS S&T BAA secure website, while classified white papers and proposals must be submitted via proper classified courier or proper classified mailing procedures as described in the National Industrial Security Program Operating Manual (NSPOM).

Federal agencies with an annual extramural research and development (R&D) budget exceeding $100 million are required to participate in the SBIR Program. Similarly, Federal agencies with an extramural R&D budget exceeding $1 billion are required to participate in the STTR Program. Federal agencies who participate in the SBIR and STTR programs must collect information from the public to meet:

1. Applicable reporting requirements under 15 U.S.C. 638 (b)(7), (g)(8), (i), (j)(1)(E), (j)(3)(C), (l), (o)(10), and (v);

2. The requirement to maintain both a publicly accessible database of SBIR/STTR award information and a government database of SBIR/STTR award information for SBIR and STTR program evaluation under 15 U.S.C. 638 g(10), (k), (o)(9), and (o)(15); and

3. Requirements for public outreach under 15 U.S.C. 638 (j)(2)(F), (o)(14), and (s).

The prior information collection request for OMB No. 1600–0005 was approved through June 30, 2018 by OMB in a Notice of OMB Action.

The information being collected is used by the Government's contracting officers and other acquisition personnel, including technical and legal staff to determine the adequacy of technical and management approach, experience, responsibility, responsiveness, and expertise of the firms submitting offers; the identification of members of the public (*i.e.,* small businesses) who qualify for and are interested in participating in the DHS SBIR Program; and, provide the DHS SBIR Program Office necessary and sufficient information to determine whether proposals submitted by the public to the

DHS SBIR Program meet the criteria for consideration under the program.

Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. Potentially, contracts would be awarded to firms without sufficient experience and expertise, thereby placing the Department's operations in jeopardy. Defective and inadequate contractor deliverables would adversely affect DHS's fulfillment of the mission requirements in all areas. Additionally, the Department would be unsuccessful in identifying small businesses with R&D capabilities, which would adversely affect the mission requirements in this area.

Many sources of the requested information use automated word processing systems, databases, and web portals to facilitate preparation of material to be submitted and to post and collect information. It is common place within many of DHS's Components for submissions to be electronic as a result of implementation of e-Government initiatives.

Information technology (*i.e.,* electronic web portal) is used in the collection of information to reduce the data gathering and records management burden. DHS uses a secure website the public can use to propose SBIR research topics and submit proposals in response to SBIR solicitations. In addition, DHS uses a web portal to review RFIs and register to submit a white paper or proposal in response to a specific BAA. The data collection forms standardize the collection of information that is necessary and sufficient for the DHS SBIR Program Office to meet its requirements under 15 U.S.C. 638.

DHS/ALL/PIA–006 General Contact Lists dated June15, 2007 covers the basic contact information that must be collected for DHS. Other information collected will typically pertain to the contract itself, and not individuals. All information for this information collection is submitted voluntarily. However, sensitive information (*e.g.,* felony conviction information) may also be collected through this information collection. Due to this sensitivity, and the sensitivities regarding the procurement process as a whole, a new PIA is required to document and identify any potential risks associated with collecting this information. There is no assurance of confidentiality provided to the respondents.

The burden estimates provided in response to Item 12 above are based upon definitive proposals reported by DHS and its Components to the Federal Procurement Data System (FPDS) for Fiscal Year 2016. No program changes occurred and there have been no changes to the information being collected. However, the burden was adjusted to reflect an agency adjustment increase of 103,600 in the number of respondents within DHS for Fiscal Year 2016, as well as an increase in the average hourly wage rate. In addition, the average response per respondent went from 7 to 3.5 per response, a difference of 3.5 hours. The change is a result of the DHS Heads of Contracting Activities' reassessment of the response time required for each of the applicable clauses.

This is an extension of a currently approved collection, 1600–0005. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of the Chief Procurement Officer, DHS.

Title: Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Solicitation of Proposal Information for Award of Public Contracts.

OMB Number: 1600–0005.

Frequency: Annually.

Affected Public: Private and Public Sector.

Number of Respondents: 117,212.

Estimated Time per Respondent: 3.5 hours.

Total Burden Hours: 1,230,726.

Dated: March 1, 2018.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2018–04970 Filed 3–12–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0105]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Entry of Appearance as Attorney or Accredited Representative; Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 12, 2018.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number [1615–0105] in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at

the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on December 6, 2017, at 82 FR 57604, allowing for a 60-day public comment period. USCIS did receive 6 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0037 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Accredited Representative; Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–28, G–28I; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. The data collected on Forms G–28 and G–28I is used by DHS to determine eligibility of the individual to appear as a representative. Form G–28 is used by attorneys admitted to practice in the United States and accredited representatives of certain non-profit organizations recognized by the Department of Justice. Form G–28I is used by attorneys admitted to the practice of law in countries other than the United States and only in matters in DHS offices outside the geographical confines of the United States. If the representative is eligible, the form is filed with the case and the information is entered into DHS systems for whatever type of application or petition it may be.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–28 is 2,778,700 and the estimated hour burden per response is 0.833 hours. The estimated total number of respondents for the information collection G–28 online filing is 281,950 and the estimated hour burden per response is 0.667 hours. The estimated total number of respondents for the information collection G–28I is 25,057 and the estimated hour burden per response is 0.700 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 2,520,258.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any costs associated with this collection of information would be included in the forms that provide the catalyst for the filing of Forms G–28 or G–28I.

Dated: March 1, 2018.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–04586 Filed 3–12–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0135]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Application for Travel Document (Carrier Documentation)

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until May 14, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0135 in the body of the letter, the agency name and Docket ID USCIS–2015–0004. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2015–0004;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking

information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2015–0004 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document (Carrier Documentation).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information provided on Form I–131A to verify the status of permanent or conditional residents, and determine whether the applicant is eligible for the requested travel document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–131A is 4,110 and the estimated hour burden per response is .92 hours; biometrics processing is 4,110 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,590 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $704,620.

Dated: March 7, 2018.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–04983 Filed 3–12–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2017–N165; FXES11130800000–178–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before April 12, 2018.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–168927

Applicant: Bradford Hollingsworth, San Diego, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, photograph, and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) in conjunction with survey and scientific research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58829C

Applicant: Benjamin Ruiz, Bakersfield, California.

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and giant kangaroo rat (*Dipodomys ingens*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58844C

Applicant: Phillip Peters, San Francisco, California.

The applicant requests a permit amendment to take (harass by survey) the California Clapper rail (California

Ridgway's rail) the California Ridgway's rail, formerly known as the California Clapper rail (*Rallus longirostris obsoletus,* or *R. obsoletus o.*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58847C

Applicant: Steven Manley, San Diego, California.

The applicant requests a new permit to take (harass by survey, locate and monitor nests, capture, band, and release) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey, population monitoring, and research activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–221295

Applicant: Angelica Mendoza, Fontana, California.

The applicant requests a permit renewal to take (pursuit by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–115370

Applicant: Gage Dayton, Santa Cruz, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, mark, collect tissues samples, photograph, release, collect a limited number of voucher specimens, and conduct habitat restoration for) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) and take (harass by survey, capture, handle, mark, photograph, release, collect a limited number of voucher specimens, and conduct habitat restoration for) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with survey, population monitoring, genetic sampling, research, and habitat restoration activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–54716A

Applicant: Christine Harvey, San Diego, California.

The applicant requests a permit renewal and amendment to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and take (harass by survey, and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–200339

Applicant: Sarah Foster, Sacramento, California.

The applicant requests a permit renewal to take (harass by survey) the California Clapper rail (California Ridgway's rail) (*Rallus longirostris obsoletus*) (*R. obsoletus o.*) and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–022649

Applicant: Joseph Messin, Temecula, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–92799B

Applicant: Karl Fairchild, Fullerton, California.

The applicant requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–70880B

Applicant: Michael Hobbs, San Jose, California.

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–59233C

Applicant: University of California Merced, Merced, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and educational activities in Merced County, California, for the purpose of enhancing the species' survival.

Permit No. TE–59234C

Applicant: Advanced Solutions for Earth's Future, Los Angeles, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–053598

Applicant: Nicole Kimball, Spring Valley, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (pursuit by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–192702

Applicant: Jaime Kneitel, Sacramento, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta*

longiantenna), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–808242

Applicant: Scott Cameron, Palmdale, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) and arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) and take (pursue by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–72044A

Applicant: Carl Demetropoulos, Thousand Oaks, California.

The applicant requests a permit amendment to take (harass by survey, capture, mark, and release) the Mohave tui chub (*Gila bicolor mohavensis*), in conjunction with survey and population monitoring activities on Naval Air Weapons Station China Lake, in California, for the purpose of enhancing the species' survival.

Permit No. TE–02737B

Applicant: Susan Dewar, Rocklin, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–59680C

Applicant: Thea Wang, Los Angeles, California.

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–095896

Applicant: Phillip Richards, Laguna Hills, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–59924C

Applicant: Land Trust of Santa Cruz County, Santa Cruz, California.

The applicant requests a new permit to take (harass by survey, capture, and release) the Ohlone tiger beetle (*Cicindela ohlone*) in conjunction with survey and habitat enhancement activities in Santa Cruz County, California, for the purpose of enhancing the species' survival.

Permit No. TE–839213

Applicant: David Muth, Martinez, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, and conduct instructional workshops involving field survey methods) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) and take (harass by survey, capture, handle, release, collect vouchers, collect branchiopod cysts, process vernal pool soil samples, and conduct instructional workshops involving field survey methods) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and educational activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–797234

Applicant: LSA Associates, Point Richmond, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, collect branchiopod cysts, and process vernal pool soil samples) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*); and take (harass by survey) the California Clapper rail (California Ridgway's rail) (*Rallus longirostris obsoletus*) (*R. obsoletus o.*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–028223

Applicant: Jonathan Stead, Oakland, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California and Oregon for the purpose of enhancing the species' survival.

Permit No. TE–203081

Applicant: John Labonte, Goleta, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, take

tissue samples, remove hybrids from the wild, temporarily keep hybrids in captivity, euthanize hybrids, and release) the California tiger salamander (Santa Barbara County Distinct Population Segment) (*Ambystoma californiense*); and take (pursuit by survey) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–207873

Applicant: Carol Thompson, Riverside, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by locating and monitoring nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) and Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–60358C

Applicant: California Department of Fish and Wildlife, San Diego, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–083348

Applicant: San Bernardino County Department of Public Works, San Bernardino, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities in San Bernardino County, California, for the purpose of enhancing the species' survival.

Permit No. TE–53771B

Applicant: Erin Bergman, La Mesa, California.

The applicant requests a permit amendment and renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (pursuit by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and mission blue butterfly (*Icaricia icarioides missionensis*); and take (harass by survey, capture, handle, release) the Casey's june beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–091857

Applicant: Denise Duffy and Associates, Inc., Monterey, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, take tissue samples, conduct habitat restoration for, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey, research, and habitat enhancement activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–837308

Applicant: John Konecny, Valley Center, California.

The applicant requests a permit renewal to take (harass by locating and monitoring nests, capture, handle, band, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey, locate and monitor nests, capture, handle, band, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), take (harass by survey) the light-footed clapper rail (light-footed Ridgway's rail) (*Rallus longirostris levipes*) (*R. obsoletus l.*) and Yuma clapper rail (Yuma Ridgway's rail) (*Rallus longirostris yumanensis*) (*R. obsoletus y.*), take (harass by survey, locate and monitor nests, capture, handle, and band) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*), and take (harass by survey, capture, handle, and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) in conjunction with survey and population monitoring activities throughout the range of the species in California and Nevada for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Karen A. Jensen,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2018–04959 Filed 3–12–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200 L99110000.EK0000 XXX L4053RV]

Renewal of Approved Information Collection; OMB Control Number 1004–0179 Agency Information Collection Activities; Helium Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection request to the Office of Management and Budget (OMB), to renew control number 1004–0179, ''Helium Contracts.''

DATES: Interested persons are invited to submit comments on or before May 14, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov*. Please reference OMB Control Number 1004–0179 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Samuel R.M. Burton by email at *sburton@blm.gov,* or by telephone at 806–356–1002.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

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 BLM needs to collect information in order to implement in-kind sales of helium in accordance with the Helium Stewardship Act (50 U.S.C. 167–167q) and 43 CFR part 3195.

Title of Collection: Helium Contracts.

OMB Control Number: 1004–0179.

Form Numbers: 3195–1, 3195–2, 3195–3, and 3195–4.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Private helium merchants that sell a major helium requirement (*i.e.,* an amount of refined helium greater than 200,000 standard cubic feet of refined gaseous helium or 7,510 liters of liquid helium) to a Federal agency or to private helium purchasers for use in Federal Government contracts.

Total Estimated Number of Annual Respondents: 22.

Total Estimated Number of Annual Responses: 60.

Estimated Completion Time per Response: Varies from 4–8 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 272.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection:

- Quarterly for the Refined Helium Deliveries Detail;
- Annually for the Calculation of Excess Refining Capacity and Refiners' Annual Tolling Report; and
- On occasion for the Refiners' Tolling Occurrence Report.

Total Estimated Annual Nonhour Burden Cost: None.

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*).

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2018–05044 Filed 3–12–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L10200000.DF0000. 18XL1109AF.LXSSH1070000.HAG 18–0048]

Notice of Public Meeting for the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: The EWRAC will hold a public meeting on Thursday, March 22, 2018. The meeting will run from 8:00 a.m. to 2:30 p.m. Pacific Time. A public comment period will be available from 1 until 1:30 p.m. There will be an EWRAC field trip to the Juniper Dunes Recreation Area on Wednesday, March 21, 2018, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The EWRAC meeting will be held in the Oak Room at the Red Lion Inn, 2525 N 20th Ave., Pasco, WA 99301. The EWRAC field trip to the Juniper Dunes Recreation Area will depart from Country Mercantile, 232 Crestloch Rd., Pasco, WA 99301.

FOR FURTHER INFORMATION CONTACT: Jeff Clark, Public Affairs Officer, 1103 N Fancher, Spokane Valley, WA 99212; 509–536–1297; *jeffclark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member EWRAC was chartered to provide information and advice regarding the use and development of the lands administered by the Spokane District in central and eastern Washington. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide.

All meetings are open to the public in their entirety. The field trip on Wednesday, March 21, 2018, will be to the Juniper Dunes Recreation Area. Members of the public wanting to attend must provide their own transportation. The EWRAC meeting agenda on Thursday, March 22, 2018, includes a discussion of the the Juniper Dunes field trip and updates on Juniper Dunes public access and the BLM Eastern Washington Resource Management Plan. There will be a public comment period from 1:00 p.m. to 1:30 p.m. Persons wishing to make comments during the public comment period should register in person with the BLM by noon on the meeting day, at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments

to the EWRAC at BLM Spokane District, Attn. EWRAC, 1103 N. Fancher, Spokane Valley, WA 99212. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Authority: 43 CFR 1784.4–2.

Linda Clark,

Spokane District Manager.

[FR Doc. 2018–05048 Filed 3–12–18; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000.PC0000.18X.LXSIADVSBD00]

Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Board meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Wild Horse and Burro Advisory Board (Advisory Board) will meet as indicated below.

DATES: The Advisory Board will hold a public meeting on Tuesday, March 27, 2018, from 8 a.m. to 5 p.m. and Wednesday, March 28, 2018, from 8 a.m. to 12:00 p.m. MDT.

ADDRESSES: The meeting will be held at the Radisson Hotel Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101. The final agenda for the March 27–28, 2018, public meeting will be posted on the BLM web page at: *https://www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board.* Written comments pertaining to the meeting and written statements that will be presented to the Advisory Board may be filed in advance of the meeting and sent to the U.S. Department of the Interior, BLM, Attention: Advisory Board (WO–260), 20 M Street SE (Room 2134 LM), Washington, DC 20003 or emailed to: *whbadvisoryboard@blm.gov* no later than March 20, 2018. Please include ''Advisory Board Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Acting Wild Horse and Burro Outreach Specialist at 202–912–7654 or by email at *dboothe@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the U.S. Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

I. Advisory Board Public Meeting Agenda

Tuesday, March 27, 2018 (8 a.m.–5 p.m.)

Welcome, Introductions, and Agenda Review
Advisory Board October 2017 Meeting Minutes Review/Approval
BLM Responses to Board Recommendations—September 2016 and October 2017 Meetings
BLM Utah WHB Program Update
BLM National WHB Program Overview and Status
BLM National WHB Research Update
BLM National WHB Program Budget Update
U.S. Forest Service WHB Program Update
Public Comment Period (3 p.m.–5 p.m.)
Adjourn

Wednesday, March 28, 2018 (8 a.m.–Noon)

Welcome, Introductions, and Agenda Review
Building Collaborative Partnerships
Advisory Board Discussion and Recommendations to the BLM
Adjourn

The meeting will be live-streamed at *www.blm.gov/live.* The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. Boothe one week before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange for it.

II. Public Comment Procedures

On Tuesday, March 27 at 3 p.m., members of the public will have the opportunity to make comments to the Advisory Board on the WHB Program. Persons wishing to make comments during the meeting should register in person with the BLM prior to 2:30 p.m. on March 27, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Public commenters are requested to submit a written copy of their statement to the addresses listed in the **ADDRESSES** section above, or bring a written copy to the meeting to be included and posted as part of the Advisory Board's record of the meeting. There will be a webcam present during the entire meeting, and individual comments may be recorded.

Participation in the Advisory Board meeting is not required to submit written comments. The BLM invites written comments from all interested parties. We request that written comments be specific and explain the reason for any recommendation. The Advisory Board considers comments that are either supported by quantitative information or studies, or those that include citations to and analysis of applicable laws and regulations to be the most useful in developing its advice and recommendations on the management and protection of wild horses and burros.

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 in your comment that the BLM withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Authority: 43 CFR 1784.4–2.

Steve Tryon,

Deputy Assistant Director, Resources and Planning.

[FR Doc. 2018–05046 Filed 3–12–18; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–579–580 (Final)]

Fine Denier Polyester Staple Fiber From China and India; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of fine denier polyester staple fiber (''fine denier PSF'') from China and India, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be subsidized by the governments of China and India.

Background

The Commission, pursuant to section 705(b) of the Act (19 U.S.C. 1671d(b)), instituted these investigations effective May 31, 2017, following receipt of a petition filed with the Commission and Commerce by DAK Americas LLC, Charlotte, NC; Nan Ya Plastics Corporation, America, Lake City, SC; and Auriga Polymers Inc., Charlotte, NC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of fine denier PSF from China and India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 27, 2017 (82 FR 56050). The hearing was held in Washington, DC, on January 17, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 705(b) of the Act (19 U.S.C. 1671d(b)). It completed and filed its determinations in these investigations on March 7, 2018. The views of the Commission are contained in USITC Publication 4765 (March 2018), entitled *Fine Denier Polyester Staple Fiber from China and India: Investigation Nos. 701–TA–579–580 (Final).*

By order of the Commission.

Issued: March 7, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04972 Filed 3–12–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–601 and 731–TA–1411 (Preliminary)]

Laminated Woven Sacks From Vietnam; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–601 and 731–TA–1411 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of laminated woven sacks from Vietnam, provided for in subheading 6305.33.00 (statistical reporting number 6305.33.0040) of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Vietnam. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 23, 2018. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 30, 2018.

DATES: March 7, 2018.

FOR FURTHER INFORMATION CONTACT: Drew Dushkes (202–205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on March 7, 2018, by the Laminated Woven Sacks Fair Trade Coalition, which is comprised of Polytex Fibers Corporation (Houston, Texas) and ProAmpac, LLC (Cincinnati, Ohio).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, March 28, 2018, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before March 26, 2018. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 2, 2018, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Dated: March 7, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04973 Filed 3–12–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–17]

Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy; Decision and Order

On February 23, 2015, the former Deputy Assistant Administrator of the then-Office of Diversion Control, Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause to Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy (hereinafter, Respondent). ALJX 1. The Show Cause Order proposed the revocation of Respondent's registration pursuant to 21 U.S.C. 824(a)(4) and 823(f) on the ground that Respondent's registration is inconsistent with the public interest. ALJX 1, at 1. For the same reason, the Show Cause Order also proposed the denial of any pending application by Respondent for renewal or modification of its registration, and the denial of any application by Respondent for any other DEA registration. *Id.* (citing 21 U.S.C. 823(f)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that Respondent's DEA Certification of Registration No. FP1049546 authorized it to dispense controlled substances in schedules II through V as a retail pharmacy at the registered location of 205 E. Hallandale Beach Blvd., Hallandale Beach, Florida 33009. *Id.* Respondent's registration was to expire on March 31, 2017. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order contained seven categories of violations. First, it alleged that ''Zion dispensed controlled substances where it knew, or should have known, that the prescriptions were not issued in the usual course of professional practice or for a legitimate medical purpose and therefore failed to exercise its corresponding responsibility regarding the proper prescribing and dispensing of controlled substances.'' *Id.* (citing 21 CFR 1306.04(a)). The Show Cause Order stated that Respondent's failure to exercise its corresponding responsibility was evidenced by its ''dispensing of controlled substances despite the presence of red flags of diversion that Zion failed to clear prior to dispensing the drugs.'' *Id.* at 1–2. The Show Cause Order listed seven red flags of diversion that Respondent allegedly did not resolve prior to filling prescriptions. *Id.* at 2–7. It cited *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195,* 77 FR 62,316 (2012) (hereinafter, Holiday CVS) as support for these allegations.

The Show Cause Order listed 13 prescriptions, for customers who allegedly traveled long round-trip distances of approximately 166 to 661 miles from home to physician to Respondent and back home, and alleged that Respondent filled them without having resolved the long distance red flags of diversion. ALJX 1, at 2–3. Each of the 13 prescription examples was for a controlled substance written some time during the period of February 2012 through January 2013. *Id.; see also* Government Exhibit (hereinafter, GX) 8/8a.

The Show Cause Order cited five prescriptions written by the same doctor on June 27, 2012 for five different customers for ''1 ML Testosterone Cypionate 210mg/mL IM,'' a controlled substance, that Respondent allegedly filled without first having resolved the red flags of diversion. ALJX 1, at 3–4; s*ee also* GX 10.

The Show Cause Order referenced two prescriptions for Dilaudid 8 mg., a controlled substance, written by the same doctor on June 22, 2012 for two individuals with the same last name and the exact same street address that Respondent allegedly filled without first having resolved the red flags of diversion. ALJX 1, at 4; s*ee also* GX 11. The Show Cause Order alleged that Respondent filled the two prescriptions on July 13, 2012 at 2:35 p.m. and 2:39 p.m., respectively. ALJX 1, at 4.

The Order to Show Cause alleged that Respondent filled two prescriptions for the same customer on the same day for the same immediate release controlled substance, but for different strengths,

without first having resolved the red flags of diversion. *Id.* The two pairs of prescriptions listed in the Show Cause Order to illustrate this allegation were issued for Dilaudid 8 mg. and Dilaudid 4 mg. *Id.; see also* GX 12. They were written during the period of September 2012 through November 2012. ALJX 1, at 4.

The Show Cause Order alleged that Respondent filled opiate (hydromorphone) and benzodiazepine (alprazolam, clonazepam, diazepam, or lorazepam) prescriptions, a ''common 'drug cocktail' popular with drug abusers,'' for the same customer on the same day at about the same time without first having resolved the red flags of diversion. *Id.* The Show Cause Order cited 14 prescriptions, or seven pairs of ''drug cocktail'' prescriptions, that Respondent allegedly filled during the period of October 2012 through January 2013. ALJX 1, at 4–5; s*ee also* GX 13.

The Order to Show Cause alleged that ''[c]ustomers paying for their prescriptions with cash, where other red flags of diversion were present,'' were red flags of diversion that Respondent did not resolve prior to having filled the prescriptions. ALJX 1, at 5. The Show Cause Order listed 50 examples of prescriptions paid for with cash, costing as much as $1,008 for one prescription. *Id.; see also* GX 8, GX 10, GX 11, and GX 13.

The Show Cause Order alleged that Respondent filled prescriptions for ''[c]ustomers [who] present[ed] new prescriptions for controlled substances when they should not have finished their previous prescription for that drug ('early fills' or 'early refills')'' without first having resolved the red flags of diversion. ALJX 1, at 5. The Order to Show Cause provided seven sets of examples of prescriptions that Respondent allegedly filled as many as 15 days early. *Id.* at 5–7; s*ee also* GX 14. The Show Cause Order specifically cited *Holiday CVS,* 77 FR at 62,318 as precedent for this charge. ALJX 1, at 7.

Next, the Order to Show Cause alleged that Respondent ''was unable to readily retrieve prescriptions it had dispensed.'' *Id.* (citing subsections (a) and (h)(3) and (4) of 21 CFR 1304.04). Specifically, the Show Cause Order alleged that, on April 11, 2013, DEA investigators conducted an on-site inspection of Respondent and requested specific prescriptions that Florida's Prescription Drug Monitoring Program showed Respondent had filled.[1] *Id.* The Show Cause Order listed 12 testosterone prescriptions that Respondent filled from February 2012 through January 2013 and DEA investigators requested, but that Respondent's staff was allegedly ''unable to produce.'' *Id.* at 7–8.

The Show Cause Order further alleged that Respondent filled controlled substance prescriptions and shipped them to Alabama, Georgia, Illinois, Kentucky, Massachusetts, and Vermont without meeting the out-of-state pharmacy requirements of four of those states.[2] *Id.* at 8. It detailed eight prescriptions that Respondent allegedly filled and shipped out-of-state, though it did not allege that all eight were shipped in violation of a State's non-resident pharmacy requirements. *Id.* at 8–9; s*ee also* GX 15.

The Order to Show Cause next alleged that Respondent filled controlled substance prescriptions that did not contain all of the required information, such as directions for use, patient address, prescriber name, prescriber address, prescriber DEA number, and prescriber signature. ALJX 1, at 9 (citing 21 CFR 1306.05(a) and (f)). It specified eight prescriptions and the required information each one allegedly lacked. *Id.* at 9–10; *see also* GX 16.

Next, the Show Cause Order alleged that Respondent filled prescriptions written for ''office use'' in violation of 21 CFR 1306.04(b). ALJX 1, at 10. It provided two examples of such prescriptions. *Id.* at 10; *see also* GX 17.

The Show Cause Order also alleged that Respondent filled prescriptions written by physicians for their personal use in violation of Florida law. ALJX 1, at 10 (citing Fla. Stat. § 458.331(r)). It referenced six examples of prescriptions where the name of the prescribing physician was the same name as the patient. *Id.; see also* GX 18.

And, lastly, the Order to Show Cause alleged that Respondent violated Florida law by ''failing to report some prescriptions to E–FORCSE, in violation of Fla. Stat. § 893.055(4).'' ALJX 1, at 10. It listed six prescriptions that Respondent allegedly did not report to E–FORCSE. *Id.* at 11; *see also* GX 19.

The Show Cause Order notified Registrant of its right to request a hearing on the allegations or to submit a written statement while waiving its right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. ALJX 1, at 11 (citing 21 CFR 1301.43).

On February 25, 2015, the DEA Diversion Investigator (hereinafter, DI) assigned to the investigation of Respondent, personally served the Order to Show Cause on Respondent's owner and operator, Veronica Taran (hereinafter, Respondent's Owner and PIC).[3] ALJX 5 (Government's Prehearing Statement dated March 27, 2015 (hereinafter, Govt. Prehearing Statement)), at 2; ALJX 7 (Respondent's Prehearing Statement dated April 10, 2015), at 2; *see also* Stipulation No. 4, ALJX 10, at 2.

By letter from its attorneys dated March 12, 2015, Respondent timely requested a hearing and asked that a ''reasonable extension to respond to an Order to Show Cause'' be granted. ALJX 3 (Hearing Request dated March 12, 2015), at 1; ALJX 4 (Order for Prehearing Statements dated March 17, 2015), at 1. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On March 17, 2015, the CALJ established the schedule for the filing of prehearing statements and granted Respondent's request for additional time ''to the extent that the hearing date set in the OSC . . . will be continued as directed at the prehearing conference scheduled by this order.'' ALJX 4 (Order for Prehearing Statements), at 1, 2.

On March 27, 2015, the Government filed its Prehearing Statement. ALJX 5. On April 10, 2015, Respondent served its Prehearing Statement. ALJX 7. The April 14, 2015 Prehearing Ruling and Protective Order found that four ''stipulations have been mutually agreed to and are conclusively accepted as facts.'' ALJX 10, at 1.

On May 6, 2015, the Government and Respondent filed Supplemental Prehearing Statements. ALJX 6 and ALJX 9, respectively. The parties' joint filing dated May 26, 2015 included their 11 additional joint stipulations. ALJX 20, at 1–2.

On June 9 through 11, 2015 and on August 4, 2015, the CALJ conducted an evidentiary hearing in Miami, Florida.

[1] Florida's Prescription Drug Monitoring Program is called the Electronic-Florida Online Reporting of Controlled Substance Evaluation Program (hereinafter, E–FORCSE).

[2] The Order to Show Cause cited the allegedly violated state legal requirements as Alabama: Rules of Ala. State Bd. of Pharm. § 680–x–2–.07(2); Illinois: Ill. Admin Code tit. 68, § 1330.550(a); Kentucky: Ky. Rev. Stat. § 315.0351(1); and Vermont: Admin. Rules Vt. Bd. of Pharm., Part 16.

[3] She variously testified that she was ''the owner of the respondent pharmacy'' and that she was ''an owner and a Pharmacist-in-Charge'' of Respondent. Transcript Page (hereinafter, Tr.) 795, 798 (respectively); s*ee also* Stipulation No. 2, ALJX 10, at 1.

Her testimony cited in this Decision and Order is quoted verbatim from the hearing transcript, without correction or ''[sic]'' notations in addition to those already in the transcript.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated October 16, 2015 (hereinafter, R.D.), at 2. At the hearing, both parties called witnesses to testify and offered documents into evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, proposed conclusions of law, and argument.

On October 16, 2015, the CALJ issued his Recommended Decision, including that all but two of the Show Cause Order's allegations, the sixth (prescriptions written for ''office use'') and the seventh (prescriptions written for the prescriber's personal use), be sustained. *Id.* at 33–36, 38–39 (respectively). Regarding those two allegations, the CALJ's recommendations were that there were substantive violations, but that the allegations should not be sustained ''based exclusively on the lack of adequate notice under current Agency precedent.'' *Id.* at 36, 39 (respectively).

The CALJ found that the Government ''supplied sufficient evidence to make out a *prima facie* case.'' *Id.* at 57. He also found that Respondent's acceptance of responsibility was insufficient. *Id.* at 58. Concerning remedial steps, he explained that Respondent's ''intentional decision to decline to notice evidence of remedial steps resulted in their preclusion from consideration.'' *Id.* In sum, he concluded that the record supported imposition of a sanction. *Id.*

The CALJ included in his R.D. an assessment of the degree and extent of Respondent's misconduct and concluded that Respondent had not ''accepted anything meaningful in terms of responsibility or learned anything.'' *Id.* at 59. ''Where no understanding is acquired about how the regulated conduct fell short of professional and federal and state legal standards,'' he wrote, ''it would be difficult (even illogical) to predict improvement.'' *Id.* He determined that the Registrant ''is likely to proceed in the future as it has in the past if not curtailed in its ability to do so.'' *Id.* He concluded that the ''sheer number of established transgressions of various types, coupled with the refusal to admit that issues existed, would render a sanction less than revocation as a message to the regulated community that due diligence is not a required condition precedent to operating as a registrant.'' *Id.* at 59. He recommended revocation of Registrant's registration and the denial of any pending applications for renewal. *Id.* at 60.

On November 5, 2015, both parties filed Exceptions to the R.D. Respondent served supplemental Exceptions to the R.D. on November 16, 2015. By letter dated November 10, 2015, the record was forwarded to me for Final Agency Action.[4]

Having considered the record in its entirety, including all of the Exceptions filed by Respondent and the Government, I agree with the CALJ that Respondent's registration should be revoked and that any pending applications for its renewal or modification should be denied. I further agree with the CALJ's conclusions that Respondent dispensed controlled substances knowing that the prescriptions were not issued in the usual course of professional practice or for a legitimate medical purpose and, therefore, violated the corresponding responsibility rule of 21 CFR 1306.04(a). I agree with the CALJ that Respondent was unable to readily retrieve prescriptions it had dispensed and, therefore, violated 21 CFR 1304.04. I agree with the CALJ that Respondent filled controlled substance prescriptions and shipped them out-of-state in violation of four States' non-resident pharmacy requirements. I agree with the CALJ that Respondent violated 21 CFR 1306.05 by filling controlled substance prescriptions that did not contain all of the required information. Based on Respondent's admissions, I find that Respondent filled prescriptions written for ''office use,'' although I do not sustain this allegation due to the Government's failure to comply with the notice requirements for a Show Cause Order. 21 CFR 1301.37(c). I find that Respondent filled at least one controlled substance prescription written by a physician for the physician's personal use, although I do not sustain this allegation due to the Government's failure to comply with the notice requirements for a Show Cause Order. 21 CFR 1301.37(c). I agree with the CALJ's conclusion that Respondent failed to report controlled substance prescriptions to E–FORCSE in violation of Fla. Stat. § 893.055(4) (2012). I agree with the CALJ that Respondent's acceptance of responsibility was insufficient and that Respondent did not provide sufficient notice of remedial measures.

Accordingly, I find the record as a whole established by substantial evidence that Respondent committed acts which render its continued registration inconsistent with the public interest. I conclude that revocation of Respondent's registration and denial of any pending application to renew or modify Respondent's registration are appropriate sanctions. I make the following findings.

[4] By correspondence dated February 29, 2016, Respondent's counsel gave notice of ''termination of legal representation and an attorney/client relationship with the Respondent.''

Findings of Fact

Respondent's DEA Registration

Respondent is registered with the DEA as a retail pharmacy in schedules II through V under DEA Certificate of Registration No. FP1049546 at 205 E. Hallandale Beach Blvd., Hallandale Beach, Florida 33009. ALJX 1, at 1; s*ee also* Stipulation No. 1; ALJX 10, at 1. Respondent's registration was to expire on March 31, 2017. Stipulation No. 1; ALJX 10, at 1. According to DEA's registration records, however, on January 31, 2017, Respondent timely filed a renewal application. I take official notice of that pending registration renewal application. 5 U.S.C. 556(e).[5] Respondent's registration, therefore, remains in effect pending the issuance of this Decision and Order. 5 U.S.C. 558(c).

The Investigation of Respondent

According to the testimony of the DI, he decided to investigate Respondent after learning that it had ordered 41,700 dosage units of hydromorphone in 2012. Tr. 28. This raised his suspicion because the average pharmacy in the United States ordered approximately 5,900 dosage units of hydromorphone in the same time period. *Id.* at 28.

On April 11, 2013, the DI presented Ms. Veronica Taran, Respondent's Owner and PIC, with a Notice of Inspection. *Id.* at 38; *see also* Stipulation No. 3; ALJX 10, at 2. The DI testified that Respondent's Owner and PIC read the notice of inspection, did not have any questions for the DI about it, signed it, and consented to the inspection. Tr. 38. The DI then asked Respondent's Owner and PIC for various records, including order forms and prescriptions

[5] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent or the Government may dispute my finding by filing a properly supported motion for reconsideration within 10 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the other party; in the event either party files a motion, the other party shall have 10 calendar days to file a response.

filled for schedule II through V controlled substances. *Id.* The DI stated that ''I asked Mrs. Taran if we could take records for further review, so we boxed them up and took them with us. She consented to that.'' *Id.* at 52–53. When he left Respondent on the unannounced inspection day, he took with him ''2011 to 2013 Schedule II through V prescriptions, . . . any invoices or receipts covering the same timeframe, and executed DEA 222 forms and . . . [Respondent's] biennial inventory.'' *Id.* at 50.

The DI also testified about approximately a dozen problematic prescriptions he had identified from E–FORCSE that Respondent's Owner and PIC ''was never able to locate . . . for me.'' *Id.* at 42, 43. ''They were written for different anabolic steroid substances to patients that were not in the State of Florida,'' he testified. *Id.* at 42.

The DI testified that he asked Respondent's Owner and PIC questions, including how she would verify controlled substance prescriptions. *Id.* at 39. According to the DI, Respondent's Owner and PIC said that she used two forms, one to verify the prescription and a doctor-patient affidavit ''that she makes the patient fill out,'' and she checked the prescriber's DEA number on the DEA website and the prescriber's license on the Florida Department of Health website. *Id.* at 39–40. According to the DI, Respondent's Owner and PIC told him that she was familiar with her patients and visited the doctors and their offices. *Id.* at 40.

The DI testified that Respondent's Owner and PIC had posted lists: ''[o]ne was for doctors she would fill prescriptions for, another list of doctors that she wouldn't fill prescriptions for, and ones that were pending verification.'' *Id.* at 40; *see also id.* at 41. The DI stated that Respondent's Owner and PIC specifically told him ''she does not check'' E–FORCSE, she had never shipped a controlled substance out of state, and ''the pharmacy was not licensed in any other state.'' *Id.* at 40–41, 44. Regarding E–FORCSE, the DI testified that he asked Respondent's Owner and PIC to ''go onto'' it to ''check a prescription for me'' and that ''she wasn't able to do that.'' *Id.* at 48–49. When asked for elaboration on the meaning of ''she wasn't able to do that,'' the DI responded that she did not have access. He testified, ''She had access to enter her data into, but not to query a patient. . . . I was standing next to her when she was logged onto the computer attempting to query a patient.'' *Id.* at 49.

The Allegations of Dispensing and Non-Dispensing Violations

The Order to Show Cause alleged seven bases for the revocation of Respondent's registration pursuant to 21 U.S.C. 824(a)(4) and 823(f). One of them had seven subparts.

Witnesses

Four witnesses testified at the hearing: The DI and Dr. Tracey J. Gordon for the Government, and Louis Fisher and Respondent's Owner and PIC called by Respondent. There was factual agreement among the witnesses on a number of issues. When there was factual disagreement, I applied the CALJ's credibility recommendations. *See* R.D., at 5–25.

Regarding the DI, the CALJ stated that he ''presented as an objective regulator with no stake in the outcome of the proceedings'' and provided ''testimony [that] was sufficiently detailed, plausible, consistent, and cogent to be fully credited.'' R.D., at 8. I agree with the CALJ's assessment of the DI's credibility.

At the hearing, the Government also offered testimony from Dr. Tracey Gordon, a pharmacist licensed in Florida who had practiced pharmacy for 21 years. Dr. Gordon testified to ''ten-plus years of retail'' experience in ''at least 200'' Florida retail pharmacies serving as a clerk, tech, intern, assistant manager, and manager. Tr. 282, 284. She testified to having experience dispensing controlled substances for the treatment of chronic pain. *Id.* at 289. She stated that she has served as a pharmacist-in-charge. *Id.* at 351. She testified to training in, and experience with, issues regarding the use and diversion of controlled substances, and to familiarity with the pharmaceutical practice aspects of the use and abuse of controlled substances. *Id.* at 289–90. She stated that she was a licensed Consultant Pharmacist and, at the time, was serving as a clinical Hospice pharmacist. *Id.* at 278–79.

Dr. Gordon was accepted, without objection, ''as an expert in the practice of pharmacy in the [S]tate of Florida regarding the dispensing of controlled substance prescriptions.'' R.D., at 8; *see also* Tr. 294–95.[6] The CALJ found that Dr. Gordon's testimony was ''internally consistent and logically persuasive'' and her qualifications ''reflected a wide breadth of pharmacy experience, including working in many pharmacies as a line pharmacist and a pharmacist in charge,'' and as a consultant and teacher. R.D., at 11. I agree with the CALJ that Dr. Gordon's ''answers rang of sufficient clarity, authority, and candor to merit controlling weight in these proceedings regarding the practice of pharmacy in Florida.'' *Id.* at 11.

Respondent offered the testimony of Louis Fisher, who graduated in 1971 from the Hampden College of Pharmacy and worked for DEA or its predecessor agency from 1971 to 2003. Tr. 565. Mr. Fisher testified that, during his government service, his positions included compliance investigator, quota operation staff assistant, diversion investigator, diversion program manager, and group supervisor. *Id.* at 565, 570. He stated that he was ''familiar with a procedure of dispensing controlled medications pursuant to prescriptions in Florida,'' even though he never practiced pharmacy, or was a licensed pharmacist, in Florida. *Id.* at 571–72, 574–75. He testified that he was a consultant in the field of ''controlled substances abuse and diversion'' at the time. *Id.* at 572. Respondent sought to qualify Mr. Fisher as a ''specialist in preventing drug diversion.'' *Id.* at 561.

The CALJ accepted Mr. Fisher as an expert on the issue of dispensing in Florida. R.D., at 11 n.74, at 17. I agree with the CALJ that it is appropriate to ''afford . . . diminished weight [to Mr. Fisher's testimony] where it conflicts with other, more persuasive evidence of record, including the testimony of Dr. Gordon.''[7] *Id.* at 17; *see also id.* at 11 n.74.

At the hearing, Respondent also offered testimony from Respondent's

[6] On cross-examination, Respondent elicited that, although Dr. Gordon had helped her father in his store before she was a pharmacist, she never worked as a pharmacist in a small independent pharmacy. Tr. 477–78. Respondent further elicited that Dr. Gordon was ''never in charge of purchasing controlled substances for resale for a small independent pharmacy.'' *Id.* at 482. Respondent's first Exception to the R.D. also asserts ''[a]s evident from the record'' that ''Respondent challenged Dr. Gordon's qualifications to testify about dispensing patterns . . . for a small sized, independent pharmacy such as Respondent.'' Respondent's Exceptions to the ALJ's Recommended Ruling dated Nov. 5, 2015 (hereinafter, Resp. Exceptions), at 2. Respondent did not, however, provide a citation to the record for its assertion and my review found none. 21 CFR 1316.66(a). Regardless, given that the Show Cause Order did not raise ''dispensing patterns . . . for a small sized, independent pharmacy,'' Respondent's assertion is not germane to the resolution of this matter.

[7] The CALJ explained that Mr. Fisher's ''discrepant testimony regarding his licensure and experience was disquieting. . . . On this record, the issue of Mr. Fisher's qualifications to render an expert opinion is uniquely dependent upon his own representations of his experience and, thus, his credibility. Either Mr. Fisher was careless . . . and reckless . . ., or he was engaged in an intentional effort to inflate his own qualifications. Either option undermines the weight that can be logically afforded to his opinions, and where these opinions conflict with other opinions or evidence, they cannot be relied upon.'' R.D., at 16 (footnote omitted).

Owner and PIC. Tr. 798. Respondent's Owner and PIC testified that she had been, at the time, a practicing pharmacist in Florida for about ten years. *Id.* at 798. She testified that she was familiar with the Florida provision specifically addressing the dispensing of controlled substances, and that she had taken ''[m]ultiple courses'' on ''red flag of diversions'' as well as ''read many articles online about the situation in Florida with the pain management.'' *Id.* at 799. Respondent's Owner and PIC also testified that she was a custodian of records for Respondent and supervised, at the time, one technician, one intern, and one student. *Id.* at 798–99.

I agree with the CALJ's conclusion that, while ''[t]here were, undoubtedly, aspects of . . . [the testimony of Respondent's Owner and PIC] during which she presented as generally credible, . . . on the present record, her testimony was not sufficiently consistent or plausible to be afforded full credibility.'' R.D., at 25.

Florida Pharmacists' Standard of Practice

Dr. Gordon, Mr. Fisher, and Respondent's Owner and PIC testified about a Florida pharmacy's/pharmacist's standard of practice when presented with a controlled substance prescription.[8] There were some areas of agreement by at least two of the three witnesses on some aspects of that standard.

According to Dr. Gordon, upon a customer's presentation of a controlled substance prescription, the pharmacist should protect the safety of the patient and the community by looking for red flags of diversion, or ''something that makes a pharmacist pause and think about'' whether the prescription was ''really for a legitimate medical purpose.'' Tr. 296, 303. She discussed red flags including the quantity and dosage of the controlled substance, the doctor and practice specialty, and the patient's geographic location, doctor/pharmacy patronage, and payment (insurance/cash) method. *Id.* at 295–97.

Regarding the quantity and dosage of a controlled substance used for pain management, Dr. Gordon explained that ''I look . . . [for] a long-acting with the prescription . . . [because] [i]t helps the patient to be more adherent to therapy.'' *Id.* at 296.

Regarding the doctor and practice specialty, Dr. Gordon explained that, ''I feel pretty comfortable filling a prescription for a large quantity of pain medication'' if an oncologist wrote it. *Id.* at 298. ''But if it's from a general practitioner or an ob-gyn,'' she continued, ''then that causes me to take pause and reevaluate the legitimacy of the prescription.'' *Id.* She testified that the National Provider Identification website showed physicians' specialties and helped the pharmacist evaluate prescriptions. *Id.* at 297–98, 345. She also testified that a pharmacist should routinely check the status of a controlled substance prescriber's State medical license and DEA registration. *Id.* at 301, 345.

Regarding the patient, Dr. Gordon stated that a chain pharmacy's computer would show if the customer had filled the prescription at another branch, and Florida's prescription drug monitoring program, E–FORCSE, would show what other controlled substances the customer had received from other pharmacies or doctors. *Id.* at 301–02, 345. She explained that E–FORCSE ''gives you the date . . . [the prescription] was written, the date it was filled, the name of the drug, the quantity, the doctor, the pharmacy, and how the patron paid for the medication'' which would tell the pharmacy ''if the patient was either doctor-hopping or pharmacy-hopping.'' *Id.* at 302.

Dr. Gordon testified about the importance of the customer's payment method, explaining that ''[a] lot of drug-seekers only want to pay for their medications in cash because . . . the insurance company will actually create your red flag for you to say if a prescription is refilled too soon, which means they've . . . obtained a prescription from another pharmacy.'' *Id.* at 297; *see also id.* at 298–99.

Dr. Gordon stated that what constituted a red flag ''changed all the time. It's like the drug community gets smarter.'' *Id.* at 303. She indicated that, when confronted with a red flag, a pharmacist would make further inquiries of the doctor, the customer, or the caregiver. *Id.* at 305. She noted that ''some of the red flags really can't be resolved, especially if you see patterns.'' *Id.* at 304–05. She testified that, if she could not resolve a prescription's red flags, she would not fill it. *Id.* at 305. She would either give the prescription back to the customer or, with the doctor's authorization, shred it. *Id.*

Dr. Gordon testified that, although there is no codified Florida rule specifying where a pharmacist must document resolution of a red flag, the standard practice in Florida was for the resolution of a red flag to be documented on the front of the prescription. *Id.* at 346–48. As a pharmacist-in-charge, she would check the face of the prescription to see if a subordinate pharmacist resolved a concern about the prescription. *Id.* at 351–52. She testified that any notes about the patient, as opposed to notes about a specific prescription, would appear in the patient profile. *Id.* at 350, 352.

Mr. Fisher testified that red flags ''are part of the pharmacist's responsibility.'' *Id.* at 616. Regarding what a pharmacist should do to resolve a red flag, Mr. Fisher first stated that the pharmacist should ''[c]heck the state E–FORCSE system to see if this person is a doctor-shopper.'' *Id.* at 604; *see also id.* at 608–09. He also stated that he would check the doctor's license to make sure it was valid, check if the customer had any history in the pharmacy of previous prescriptions being filled, and ''then talk to the doctor and see . . . what the—maybe the diagnosis is on this prescription.'' *Id.* at 604. When asked ''where would you see if these things were done, if they were documented,'' Mr. Fisher responded that the documentation could be written on the back of the prescription, in a notebook, in a logbook ''of any kind'' or ''whatever system they want to be put into effect.'' *Id.* at. 604–05. When asked whether the red flags ''would have to be documented someplace,'' Mr. Fisher responded affirmatively. *Id.* at 605; *see also id.* at 598–600 (Mr. Fisher's testimony that a pharmacist needs to resolve a red flag before dispensing the prescription, and resolution of the red flag must be documented somewhere.). Mr. Fisher testified that he did not know if the red flags he had identified on the prescriptions in the Government's exhibit had been resolved. *Id.* at 605; *see also id.* at 766 (Mr. Fisher's testimony that the prescriptions contained no notations evidencing that Respondent had resolved any of their red flags.).

The testimony of Respondent's Owner and PIC about diversion and what a pharmacy needed to do when presented with a controlled substance prescription was largely inconsistent with the testimony of Dr. Gordon and Mr. Fisher. Further, her testimony admitted that Respondent did not even follow the steps she described. It also, though, evidenced her knowledge and awareness that schedule II controlled substances were prone to diversion. For example, Respondent's Owner and PIC testified that ''[e]ach prescription it comes with chronic nonmalignant pain, has to be addressed as a highly risky—high risk medication. It has to be addressed with proper steps.'' *Id.* at 1129. Also regarding prescriptions for

[8] The DI also addressed the standard of practice. For example, he testified that his investigation identified issues concerning Respondent's compliance with the Controlled Substances Act and its implementing regulations. *See, e.g.,* Tr. 51, 54, 68, 71, 73, 74–75, 76–77, 99, 102, and 124.

schedule II controlled substances, she testified that ''on schedule II, each time it's presented it has to be—there's a lot of diversion.'' *Id.* at 1116. Specifically, Respondent's Owner and PIC identified Dilaudid 8mg. and Dilaudid 4 mg. prescriptions as ''highly risky.'' *Id.* at 1129; GX 12, at 5 and 7. When asked whether she recalled identifying ''any red flags'' when she filled a prescription for 174 tablets of Dilaudid 8 mg., Respondent's Owner and PIC responded that ''the major red flag of that prescription is for Schedule II medication, Dilaudid, 8 milligram. Also, prescribed on the quantities.'' Tr. 880–81.

According to Respondent's Owner and PIC, Respondent, and she as its PIC, needed to implement specific procedures unique to schedule II prescriptions due to the diversion associated with them. Her ''specific procedures'' consisted of a series of steps. *See id.* at 883–897 (using as an example GX 19, at 1). First, according to her testimony, she would ''talk to doctor on each [schedule II] prescription'' because ''there's a lot of diversion'' of schedule II controlled substances. *Id.* at 1116. Her testimony underlined the importance of talking to the prescribing doctor ''each time'' a schedule II prescription was presented by comparing the diversion of schedule II controlled substances with schedule III controlled substances:

> When all the schedule II prescriptions—I would talk to doctor on each prescription. On schedule III I would talk to doctor when there's initial prescriptions for it. But there's not that much schedule III situations. But on schedule II, each time it's presented it has to be—there's a lot of diversion.

Id.

Respondent's Owner and PIC described the conversation she had regarding the first prescription in GX 19, a prescription for 174 tablets of Dilaudid 8 mg. She stated that she called the office and asked to speak with the doctor. ''[H]onestly,'' she admitted, the ''doctor not always were available. But I spoke with the manager.'' *Id.* at 895. The ''honest'' admission of Respondent's Owner and PIC that she did not always speak with the prescribing doctor about a schedule II prescription contradicted other testimony she gave that she always spoke with the doctor regarding such prescriptions. *See, e.g., id.* at 1116.

Respondent's Owner and PIC continued to describe her conversation with the doctor's office. She testified that she ''would ask a manager to tell me more what was happening with the patient; was he seen on that day?'' *Id.* at 895.

> So if the patient was seen on the day that the prescription was issued, and the quantity—the reason why he had prescribed that quantity this month? And they would tell me that he has diagnosis in the proper—that doctor has a note in his chart to consider alternative treatments . . . . I would ask them, What did you prescribe today for that patient? . . . So they have to spell out what did they write this day, the quantity, to make sure there is no alteration on the way—there is no forging of the prescription. Then I would say, Is it okay for me to fill it? And they would give me approval to fill.

Id. at 896. Respondent's Owner and PIC testified that after these steps, including ''verify[ing] all the information, the address, the phone number, the complete date of birth, the doctor DEA number on the front, the quantities and the medications, the signature . . . [a]nd that medication was hand signed by the doctor,'' she filled the prescription. *Id.* at 897.

Despite her testimony and her stated awareness of the high risk nature of schedule II prescriptions and the risk of diversion associated with them, including the ''red flag'' of schedule II controlled substances being prescribed in large quantities, Respondent's Owner and PIC again admitted that she did not always follow her first step. Instead, she testified that she would have to ''go one-by-one each [schedule II] prescription'' before answering questions about whether or not she spoke with the doctor about any of them. *Id.* at 1137; *see also id.* at 1133–39. Thus, Respondent's Owner and PIC admitted more than once to not implementing her own requirement of speaking to the prescriber of every schedule II prescription.[9] In making this admission, she did not explain why she deviated from her own procedure. Nor did she justify that deviation.

Second, Respondent's Owner and PIC testified that she made sure the prescriber's State medical license was active, and the prescription was within the scope of the prescriber's DEA registration. Regarding a prescriber's State license, she testified that she would make sure that ''the doctor actually licensed in the State of Florida to prescribe controlled substances.'' [10] *Id.* at 894. Regarding a DEA registration, she testified that she ''was instructed . . . [by DEA] to go on the website—diversion site and verify the physician DEA number'' and ''[s]ince that instruction I religiously did that.'' *Id.* at 892; *see also id.* at 1131–32 (Pharmacies should ''make sure that . . . [the] doctor[ ] . . . [was] legitimate, I mean, . . . has a DEA license.'').

According to Respondent's Owner and PIC, ''[t]he decision of prescribing lies upon the physicians and the state who govern his practice.'' *Id.* at 1108. She elaborated, asserting that a pharmacy must fill a controlled substance prescription issued by a practitioner with the appropriate State and DEA licenses unless there is ''a very good reason not to fill it.'' *Id.* at 1168.

> The doctor tells you it's okay to fill, just by the filling—the filling prescription. When the patient comes to the office—to the doctor, he's seen by the doctor. Doctor asking how many pills you have, what are you taking? Then he decide to issue another prescription. Once he issue the prescription, it's an order for a pharmacy—keep in mind, we still working in the medical system here. The prescription is an order for the pharmacist to fill. For me not to fill that prescription, I have to have a very good reason not to fill it, because it's an order from the doctor to me to fill that prescription for that patient.

Id. at 1167–68. Respondent's Owner and PIC did not explain what she meant by ''a very good reason not to fill it.'' Nevertheless, I found in the record evidence of numerous controlled substance prescriptions that Respondent's Owner and PIC admitted Respondent filled without having documented the existence or resolution of any of the red flags of diversion identified in the testimony of Dr. Gordon and Mr. Fisher.

Third, Respondent's Owner and PIC testified that her ''main concern would be if this patient was checked and have relation with the doctor.'' *Id.* at 885. In the context of GX 19, the six Dilaudid

[9] In the context of describing the uses of the ''approved'' stamp and the name/telephone number stamp, Respondent's Owner and PIC also testified she verified that the prescriptions were issued within the scope of the prescriber's practice when she talked ''to the [prescriber's] office.'' Tr. 1132.

> [The stamps mean that] I talk to the office and I spoke with the patient. And I fill out documentation appropriate for—I verified—and most important, I verified this prescription was issued within scope of the doctor's practice. The doctor was allowed to treat chronic pain. It was the scope of his practice. He made the decision to write this prescription according to his practice.

Id. at 1132–33; *contra id.* at 1225–27. It is noteworthy that Respondent's quoted testimony concerned her calling ''the office'' as opposed to her ''speak[ing] with the doctor.'' *Id.* at 1138, 1132, respectively. It was the further admission of the Respondent's Owner and PIC that she did not always ''speak with the doctor'' as she had testified was appropriate due to the high risk nature of schedule II prescriptions and the risk of diversion associated with them. Given her testimony that she did not necessarily speak with the ''doctor'' about schedule II prescriptions, it also raises the question of whether Respondent's Owner and PIC actually ''verified'' that prescriptions were ''issued within [the] scope of the doctor's practice.'' *Id.* at 1133.

[10] Regarding the doctor who prescribed the first prescription in GX 19, Respondent's Owner and PIC testified that he was ''licensed in the State of Florida to prescribe medication for chronic pain management.'' Tr. 894–95. ''He was actually special trained in the pain management,'' she stated. *Id.* at 895.

8 mg. prescriptions the Show Cause Order alleged that Respondent did not report to E–FORCSE, Respondent's Owner and PIC testified about how she would establish the requisite doctor-patient relationship.[11] She testified that she would ''ask . . . [the customers] to fill out the ['Pain Management Physician-Patient Relationship Affidavit,'' hereinafter, Relationship Affidavit] form, and sign . . . written affidavit'' and ''then I would call to the office and start questioning the office about whether this—to substantiate the truth about it.'' *Id.* at 885. She testified that the Relationship Affidavit was to be completed the ''first time only'' that a customer came to Respondent pharmacy. *Id.* at 1016. She testified as to what the Relationship Affidavit would ''do to alleviate . . . [her] concerns that this prescription was not diverted.'' *Id.* at 887. She stated that ''the major red flag at that time'' was ''whether patient actually be seen by doctor, not just come to the office and have the prescription ready for them.'' *Id.* She continued by stating that ''[i]t was not about . . . whether this prescription written for Dilaudid or prescription written for—or quantities, it was a concern, but not the main concern.'' *Id.* According to Respondent's Owner and PIC, ''[t]he main concern—the problem at the time was the patient going and the doctor's [sic] are not properly executing the practice that's reflected in the medical practice law.'' [12] *Id.* Her testimony continued:

''So we would check, . . . would require for the patient has issues . . . [a]nd she has a medical history and there is a logical connection between her and the doctor, there's relationship, it's not just to get a prescription for major narcotics.'' *Id.* at 887–88. According to Respondent's Owner and PIC, the Relationship Affidavit ''resolve[d]'' these concerns. *Id.* at 889. She stated, ''That form would resolve . . . that he's not attempted to fraudulently—to illegally get access to the controlled pain medication.'' *Id.; see also id.* at 1149.[13]

The Relationship Affidavit was a one-page form with Respondent's name at the top, and name and contact information at the bottom. *See, e.g.,* Respondent Exhibit (hereinafter, RX) 5, at 2. Text on the Relationship Affidavit stated that individuals ''who are receiving medications to treat chronic intractable pain are required to be seen and examined by the physician on the same date the prescription for pain has been issued.'' *Id.* According to the Relationship Affidavit, a customer had to sign it before Respondent would fill a prescription. The Relationship Affidavit stated that:

> In order for prescriptions to be filled by . . . [Respondent] patients are required to sign this affidavit to ensure the following elements exist. By affirming and satisfying the conditions mentioned below . . . [Respondent] assumes that the prescription is valid pursuant to a legal Physician Patient Relationship.[14]

Id. Notably, Respondent stated its ''assumption'' that a prescription was valid when customers affirmed and satisfied the Relationship Affidavit's ''conditions mentioned below,'' presumably the ''elements.'' *Id.*

Also of note was the ''Warning'' on the Relationship Affidavit: ''In the event . . . [Respondent] has reasons to believe that prescriptions for pain medication have been prescribed and/or received fraudulently we have a legal responsibility to report such activity and individuals to local and federal authorities. These authorities will handle such individual in the manner prescribed by law.'' *Id.* Respondent's Owner and PIC discussed the Relationship Affidavit's ''warning'' in her testimony. She stated that ''it was actually warning that's in the case if I find something which would jeopardize or compromise my belief in the validity of the prescription, we have responsibility to report such activity to local and federal police. And the patient knew about it.'' Tr. 888. She testified that, ''I would say if I . . . find something . . .—. . . like Your Honor giving me the benefit of the doubt, I would give the patient the benefit of the doubt. If I find out that you have a problem, it's fraudulent, I will report you. So you better not start that process.'' *Id.*

In sum, Respondent's Owner and PIC testified that (1) she assumed the legality of a prescription based on customers' completion of the Relationship Affidavit, (2) she gave customers ''the benefit of the doubt'' concerning their completion of the Relationship Affidavit, and (3) she warned customers to ''better not start'' the process of her ''find[ing] out'' that a prescription is ''fraudulent.'' She did not explain why it was reasonable to expect drug seekers to understand what they read, let alone be honest and

[11] The six Dilaudid 8 mg. prescriptions in GX 19 were written by the same doctor for six different customers in the July-August-November 2012 time period. Specifically, the six Dilaudid 8 mg. prescriptions were for: (1) 174 tablets for a customer from Pompano Beach at a cash price of $870; (2) 96 tablets for a customer from Fort Lauderdale at a cash price of $480; (3) 150 tablets for a customer from Miami at a cash price of $750; (4) 180 tablets for a customer from Pompano Beach at a cash price of $900; (5) 168 tablets for a customer from Pompano Beach at a cash price of $840; and (6) 168 tablets for a customer from Coral Springs at a cash price of $840. Respondent's Owner and PIC had identified the first prescription for 174 Dilaudid 8 mg. tablets as showing a ''major red flag'' because it was for a schedule II medication and for 174 tablets. Tr. 881.

[12] Apparently, the ''medical practice law'' Respondent's Owner and PIC referenced was the ''Ryan Act.'' She testified that the purpose of the Relationship Affidavit was to ''establish the patient-doctor relationships and the legitimate ill of the patients'' in compliance with the ''Ryan Act.'' Tr. 1015–16. According to Respondent's Owner and PIC, ''by that law is rely if the patient actually has a logical relation with the doctor.'' *Id.* at 1016.

She testified further about the ''state statute and federal statutes'': ''For . . . me was most important thing was to go to references of the state statute and federal statutes. So federal statute says, has to be clear relationship to establish the legitimate medical purpose. You rely on the doctors to establish the appropriateness of therapies. It's not on the pharmacy to establish the appropriateness of pharmacy. . . . , that's how I understood the law. The pharmacist is just to establish that the prescription was valid—the validity of prescription based that the prescription as a requirement, and the doctor allowed to prescribe, and the doctor actually see the patients. Unless there's some issues that arise with that, like, for instance, if the patient is—not that the doctor overly treated or the patient has issues — or the doctor has issues with the patient, or I feel something suspicious, then I call the doctors. . . . Because standards only tell you that you have to actually establish the patient is not coming here for wrong reasons. That's only what the statute says. The statute says if the patient come for wrong reason you don't fill it. If the patient come from appropriate reason, you fill.'' *Id.* at 1018–19, 1021.

[13] She also testified that she interacted with Respondent's customers by asking them questions.

> I would talk to the patient, ask him about why did he come to my pharmacy? Where did he fill before? What is the reason he doesn't use previous pharmacy? And also, what is the reason for—how long has he been on that medication? And whether he was checked by—and then I would ask him to look at the affidavit form and sign the affidavit form for the patient. . . . I have not written those questions out. But they would be the same questions that I would ask to establish . . . the history of the patient.

Tr. 882–83, 884. When asked whether she would ''essentially'' ask every customer the same questions, she responded affirmatively and identified other questions she asked. *Id.* at 884–85. Respondent's Owner and PIC, however, did not explain the purpose of these questions given her testimony that the signed Relationship Affidavits ''resolved'' the issue of whether customers were attempting to fraudulently or illegally get access to controlled pain medication.

[14] The referenced ''elements'' apparently were listed in the last section of the form, which stated: ''By signing below, I _____agree that the following elements of a legal Pain Management Physician-Patient Relationship exist: 1. There is no fraudulent representation to illegally gain access to controlled pain medications 2. There are no multiple doctors ''doctor shopping'' treating me for pain management 3. A physician has seen and conducted a physical examination 4. A physician has reviewed the patient's medical history 5. The patient has a medical complaint 6. MRI has been conducted within 24 months of the prescription 7. There is a logical correlation between the following a. Medical Complaint b. Medical History c. Physical Exam d. Prescriptions. _____Patient Name __ _____Date of Birth _____Signature _____ Date.'' RX 5, at 2.

truthful as they completed and signed the Relationship Affidavit. She also did not explain how giving customers ''the benefit of the doubt'' was consistent with the requirements of the corresponding responsibility regulation. 21 CFR 1306.04(a).

Fourth, Respondent's Owner and PIC testified that she ''validate[d] that . . . it's a signature . . . not rubber signed, . . . [the prescription] was actually signed by the physician.'' Tr. 892; *see also id.* at 1116–17 (''[T]he issue at the time was not the strength. The issue they were looking for was actually the prescription legitimate . . . , it's not fake . . . . Make sure the doctor actually issue it. He didn't buy it from—on the side, on the street. He didn't get his prescription from other sources, and actually get it from the doctor.'').

Respondent's Owner and PIC testified that the concept of ''red flags'' stood in the way of getting medicine to deserving individuals. She testified that, ''by strictly following these red flags, it will prevent legitimate patient from obtaining the medication.'' *Id.* at 1108. She testified that she decided not to fill prescriptions for schedule II controlled substances altogether because ''following the red flags will prevent me from filling the . . . prescriptions for legitimate medical purposes . . . and be unfair to the patient.'' *Id.*[15]

Before the time she testified to having decided not to fill schedule II prescriptions, Respondent's Owner and PIC testified that her ''liability was to prevent the diversion the best that I can, considering it was very, very little guidelines was provided to us at that time. We tried to update it, it was confusing, the red flags was changing.'' *Id.* at 890. Apparently based on the individual perspective of Respondent's Owner and PIC concerning what pharmacies should do, Respondent designed its own forms ''to support the establishment of legitimate medical purpose to fill'' prescriptions. *Id.* at 981.[16]

[15] She added, ''Except two instances when I had this overstock and the patient was patient of mine for other reasons, we decide to fill. . . . And I don't purchase them [schedule II controlled substances].'' Tr. 1108–09.

[16] *See, e.g.,* RX 6 and RX 10. These exhibits include various items of documentation with respect to fourteen customers which Respondent represented were obtained to determine the validity of the prescriptions. Tr. 824. Each of the exhibits contains a copy of each customer's driver's license, and copies of the Pain Management Physician-Patient Relationship Affidavit for 11 of the customers. There are also copies of printouts from the DEA registration web page with respect to five of the customers. RX 6, at 3, 18, 35; RX 10, at 6, 12.

There are also copies of a ''CII/CIII Rx Verification Form'' for four customers in these two exhibits. This was a one-page form on which Respondent would document the date and time of a phone call to a prescriber's office and list the name of the person providing the information. *See* RX 6, at 6. The form was then used to document ''yes'' or ''no'' as to whether: (1) The prescription was written by the prescriber, (2) whether the patient was seen by the prescriber at the prescriber's office, and (3) whether the patient was physically examined by the prescriber, after which the form provided a space for writing the diagnosis. *Id.* The form then included boxes to check whether the prescription was approved or denied, three lines for notes, and a line for the pharmacist to initial. While Respondent's Owner and PIC testified that she used this one-page form ''[i]nstead of writing scribbles on the back of the prescription,'' Tr. 1002, and on each of the four forms, checked ''yes'' with respect to each question, listed diagnoses codes, and indicated that each prescription was ''approve[d],'' none of the forms contains additional notes and only two of the forms were initialed by the pharmacist. *See* RX 6, at 6, 10, 21, 29.

Finally, the exhibits contain copies of E–FORCSE printouts for five of the fourteen patients. *See* RX 6, at 4, 7, 17, 20, 30. Of note, three E–FORSCE printouts were not obtained until the middle of April 2013, *see id.* at 4, 7, 30, one was obtained on May 13, 2013, *see id.* at 20, and one was obtained on August 23, 2013. *Id.* at 17. As found above, the DI served the Notice of Inspection on Respondent on April 11, 2013.

Respondent's Owner and PIC offered multiple comments about these timing issues: She ''would not necessarily print out every time,'' ''the record that I kept in the file obviously was the latest one,'' and ''every time I check, I would check with the PDMP—with the PMP report.'' *Id.* at 994. When questioned further by the CALJ about the E–FORCSE printout for patient G.A., Respondent's Owner and PIC testified that the State of Florida ''would not give us the access'' and ''for a while I relied on the physician offices to provide me that information. I would call the physician to run the PMP report until I actually were able to get the access myself . . . .'' *Id.* at 996. Respondent's Owner and PIC stated that she got access to E–FORCSE ''sometime during 2013.'' *Id.* at 997–98.

Respondent's Owner and PIC testified that this information was important to her because it told her ''that this patient . . . was seen by the same doctor for over . . . [a] seven-month period. And so this patient requires therapy. And the doctor was a very local doctor . . . [a]nd he was going only to my pharmacy. So [the customer] relied on me to fill her prescription.'' *Id.* at 986–87. Yet, with respect to patient S.B., her E–FORCSE printout showed that she had filled her controlled substance prescriptions at three different pharmacies as well as through a mail order service, RX 6, at 7, and with respect to patient D.K., his E–FORSCE printout showed that he had filled his prescriptions for both oxycodone and hydromorphone at four pharmacies in addition to Respondent. *Id.* at 20.

While Respondent's Owner and PIC also testified that G.A.'s ''established relationship'' with the doctor was ''one of the thing that you use—one of the tools that you use with—to establish legitimate medical purpose . . . [because] you can fairly assume that the patients are being taken [sic] by the physician properly,'' *id.* at 988–89, Dr. Gordon testified that ''[t]he first . . . [red flag] that is really bold to me is the doctor. I've worked on other cases, and I've seen this doctor [R.T.] write lots of illegitimate prescriptions.'' *Id.* at 360–61. Notably, each of the seven prescriptions listed on G.A.'s E–FORCSE printout was written by Dr. R.T., and each prescription was for 150 or 160 dosage units of hydromorphone 8 mg. RX 6, at 4. Dr. R.T. also wrote five of the prescriptions listed on S.B.'s E–FORCSE printout (including all four hydromorphone prescriptions, three of these being for 160 dosage units or more of the 8mg. dosage), *see* RX 6, at 7, and all four hydromorphone prescriptions listed on T.S.'s E–FORCSE printout, each of these being for 150 or more dosage units of the 8 mg. dosage. *Id.* at 30.

Respondent submitted a further exhibit, RX 11, which contained documentation related to other customers. Respondent's Owner & PIC testified that this exhibit was ''generated . . . [t]o show in good faith that we are actually conducting best practices. . . . That we document good practice when we fill the patient—we're filling pain medication for sick patient.'' Tr. 1173–74. The exhibit consist of a photocopy of the driver's licenses of three of the six customers for whom the prescriptions in GX 14 were written; a Relationship Affidavit signed by two of the six customers; and a one page E–FORCSE printout dated months after the corresponding prescriptions in GX 14 were written and filled.

I afford Dr. Gordon's statement of the pharmacy's/pharmacist's standard of practice regarding controlled substances controlling weight in this proceeding. I find that the requirements incumbent on pharmacies/pharmacists espoused by Respondent's Owner and PIC are only entitled to credit as I determine what actions Respondent took and Respondent's suitability to be a registrant. Essentially, the views of Respondent's Owner and PIC about a pharmacy's/pharmacist's obligations with respect to dispensing controlled substances reflect an abdication of her legal responsibility to a prescriber with a valid State license and whose DEA registration covered the schedule of the prescribed medication when the customer simply signed the Relationship Affidavit. Significant aspects of the pharmacy's/pharmacist's obligations espoused by Respondent's Owner and PIC were contrary to statute, regulation, and Agency precedent. I categorically reject them.

Allegations That Respondent Failed To Exercise Its Corresponding Responsibility When It Dispensed Controlled Substances Pursuant to Prescriptions Not Issued in the Usual Course of Professional Practice or for a Legitimate Medical Purpose

The Show Cause Order alleged that Respondent failed to exercise its corresponding responsibility under 21 CFR 1306.04(a) as evidenced by its having dispensed controlled substances without resolving ''red flags of diversion'' that were present. The Government alleged seven ''red flags of diversion'' in the Show Cause Order: Prescriptions presented by customers who traveled long distances to Respondent; multiple customers filling prescriptions written by the same prescriber, for the same drugs, in the same quantities, on the same day; multiple customers from the same address coming to Respondent at the same time with prescriptions from the same doctor for the same drug and

strength; customers presenting two prescriptions, both for the same immediate release controlled substance, but for different strengths; customers presenting prescriptions with a combination of an opiate and a benzodiazepine or ''drug cocktail'' popular among drug abusers; customers paying for their prescriptions with cash, when other red flags of diversion were present; and customers presenting new prescriptions for controlled substances when they should not have finished their previous prescription for that drug (''early fills'' or ''early refills'').

Prescriptions Presented by Customers Who Traveled Long Distances to Respondent

The Government alleged that customers traveling long distances to fill their prescriptions was a ''red flag of diversion,'' and that Respondent dispensed controlled substances to customers who traveled long round-trip distances, from their homes, to the prescribers, to Respondent, and then back home, without addressing or resolving the distance red flags. To support this allegation, the Government submitted 13 such prescriptions filled by Respondent. *See* GX 8/8a; [17] *see also* Tr. 53 (DI testifying that GX 8 contained fair and accurate copies of the documents Respondent provided to him). Of the 13 prescriptions in GX 8/8a, nine were for Dilaudid 8mg.[18]

The DI testified that he initially identified the prescriptions in GX 8/8a as ''problematic'' because they showed ''[p]eople traveling long distance[s] to the pharmacy.'' Tr. 50–51. The parties stipulated to sets of round-trip (by road) miles within the State of Florida. ALJX 20, at 1–2. Those sets of round-trip miles corresponded to miles traveled by customers for whom Respondent filled prescriptions listed in the Show Cause Order and included in GX 8/8a. In sum, the round-trips ranged from 184 miles to 661 miles. I make the following findings:

- One bottle of Buprenorphine Hydrochloride 0.3 mg/mL issued to FW of Deltona by Dr. AF of Hallandale Beach. The parties stipulated that the distance by road from Deltona to Hallandale Beach and back to Deltona is 504 miles.
- 150 tables of Dilaudid 8 mg. issued to GA of Fort Pierce by Dr. RT of Miami. The parties stipulated that the distance by road from Fort Pierce to Miami to Hallandale Beach and back to Fort Pierce is 261 miles.
- 168 tablets of Dilaudid 8 mg. issued to SB of Fort Pierce by Dr. RT of Miami. The parties stipulated that the distance by road from Fort Pierce to Miami to Hallandale Beach and back to Fort Pierce is 261 miles.
- 150 tablets of Dilaudid 8 mg. issued to CW of Fort Pierce by Dr. RT of Miami. The parties stipulated that the distance by road from Fort Pierce to Miami to Hallandale Beach and back to Fort Pierce is 261 miles.
- One bottle of Buprenorphine Hydrochloride 0.3 mg/mL issued to MW of Hobe Sound by Dr. AF of Hallandale Beach. The parties stipulated that the distance by road from Hobe Sound to Hallandale Beach and back to Hobe Sound is 166 miles.
- 140 tablets of Dilaudid 8 mg. issued to DK of Jensen Beach by Dr. NG of Hallandale Beach. The parties stipulated that the distance by road from Jensen Beach to Hallandale Beach and back to Jensen Beach is 195 miles.
- 56 tablets of Dilaudid 8 mg. issued to BS of Port St. Lucie by Dr. ML of Hollywood. The parties stipulated that the distance from Port Saint Lucie to Hollywood to Hallandale Beach and back to Port Saint Lucie is 201 miles.
- 150 tablets of Dilaudid 8 mg. issued to TS of Sebastian by Dr. RT of Miami. The parties stipulated that the distance from Sebastian to Miami to Hallandale Beach and back to Sebastian is 318 miles.
- One bottle of testosterone cypionate 210 mg/mL issued to RV of Sebring by Dr. AF of Hallandale Beach. The parties stipulated that the distance by road from Sebring to Hallandale Beach and back to Sebring is 312 miles.
- 112 tablets of Dilaudid 8 mg. issued to BR of St. Pete Beach by Dr. DJ of Deerfield Beach. The parties stipulated that the distance by road from Saint Pete Beach to Deerfield Beach to Hallandale Beach and back to Saint Pete Beach is 538 miles.
- 112 tablets of Dilaudid 8 mg. issued to WP of Stuart by Dr. GF of Pembroke Park. The parties stipulated that the distance by road from Stuart to Pembroke Park to Hallandale Beach and back to Stuart is 184 miles.

GX 8/8a.

Dr. Gordon testified that the long distances the customers traveled in connection with obtaining and filling all of the prescriptions in GX 8/8a were red flags. Tr. 353–62, 365, 368, 370, 372, 374–77, 380–82, 384–85, 387–92. She explained: ''Pharmacies that dispense prescriptions that are not for legitimate medical purpose, they have a tendency to develop a reputation. And then the other drug seekers find out about it, and they'll go to any distance to get what they need for their—to satisfy their addiction.'' *Id.* at 355.

For 12 of the 13 prescriptions, Dr. Gordon was asked to look for notations on the prescriptions evidencing that the filling pharmacist had taken steps to attempt to resolve the prescriptions' red flags, or she looked for notations herself. She found none. *Id.* at 356, 364, 369, 371, 373, 374, 377, 381–82, 384, 387–88, 389–90, 391. On cross examination, Dr. Gordon testified to the absence of documentation on the other prescription. *Id.* at 494. Dr. Gordon was asked whether the distance red flags on 12 of the prescriptions were resolvable. She testified they were not. *Id.* at 355, 367, 369, 371, 373, 374, 377–78, 382, 384, 388, 390, 391. She was not asked about the resolvability of the distance red flag on the other prescription, but said that its red flag had not been ''resolved.'' *Id.* at 364. Of that prescription, she also stated: ''That's a very long distance [261 miles from Fort Pierce to Miami to Hallandale Beach to Fort Pierce] for somebody that has pain to be driving—sitting in a car for that long to obtain Dilaudid 8, which is the highest milligrams it comes in.'' *Id.* at 361.

In sum, Dr. Gordon concluded that none of the 13 prescriptions was legitimate and that the pharmacist who filled the prescriptions had not exercised her corresponding responsibility to make sure the prescriptions were issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 357, 364–65, 367–78, 370, 371, 373, 375, 378, 382, 385, 388, 390, 391–92.

Mr. Fisher's testimony about whether distance was a red flag was inconsistent. At one point, Mr. Fisher testified that the prescriptions included in GX 8 evidenced distance red flags, and that he believed they could have been resolved. *Id.* at 596–97. ''Usually,'' he stated, ''a prescription is going to be filled close to where the physician is or close to where the person lives.'' *Id.* at 597; *see also id. at* 601 (Mr. Fisher's testimony that Fort Pierce is a ''distance from the area.''). At another point, however, Mr. Fisher appeared to testify that distance was a red flag only when Respondent was asked to fill prescriptions for intrastate customers, as opposed to out-of-state customers, even though out-of-state customers would be located further from Respondent than intrastate customers. *Id.* at 745. The CALJ sought clarification, asking: ''[I]f a person was a long distance but they were in Florida, that would be a red flag. But if a person was living a long distance . . . in Georgia, that's not a red flag? . . . So what's your final answer; that it is a distance red flag or it's not.'' *Id.* at 745–46. Mr. Fisher responded: ''It's a distance red flag, which is

[17] The materials in GX 8 and GX 8a, 13 prescriptions and corresponding prescription labels, were identical. There were driver's licenses associated with nine of the 13 prescriptions/prescription labels. GX 8a contained better copies of most of the driver's licenses than GX 8. Tr. 793. Those better copies were added to GX 8 as GX 8a during the hearing on June 11, 2015. *Id.* at 794.

[18] The other four were for buprenorphine (2), Xanax, and testosterone.

resolvable.'' [19] *Id.* at 746; *see also id.* at 754. Thus, Mr. Fisher eventually agreed with the testimony of the Government's expert that customers who traveled long distances to fill controlled substance prescriptions were red flags.

Respondent's Owner and PIC admitted that Respondent filled the prescriptions in GX 8/8a. *Id.* at 979. She testified that it was not a red flag ''by itself'' for customers within the State of Florida to come over 100 miles from their homes to fill a controlled substance prescription at her pharmacy. *Id.* at 1028; *see also id.* at 1021–22 (In 2012 and 2013, ''the fact that a patient traveled a long distance . . . was not a major red flag, no.'' There were ''other red flags that I was concentrating on.'').

Respondent submitted CII/CIII Rx Verification Forms for four of the 13 prescriptions in GX 8/8a.[20] RX 6, at 6, 10, 21, and 29. According to Respondent's Owner and PIC, these four forms were part of Respondent's ''patient files,'' the ''documents—prescriptions, prescription labels, and corresponding documents which assisted me to resolve the red flags made by . . . [Respondent] and kept in the regular course of business.'' Tr. 824–25. She asserted that the CII/CIII Rx Verification Form was a ''step ahead,'' and ''above and beyond'' the ''general practice of most of the pharmacies in the State of Florida.'' *Id.* at 1001. She further testified that ''[i]nstead of writing scribbles on the back of the prescription, . . . you have, more or less, here on form.'' *Id.* at 1002.

While the forms contained diagnosis codes, only two of the forms were initialed by the pharmacist, and none of the forms contained any notes explaining how Respondent's pharmacist resolved whatever prompted her to call the prescriber even though the form contained three lines for this purpose. RX 6, at 6, 10, 21, 29. Regarding the incompletions, Respondent's Owner and PIC testified both that: (1) ''Sometime we get busy, I know the office is called'' and ''I did look at the paper, because I would not fill the prescription unless I look at the paper;'' and (2) ''[i]f it's a routine patient who comes—who's been already established by me, . . . same prescription that's filled before, we would just—probably would be a little bit more routine in the call.'' *Id.* at 1004, 1005–06 (respectively). This testimony of Respondent's Owner and PIC was inconsistent with her testimony that ''When all the schedule II prescriptions—I would talk to doctor on each prescription.'' *Id.* at 1116.

Respondent's Owner and PIC stated that she did not document all her conversations with doctors because ''it's my kind of internal—I did it to make a proper, sound clinical judgment whether this patient appropriate to get . . . these filled prescriptions.'' *Id.* at 1010. Notably, she stated that, ''I do accept responsibility for that and I don't do it any more. Now I document every little thing that it's concerned to the conversation and the dispensing of controlled substances.'' *Id.* She also said that, ''again, like I said, I accept responsibility for that and I improve my practice now. I do document everything that's possible to. However, like I said, this happens all the time.'' *Id.* at 1011. She added that ''we cannot have 100 percent even if it's red flag. . . . You try to do the best that you can, but sometimes it happens.'' *Id.* at 1012.

The CALJ noted that ''it seems to me that on the form that you're giving me, the place that that should have been noted is down at the bottom where it says 'notes,' and also the pharmacist's initials if you had made the call.'' [21] *Id.* at 1013. Respondent's Owner and PIC, correlating the exercise of her corresponding responsibility with her practice in school of ''taking very little notes,'' admitted that ''I do have a tendency not to take too many notes'' and confirmed that ''I should learn how to take better notes.'' *Id.* at 1014. She said that she ''took remedial steps for it'' by ''hir[ing] new person who actually specifically look if I leaving the notes . . . and everything is properly taken right now.'' *Id.* Further, Respondent's Owner and PIC admitted that red flags identified from E–FORCSE were not noted, nor was their resolution documented, on the corresponding CII/CIII Rx Verification Form. *Id.* at 1010.

Based on the testimony of both Dr. Gordon and Mr. Fisher, I reject the testimony of Respondent's Owner and PIC that ''the fact that a patient traveled a long distance . . . was not a major red flag.'' I further find not credible the testimony of Respondent's Owner and PIC that she did not consider a controlled substance prescription presented by a customer who travelled a long distance to be a red flag and conclude the exact opposite to be the case.

I find that each of the prescriptions in GX 8/8a raised at least one red flag that required resolution in that customers traveled long distances to obtain controlled substances, including schedule II controlled substances that even Respondent's Owner and PIC admitted were ''highly risky'' and subject to ''a lot of diversion.'' *Id.* at 1129, 1116, respectively. I find that Respondent admitted filling the prescriptions in GX 8/8a. Based on the testimony of both Dr. Gordon and Mr. Fisher, I find that, at a minimum, the distances the patients traveled to present the prescriptions in GX 8/8a required Respondent to resolve the distance red flags before dispensing controlled substances. I further find that Respondent did not address or resolve the red flags before filling the prescriptions in GX 8/8a.

Multiple Customers Filling Prescriptions Written by the Same Prescriber, for the Same Drugs, in the Same Quantities, on the Same Day

The Government alleged that prescriptions written by the same prescriber, for the same drugs, in the same quantities, and on the same day was a ''red flag of diversion,'' and that Respondent filled such prescriptions without resolving that red flag. As support for this allegation, the Government submitted five prescriptions that were written by the same doctor (Dr. A.F.) on the same day (June 27, 2012), and for the same strength of the same medication (testosterone cypionate). *See* GX 10; *see also* Tr. 394 (testimony of Dr. Gordon), Tr. 67 (DI testifying that GX 10 contained fair and accurate copies of documents he obtained from Respondent on April 11, 2013), and Tr. 68. Respondent filled them all on June 28, 2012, between 11:24 a.m. and 12:56 p.m., a period of about an hour and a half. GX 10.

In Dr. Gordon's view, ''[t]hese prescriptions present a big red flag.'' Tr. 394. ''[I]t's odd,'' she testified, ''that a compounded script would be made exactly the same for each of these patients, which means there's not individualized therapy.'' *Id.* The lack of individualized treatment meant to Dr. Gordon that ''the prescriptions were not written for a legitimate medical purpose.'' *Id.* at 396. She testified that she did not see any notations on the prescriptions evidencing that a pharmacist attempted to address the red flags. *Id.; see also* R.D., at 49 (Respondent's Owner and PIC ''conceded that the paperwork furnished

[19] When Respondent's counsel argued that Mr. Fisher ''did not testify in all other cases that the distance was a factor and testified in this case—. . . I'm talking about as out-of-state prescriptions, that distance is not a factor'' and that ''[t]he method of delivery is completely different . . . [s]o those two are not even analogous,'' the CALJ responded: ''The record will stand as it is.'' Tr. 746–47.

[20] The CII/CIII Rx Verification Forms concern the prescriptions in GX 8/8a written for SB, CW, DK, and TS.

[21] Two of the forms' ''Pharmacist's Initials'' sections were completed. No form's ''Notes'' section contained a note.

to the DIs at the April 11th Inspection did not memorialize any attempts to resolve this red flag and agreed that she did not have any paperwork documenting her identification or resolution of the issue.''). Dr. Gordon's testimony was that this red flag was not resolvable. Tr. 396. She testified that the pharmacist who filled the prescriptions did not exercise her corresponding responsibility to ensure that the prescriptions were issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 396–97.

At first, the ''only comment'' that Mr. Fisher had about the prescriptions in GX 10 was that ''there doesn't seem to be a quantity that's identifiable.'' *Id.* at 618. When asked specifically about the fact that the prescriptions came from the same doctor and for the same drug, Mr. Fisher testified that, ''[i]f the doctor is specializing in men's health . . . , he could have multiple patients on the same regimen of drugs.'' *Id.* at 619. On cross examination, however, Mr. Fisher admitted that the five prescriptions were an example of ''pattern prescribing,'' or when ''a doctor . . . writes the same thing for every single patient that comes in.'' *Id.* at 769. Mr. Fisher then testified that pattern prescribing was a ''red flag for diversion.'' *Id.*

Respondent's Owner and PIC testified that the prescriptions raised a red flag because they were for a ''schedule [sic] medication, testosterone.'' [22] *Id.* at 1084. She testified that she resolved this red flag by asking the prescribing doctor ''if she knows the purpose of this . . . treatment, and if the patient are . . . taking it for an appropriate use.'' *Id.*

Respondent's Owner and PIC also testified that these five prescriptions raised red flags because ''[t]hey came on the same day with the same medication at the same . . . dose . . . [a]nd the same doctor.'' *Id.* at 1092. At this juncture, her testimony about how she resolved the red flags was that she spoke with the doctor. *Id.* at 1092–93. She testified that, ''The reason . . . they come on the same day, because the doctor designated that day to see patients who need hormonal replacement. . . . [I]t helps her to keep the records straight . . . . [T]hey start out on the same dose. This way it's easier to achieve the day to day concentration of the dose.'' *Id.* In response to whether she had any notes ''anywhere'' documenting her conversation with the physician, Respondent's Owner and PIC replied, ''Not here, no.'' *Id.* at 1094.

Based on all of the evidence in the record, I find that Respondent filled prescriptions that raised the red flag of multiple customers presenting prescriptions written by the same prescriber on the same day for the same medication in the same quantity. I further find that, even if these red flags were resolvable, there was no credible evidence that Respondent addressed or resolved them before filling the prescriptions. I cannot, and do not, place any weight on the testimony of Respondent's Owner and PIC that she resolved these red flags because she produced no documentary evidence to support her claim that she attempted to and, in fact, did resolve them before filling the prescriptions.

Multiple Customers From the Same Address Coming to Respondent at the Same Time With Prescriptions From the Same Doctor for the Same Drug and Strength

The Government alleged that multiple customers from the same address coming to Respondent at the same time with prescriptions written by the same doctor for the same drug and strength was a ''red flag of diversion,'' and that Respondent filled such prescriptions without resolving that red flag. To support this allegation, the Government submitted two prescriptions for Dilaudid 8 mg. that Respondent filled within five minutes of each other. *See* GX 11. The prescriptions were written by the same doctor on the same day with the same use directions to two individuals with the same last name and street address in Hollywood, Florida. *See* Tr. 397–98; *see also id.* at 70 (DI testifying that GX 11 consisted of true and accurate copies of prescriptions and labels he took from Respondent on April 11, 2013) and *id.* at 71 (DI testifying that the prescriptions in GX 11 were for two customers living at the same address, who saw the same doctor, were prescribed the exact same drug and strength, and then took those prescriptions to Respondent at the same time). The difference between the two prescriptions was that one was for 80 tablets and the other was for 85 tablets. *Id.* at 397; *see also* GX 11, at 1, 3.

In Dr. Gordon's opinion, these prescriptions raised multiple red flags that were not resolvable. Tr. 397–98. She testified that: ''This to me is what's called rubber-stamping from a physician, and is not individualized therapy. . . . It's unusual that two patients that live at the same address would receive the same exact therapy. There's always an exception to the rule, but this is common in the drug-seeking community . . . .'' *Id.* Dr. Gordon also testified that there were no notations on the prescriptions addressing the red flags. *Id.* at 398. Her opinion was that the prescriptions were not legitimate and that the pharmacist who filled the prescriptions had not exercised her corresponding responsibility to ensure the prescriptions were issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 398–99.

Mr. Fisher agreed with Dr. Gordon that the prescriptions raised red flags. He testified that the ''same address for two different people'' and the ''same drug'' were red flags associated with these prescriptions. *Id.* at 620. He considered it ''very possible'' that the prescriptions were for husband and wife who had a reason for going to the same doctor at the same time. *Id.* He suggested that ''[s]peaking to the physician would be the easiest way'' to resolve those red flags. *Id.* On cross-examination, Mr. Fisher agreed that a pharmacist's ''due diligence . . . [and] the standard way to try to prevent diversion of drugs'' required the pharmacist to ''check the other things available . . . [l]ike the E–FORCSE system, . . . the doctor's license number, and all that. The routine things you do with a Schedule II prescription.'' *Id.* at 771. He also contradicted his earlier testimony when he admitted that, in this situation, a ''simple phone call to the doctor'' might not achieve the level of satisfaction concerning the prescriptions' legitimacy the ''pharmacist has to get . . . before they can fill the prescription,'' because ''the doctor, himself, may not have issued . . . [the prescriptions] for legitimate medical purpose[s] in the course of his professional practice.'' *Id.* at 771–72.

According to Respondent's Owner and PIC, the fact that the prescriptions were written by the same doctor, for the same drug and dosage, for individuals living at the same address who had the same last name and presented the prescriptions on the same day did not raise a red flag. *Id.* at 1097–98. She testified that she ''would treat . . . [the prescriptions] the same way I treat every other schedule II medication.'' *Id.* at 1098. She also stated that she filled the prescriptions because, at the time, ''I thought the circumstances of the prescriptions were understandable.'' *Id.* at 1103–04. She then stated that, as of 2015, she would not fill them ''[b]ecause the DEA have restriction on filling those

[22] Respondent's Owner and PIC testified that the red flag for the testosterone prescription on page 3 of GX 10 was the customer's age, 27 years old. Tr. 1086. She stated that she spoke with the doctor about this prescription and the ''doctor assured me that this patient has low testosterone and he needs because he feels very tired and he's not going to use it for athletic purposes. He was not an athlete.'' *Id.*

prescriptions[,] . . . [n]ot because the patient are not legitimate and not because of doctor not legitimate or not legitimate medical purpose. Only because DEA said do not fill those prescriptions.'' *Id.* at 1104. When asked if someone at DEA told her not to fill schedule II prescriptions, Respondent's Owner and PIC responded: ''Obviously, if they bring me that case, that what they saying to me. They will try to take—intend to revoke my license for filling those prescriptions. . . . The[y] didn't tell me—not until they come with this order to show cause.'' *Id.* at 1104–05.

Based on all of the evidence in the record, I find that the prescriptions in GX 11 raised red flags because customers with the same last name and street address presented them, and they were written on the same day by the same doctor for the same drug and strength. Further, I find that Respondent admitted filling the prescriptions even though these red flags were not resolvable, according to Dr. Gordon's testimony. I find that, even if these red flags were resolvable, there was no credible evidence in the record that Respondent addressed or resolved them before it filled the prescriptions. Respondent's Owner and PIC offered no evidence to substantiate her testimony that the circumstances of the prescriptions were ''understandable'' and did not raise red flags. I afford her testimony no weight.

Customers Presenting Two Prescriptions, Both for the Same Immediate Release Controlled Substance, but for Different Strengths

The Government alleged that a ''red flag of diversion'' was raised when customers presented two prescriptions for the same immediate release controlled substance, but for different strengths, and that Respondent filled such prescriptions without addressing or resolving the red flag. As support for this allegation, the Government submitted four such prescriptions filled by Respondent. *See* GX 12. The four prescriptions consisted of two prescriptions each for Dilaudid 8 mg. and Dilaudid 4 mg. written for two different people. Tr. 399, 405–06; *see also id.* at 72 (DI testifying that GX 12 contained true and accurate copies of documents he took from Respondent on April 11, 2013) and *id.* at 73 (DI testifying that the prescriptions in GX 12 belonged to two patients for the same immediate-release drugs and strengths). Dr. Gordon testified that the prescriptions raised red flags. *Id.* at 399–400, 403–04. The first red flag she identified was that the two prescriptions were written for the same immediate release controlled substance, but for different strengths. *Id.* at 399. The second red flag she identified was the diagnosis of ''lumbar radiculopathy.'' *Id.* at 400.

Dr. Gordon explained that giving one person two prescriptions for two immediate release opioids was not necessary because the Dilaudid 8 mg. could be broken in half to get a 4-milligram dose. *Id.* at 399. She pointed out that there was no long-acting medication accompanying the prescriptions in GX 12 and that ''[t]wo immediate-release opioids is . . . a common red flag for diverted prescriptions.'' *Id.; see also id.* at 399–400. She explained: ''In pain management . . . you start out with a short-acting. Then based on the amount of short-acting, you prescribe a long-acting, because if you were in pain, I wouldn't want you to have to take something every four hours. . . . So what we do is we recommend . . . a long-acting . . . with a break-through.'' *Id.* at 401. Her testimony further explained that ''it looks like the practitioner was trying to say that you could only take Dilaudid, 4 milligrams, one, three times a day . . . [but] [i]t won't last eight hours. So that's the first red flag.'' *Id.* at 403. She continued, asking rhetorically ''why would you take a higher dose of a break-through? It doesn't make any sense.'' *Id.* Drawing from her experience, she testified that ''it would have made more sense for him to schedule the eight[;] . . . it's usually the same dose for break-through.'' *Id.*

Dr. Gordon also testified that the diagnosis of ''lumbar radiculopathy'' was ''a red flag to take pause for any reasonable pharmacist to make sure the prescriptions are legit.'' *Id.* at 400. *See* GX 12, at 1–2. She explained that, ''on prescriptions that are not legit, that's the pattern I've seen—lumbago is big on illegitimate prescriptions—and most of my colleagues as well.'' Tr. 404.

When asked if she would ''reach out to the prescriber'' if she ''were in a retail pharmacy and . . . saw a prescription like this coming in with two short-actings,'' Dr. Gordon responded ''[n]o. . . . I would give the prescriptions back to the patron.'' *Id.* at 402. She stated that the red flags raised by the prescriptions were not resolvable. *Id.* at 405, 406. Dr. Gordon testified that there were no notations on the prescriptions addressing the red flags, and gave her opinion that the prescriptions were not legitimate and that the pharmacist who filled the prescriptions did not exercise her corresponding responsibility to ensure the prescriptions were issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 404–05, 406–07; *see* GX 12, at 1–8.

Mr. Fisher agreed that ''two prescriptions written for the same person for the same drug but different strengths'' was a red flag. Tr. 620–21. He testified that he would speak to the doctor to resolve it because it's ''[c]ommonly done'' to ''try[ ] to achieve a certain therapeutic level by combining the two doses . . . [because] [t]he 8 milligrams is not enough for the patient, so they do 12.'' *Id.* at 621. Mr. Fisher testified that a consistent therapeutic level would be achieved if the medication were taken as directed during a 24-hour cycle. *See id.* at 624. He stated that ''three times a day, you're going to take it probably . . . . You're not taking it in the middle of the night. You're probably going to take it morning, noontime, and suppertime. And then he goes to work and he needs something stronger and he takes the stronger dose. . . . It is common.'' *Id.* at 624–25.

Respondent's Owner and PIC testified that the only red flag she associated with the prescriptions in GX 12 was that they were for schedule II controlled substances. *Id.* at 1115, 1129. When asked if ''the fact that there was two different strengths of the same medication, issued to the same patient on the same day by the same doctor . . . constitutes a red flag,'' Respondent's Owner and PIC replied in the negative ''because there is a logical explanation to it.'' *Id.* at 1115. ''That's done . . . to achieve certain dosage variance,'' she stated. *Id.* After further questioning on the subject, Respondent's Owner and PIC stated that she ''spoke with the doctor about it and doctor approved the dose.'' *Id.* at 1121; *see also id.* at 1132–33. She added that the doctor was ''still practicing . . . [a]nd the patient tells me that's how he benefits the most.'' *Id.* at 1121. She testified similarly regarding the prescriber of the other prescriptions in GX 12. *Id.* at 1126.

When asked whether she had, for these prescriptions, ''the same documentation that you've shown before . . . [l]ike . . . the patient agreement and the PMP report and a note that somebody checked with the doctor,'' Respondent's Owner and PIC answered affirmatively. *Id.* at 1121–22. She admitted that she had not, however, provided the same documentation. Instead, she stated that the existence of the ''approved'' stamp and ''my personal stamp with my signature on it'' meant that ''I spoke with the doctors. . . . And documents were obviously generated when he comes—visiting the

pharmacy, otherwise I would not dispense it.'' *Id.* at 1122. When asked, however, whether ''[e]very time you see that stamp, you spoke with the doctor,'' Respondent's Owner and PIC declined to respond in the affirmative. *Id.* at 1136–37. She stated, ''I have to go each prescription by—let's go one-by-one each prescription, I tell you each one I spoke with.'' *Id.* at 1137. She testified that, ''I called—as far as I remember, on each prescription, every time it's presented to me, I called the office. Not necessarily I would speak every time with the doctor. . . . But the practice was at the pharmacy, we verify every prescription.'' *Id.* at 1138. During cross-examination, Respondent's Owner and PIC testified that the absence of the stamps would not mean that a prescription was not valid ''[b]ecause, again, there's sometimes human distractions and errors, some paper can be missed. . . . Again, I was not obligated by either the State or law to stamp those prescriptions.'' *Id.* at 1226. She testified that, ''I did my best attempt to make sure there's no fraudulent prescription I fill there. Or there's no valid DEA numbers or there's, like, no major violation or diversion with the prescriptions.'' *Id.* at 1227.

Respondent's Owner and PIC was satisfied, she testified, when she filled the prescriptions in GX 12 that each ''prescription was filled for medical purpose within the scope of a physician practice.'' *Id.* at 1139.

Based on all of the evidence in the record, I find that Respondent, without addressing or resolving the red flags, filled prescriptions that raised the red flag of customers presenting two prescriptions for the same immediate release controlled substance but for different strengths. The testimony of Respondent's Owner and PIC, including her testimony that she filled each prescription in GX 12 only after being satisfied they were for a medical purpose within the scope of a physician practice, was not credible. First, it directly conflicted with her original testimony denying that the circumstances raised a red flag and, second, she did not produce any documentary evidence to corroborate her statements.

Customers Presenting Prescriptions With a Combination of an Opiate and a Benzodiazepine or ''Drug Cocktail'' Popular with Drug Abusers

The Government alleged that prescriptions with a combination of an opiate and a benzodiazepine are ''drug cocktails'' popular with drug abusers and, therefore, raise ''red flags of diversion,'' and that Respondent filled such prescriptions without addressing or resolving those red flags. To support this allegation, the Government submitted seven sets of prescriptions (a total of 14 prescriptions) that Respondent filled and dispensed to its customers containing an opiate and a benzodiazepine. *Id.* at 407, 412, 414–15, 417, 421, 422–23, 424; *see* GX 13; s*ee also* Tr. 73–74 (DI testifying that GX 13 consisted of true and accurate copies of documents he took from Respondent during the unannounced inspection) and Tr. 74–75 (DI testifying that the prescriptions in GX 13 were for a common drug cocktail of a narcotic pain reliever and a benzodiazepine, both at their highest strengths).

Drug	Number of tablets	Date written	Customer's initials
Dilaudid 8 mg	116	11/20/12	D.C.
Xanax 2 mg	43	11/20/12	D.C.
Dilaudid 8 mg	140	12/27/12	D.C.
Xanax 2 mg	42	12/27/12	D.C.
Dilaudid 8 mg	140	1/24/13	D.C.
Xanax 2 mg	42	1/24/13	D.C.
Dilaudid 8 mg	162	10/26/12	L.F.
clonazepam 2 mg	30	10/26/12	L.F.
Dilaudid 8 mg	162	12/21/12	L.F.
clonazepam 2 mg	30	12/21/12	L.F.
Dilaudid 8 mg	70	10/12/12	B.K.
Valium 10 mg	42	10/12/12	B.K.
Dilaudid 8 mg	35	11/9/12	B.K.
Valium 10 mg	42	11/9/12	B.K.

According to Dr. Gordon, these seven pairings of prescriptions were considered ''cocktail medications,'' red flags, because they were multiple drugs that suppressed the central nervous system and, when taken together, could give euphoria. Tr. 408, 412, 414–15 (maximum strength of Dilaudid and Xanax), 417, 421, 422 (highest Valium dose available), 424 (highest doses available), 546, 547. She elaborated on what makes a drug cocktail by testifying that it consisted of ''drugs that cause you to have a high.'' *Id.* at 547. ''So it could be an opioid, it could be an upper and a downer,'' she stated. *Id.* She explained that the ''person could be taking the drugs to get a high during the day and then a low at night. . . . ''[I]t's not being used for what it's intended to be used for.'' [23] *Id.* She explained that ''these two drugs are very highly sought after on the street.'' *Id.* at 409. In her opinion, the drug pairings were ''surrounded by diversion.'' [24] *Id.* at 410; *see also id.* at 413–14.

Dr. Gordon addressed whether a muscle relaxant had to be present to constitute a drug cocktail. She stated that, ''Cocktail medications usually . . . are a combination of an opioid plus or minus a benzo plus or minus a muscle relaxant.'' *Id.* at 408. Then she explained: ''But what I've seen . . . lately is the doctors have stopped the Soma, and they are just doing, now, high doses of Dilaudid, high doses of benzos. It used to be Oxys. Now they've switched to hydromorphone. So you see . . . the flags change.'' *Id.* She added that, ''I see the physicians and drug diverters trying to eliminate one of the components of the cocktail to try to get away with diverted drugs.'' *Id.* at 538.

Dr. Gordon testified that she saw no notations by the pharmacist on the prescriptions attempting to resolve the

[23] Dr. Gordon testified that the prescriptions would not raise a red flag for her if they were written by a ''Hospice doctor [or] oncologist.'' Tr. 545.

[24] Dr. Gordon identified additional red flags regarding the prescriptions in GX 13: First, the prescriptions on pages 13 and 15 were written for a male (LF) living in Davie and traveling a long distance to Miami to see an OB/GYN (Dr. R.T.); second, the diagnosis written on the prescription on page 13 was lumbago, a common diagnosis that doctors used on diverted prescriptions; and third, the repeat customer (LF) for the prescriptions on pages 13 through 19 written by Dr. R.T. was receiving the same cocktail medications with no long-acting medication present. Tr. 16–17, 418, 420–21.

red flags and, in her opinion, the ''cocktail'' red flags were not resolvable. *Id.* at 411, 414, 416, 418, 421, 423, 424–25. She specifically testified that the prescriptions were not legitimate and that the pharmacist who filled the prescription pairings did not exercise her corresponding responsibility to ensure that the prescriptions were issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 411–12, 414, 416, 418–19, 421–22, 423, 425.

Mr. Fisher stated that he did not consider the drugs in the prescriptions in GX 13 to be cocktails. *Id.* at 629, 631, 632, 633. He elaborated: ''To me a cocktail is when you have a combination of three drugs: alprazolam, oxycodone or hydrocodone, and carisoprodol. This to me looks like a simple case of a patient getting pain medication and some Xanax for anxiety.'' *Id.* 629; *see also id.* at 630 (''[I]n everything I have read and have seen and talked to and have heard at meetings, it's a combination of the three drugs represents the cocktail.''). Mr. Fisher agreed that ''[a]s things have changed, yes, other drugs have been added like the hydromorphone that's come into play.'' *Id.* at 629–30. He testified that what makes a cocktail is ''more the street value of the drugs.'' *Id.* at 630.

On cross-examination, Mr. Fisher reaffirmed his opinion that a cocktail involves an opioid, a benzodiazepine, and carisoprodol. *Id.* at 772. He acknowledged that a customer could obtain the opioid and the benzodiazepine from one pharmacy and the carisoprodol from a second pharmacy. *Id.* at 772–73. He agreed that ''the only way to check for that would be through use of . . . E–FORCSE.'' *Id.* at 773. Mr. Fisher also agreed that Respondent, ''not having access to query E–FORCSE, would not be able to . . . check for that, those instances of drug seekers using other pharmacies or doctors to obtain a third drug that could be used in this cocktail.'' *Id.* On re-direct, Mr. Fisher stated that, beside using E–FORCSE, other ways to resolve any red flags associated with GX 13 were ''[c]all the physician, discuss their treatment modality for the patient, [c]heck the patient's profile if you maintain one[,] . . . [and] [i]f you have a computer system you could check and see if there's a history of the patient getting other prescriptions filled.'' *Id.* at 779.

Respondent's Owner and PIC did not agree that the prescriptions in GX 13 constituted a drug cocktail because, in her view, a drug cocktail had four components: two opioids, carisoprodol, and a benzodiazepine. *Id.* at 1142. ''It's multiple—it's two—for instance, oxycodone and Vicodin together with Soma and benzodiazepine,'' she stated. *Id.* According to Respondent's Owner and PIC, she ''didn't fill those prescriptions for the Soma, benzodiazepine, carisoprodol,'' and she did not recall ever filling a benzodiazepine, Soma, and opiate combination for any patients. *Id.* at 1144, 1145.

Respondent produced an exhibit containing various documents concerning the three customers who asked Respondent to fill the prescriptions in GX 13. RX 10. According to the testimony of Respondent's Owner and PIC, Respondent compiled or generated the documents in RX 10 ''at that time in 2013'' because ''[w]e tried to implement as much possible steps and follow them through as much as possible to make sure that . . . steps are taken . . . that's preventing. . . . Also, . . . that's why . . . when the patient knows the pharmacy takes extra steps and scrutinize the prescriptions, people who has non-valid prescription not come to me.'' Tr. 1157–58.

Page 2 of RX 10 was the Relationship Affidavit signed by DC, the same DC associated with six prescriptions in GX 13 (pages 1 through 12). *See id. at* 1145–46. Similarly, the Relationship Affidavit on page 5 of RX 10 was signed by LF, the same LF associated with pages 13 through 20 of GX 13.[25] *See id. at* 1148–49.

Respondent also provided registration validation pages purportedly printed from DEA's website. According to Respondent's Owner and PIC, the DEA registration validation website satisfied her that, on the day she filled LF's Dilaudid and clonazepam prescriptions, the prescribing physician was ''allowed to prescribe the pain medications.'' *Id.* at 1149; *see* RX 10, at 6; GX 13, at 17, 19. Likewise, according to Respondent's Owner and PIC, the DEA registration validation website showed her that the physician who prescribed prescriptions for BK ''was actually scheduled to prescribe schedule II narcotics.'' Tr. 1156; *see* RX 10, at 12; GX 13, at 21–27.

Respondent also submitted a hand-written note on a piece of prescription paper belonging to the doctor who issued Dilaudid and Valium prescriptions for BK. *See* RX 10, at 10; GX 13, at 21, 23, 25, and 27. The note was not addressed to anyone. It showed BK's name in the ''patient'' space, and an age, partial address, and date in the lines of the prescription paper calling for that information. It did not include a diagnosis. The note contained a signature which, according to Respondent's Owner and PIC, was the prescribing doctor's signature. Tr. 1152. The note stated that ''the patient cannot tolerate for long periods of kneel, more than 20 minutes of sitting or standing.'' *Id.* Significantly, the date on the note (August 9, 2011) was more than a year and two months before the date on the earliest prescription issued to BK and included in GX 13 as filled by Respondent (October 12, 2012). *Compare* RX 10, at 10 with GX 13, at 21. Yet, Respondent's Owner and PIC testified that: ''Because I've been calling to the doctor and asking about this patient few times . . .[,] [w]e make sure the doctor just write a note.'' [26] Tr. 1152. She continued, stating, ''[T]his patient has such a difficult time to fill his prescriptions. . . . This patient could not fill prescription anywhere, and then he come to me.'' *Id.* She did not explain how this note led her to conclude that the prescriptions issued to BK were legitimate.

Respondent also submitted a ''Verification of legitimate purpose of prescribing CII–CV medications To establish legitimate Physician-patient relationship.'' RX 10, at 11. It purported to be signed by BK, the individual for whom the Dilaudid and Valium prescriptions on pages 21, 23, 25, and 27 of GX 13 were written. This one-page sheet had space for the customer's name, signature, birth date, and appointment date, for the physician's name and address, and for ''yes'' or ''no'' responses to whether the physician or ''qualified medical professional'' conducted a medical examination, took a blood sample, and had an ''MRI on file.'' *Id.*

I find, based on Dr. Gordon's testimony and consistent with my credibility determinations giving Dr. Gordon's testimony regarding the practice of pharmacy in Florida more weight than any other witness's testimony in these proceedings, that the prescriptions in GX 13 were ''drug cocktails'' popular with drug abusers. Based on all of the evidence in the record, I find that Respondent filled prescriptions without having resolved the red flags of customers presenting prescriptions with a combination of an opiate and a benzodiazepine which is a

[25] LF did not complete the Relationship Affidavit in full.

[26] She did not address the timing of how Respondent could have ''made sure'' the doctor wrote a note more than a year before Respondent filled the earliest prescription in the record.

common ''drug cocktail'' popular with drug abusers.

Customers Paying for Their Prescriptions With Cash, When Other Red Flags of Diversion Were Present

The Government alleged that customers paying cash for their prescriptions when other red flags of diversion were present was a ''red flag of diversion,'' and that Respondent dispensed controlled substances to customers without resolving the red flags those prescriptions presented. As support for this allegation, the Government listed 50 prescriptions in the Show Cause Order. ALJX 1, at 5. No testimony disputed the allegations that Respondent filled the 50 prescriptions and that those prescriptions were purchased with cash. I reviewed those 50 prescriptions. Thirty-two of them were for Dilaudid 8 mg. GX 8, 11, 12, 13, 14.

Drug	Number of tablets	Date written	Cash paid	Customer
Dilaudid 8 mg	150	12/10/12	$750.00	G.A.
Dilaudid 8 mg	168	11/20/12	840.00	S.B.
Dilaudid 8 mg	150	12/19/12	750.00	C.W.
Dilaudid 8 mg	56	7/9/12	280.00	J.S.
Dilaudid 8 mg	140	1/21/13	840.00	D.K.
Dilaudid 8 mg	56	9/6/12	40.00	B.S.
Dilaudid 8 mg	150	12/28/12	750.00	T.S.
Dilaudid 8 mg	112	4/26/12	560.00	B.R.
Dilaudid 8 mg	112	11/14/12	560.00	W.P.
Dilaudid 8 mg	80	6/22/12	400.00	D.S.
Dilaudid 8 mg	85	6/22/12	425.00	B.S.
Dilaudid 8 mg	75	9/27/12	375.00	J.F.
Dilaudid 8 mg	168	11/29/12	840.00	B.M.
Dilaudid 8 mg	116	11/20/12	580.00	D.C.
Dilaudid 8 mg	140	12/27/12	28.00	D.C.
Dilaudid 8 mg	140	1/24/13	840.00	D.C.
Dilaudid 8 mg	162	10/26/12	810.00	L.F.
Dilaudid 8 mg	162	12/21/12	810.00	L.F.
Dilaudid 8 mg	70	10/12/12	320.00	B.K.
Dilaudid 8 mg	35	11/9/12	175.00	B.K.
Dilaudid 8 mg	128	10/5/12	640.00	B.K.
Dilaudid 8 mg	40	11/2/12	200.00	B.K.
Dilaudid 8 mg	180	8/15/12	900.00	J.B.
Dilaudid 8 mg	150	9/6/12	750.00	J.B.
Dilaudid 8 mg	180	8/30/12	900.00	J.F.
Dilaudid 8 mg	150	9/27/12	750.00	J.F.
Dilaudid 8 mg	168	3/13/13	1,008.00	L.B.
Dilaudid 8 mg	168	4/10/13	1,008.00	L.B.
Dilaudid 8 mg	168	12/28/12	840.00	J.S.
Dilaudid 8 mg	168	1/23/13	1,008.00	J.S.
Dilaudid 8 mg	180	9/7/12	900.00	H.H.
Dilaudid 8 mg	180	10/5/12	900.00	H.H.

The evidence shows that customers paid as much as $1,008.00 for a month's worth of Dilaudid 8 mg.

Dr. Gordon's testimony explained that payment in cash for a controlled substance was always a red flag, even if a significant sector of the public did not have health insurance. Tr. 363. Paying in cash was a red flag, she testified, because it enabled evasion of processes established to alert a pharmacy that a prescription was being filled too soon. She stated, ''A lot of drug-seekers only want to pay for their medications in cash because . . . the computer systems, the insurance company will actually create your red flag for you to say if a prescription is refilled too soon, which means they've gone—obtained a prescription from another pharmacy.'' *Id.* at 297. She elaborated and provided a specific example: ''[T]he insurance company will give you that red flag. Because they'll have a claim . . . and they'll . . . say, . . . the patient just got this prescription yesterday from Walgreen's . . . . So . . . the patrons will say, 'I don't want you to charge my insurance company.' That way it kind of eliminates that flag.'' *Id.* at 298–99.

In Dr. Gordon's opinion, the cash prices that Respondent charged its customers were as high as five times the cost Dr. Gordon would have expected. *Id.* at 362; *see also id.* at 417, 424, 502, 512. As Dr. Gordon concluded, ''that to me means that maybe the pharmacist knew what was going on, and they were taking advantage of these patrons that were drug seeking.'' *Id.* at 362; *see also id.* at 464–65 (Concerning Respondent's initial charge of $840 for a prescription and subsequent charge of $1,008 for the same exact prescription on the next visit, Dr. Gordon suggested that ''the pharmacist actually knew the prescriptions were diverted and . . . was taking advantage of that patron . . . [b]ecause they knew they would pay whatever they needed to pay . . . .''). She explained that ''the cost of that medication is high compared to what I've seen out in the field. That's a very high cost. And between Fort Pierce, Miami, and Hallandale, you pass like a zillion pharmacies. . . . It doesn't make sense.'' *Id.* at 362. According to Dr. Gordon, there was no notation made by the pharmacist on the prescriptions showing any attempt to resolve the red flags. *See, e.g., id.* at 364, 369, 371, 373, 374, 377, 389–90, 398, 404–05, 406, 411, 416, 421, 423, 424–25, 467; *see also id.* at 133 (DI testimony that he did not see notations on the prescriptions from Respondent ''clearing'' any red flags).

Mr. Fisher agreed that ''[c]ustomers paying for their prescriptions with cash where other red flags of diversion are present'' was a red flag. *Id.* at 756.

Respondent challenged Dr. Gordon's cash price-level testimony based on her not having been in charge of purchasing controlled substances for resale for a small independent pharmacy. *Id.* at 502.

Yet, I find Dr. Gordon's testimony to be credible because she ''actually looked up the national . . . price.'' *Id.* at 503. Respondent also challenged Dr. Gordon by stating that pharmacies where Dr. Gordon worked ''like Walgreens, are getting discounts from the supplier on purchasing controlled medication.'' *Id.* at 502. However, Dr. Gordon testified she was ''99 percent sure'' that discounts are not available for generic opioids. *Id.* at 503. Respondent presented no pricing data or other evidence refuting Dr. Gordon's characterization of the higher-than-expected level of cash prices Respondent's customers paid for controlled substance prescriptions. Further, Respondent did not present evidence to establish that its cash prices for controlled substances were consistent with the prices charged by other pharmacies similar to Respondent. Nor did it present evidence to establish that it set the level of its cash prices for controlled substances for a reason other than that its customers were willing to pay those prices. Thus, I find no reason to reject Dr. Gordon's testimony. Rather, I shall credit it consistent with the CALJ's credibility determinations.

Based on all of the evidence in the record, I find that Respondent, without resolving the red flags, filled prescriptions that raised the red flag of customers paying cash for their prescriptions when other red flags were present. I further find that Respondent's customers were charged, and paid, exorbitantly high prices for their controlled substance prescriptions.

Customers Presenting New Prescriptions for Controlled Substances When They Should Not Have Finished Their Previous Prescription for That Drug (''Early Fills'' or ''Early Refills'')

The last red flag the Government alleged in the Show Cause Order concerned early fills. According to the Government, Respondent filled prescriptions for controlled substances that the customers presented before the customers' previous prescription for that controlled substance should have been consumed. To support this allegation, the Government submitted 22 prescriptions. GX 14, at 1–33, 37–47.[27] Twelve of the prescriptions concerned one customer. The other ten prescriptions concerned five different customers. All 22 prescriptions were for Dilaudid 8 mg.

I reviewed the prescriptions the Government submitted and analyzed them according to the standard Dr. Gordon described in her testimony. GX 14; Tr. 436 (''[W]hat most pharmacies do . . . [to determine whether a prescription is an early fill is] they start at when the first prescription was filled.''); *see also* Tr. 429–67 (Dr. Gordon's testimony concerning GX 14), Tr. 75–76 (DI testifying that GX 14 consisted of true and accurate copies of documents he took from Respondent during the unannounced inspection), and Tr. 76–77 (DI testifying that GX 14 showed Respondent filled new schedule II controlled substance prescriptions before the customers' previous prescriptions should have been exhausted). I make these findings.

First, Respondent filled 12 prescriptions for BK, dispensing a total of 840 Dilaudid 8 mg. tablets, from July 26, 2012 through November 8, 2012. GX 14, at 1–33, 37–47.

CUSTOMER B.K.

Drug	Number of tablets/SIG	Date written	Date filled
Dilaudid 8 mg	168—1 every 4 hrs. for pain	7/16/12	7/26/12
Dilaudid 8 mg	168—1 every 4 hrs. for pain	8/13/12	8/13/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	9/7/12	9/10/12
Dilaudid 8 mg	128—1 every 4 hrs. for pain	9/7/12	9/13/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	10/12/12	10/12/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	10/12/12	10/15/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	10/12/12	10/17/12
Dilaudid 8 mg	8—1 every 4 hrs. for pain	10/12/12	10/17/12
Dilaudid 8 mg	128—1 every 4 hrs. for pain	10/5/12	10/22/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	11/2/12	11/2/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	11/2/12	11/5/12
Dilaudid 8 mg	40—1 every 4 hrs. for pain	11/2/12	11/9/12

I note that Respondent filled all four of the prescriptions that were written on the same day, October 12, 2012.

Further, one prescription for ''chronic pain due to trauma,'' among other things, was written on July 16, 2012, yet BK did not have it filled until July 26, 2012. GX 14, at 1–2. Similarly, BK waited up to 16 days before filling another prescription for ''chronic pain due to trauma,'' among other things. GX 14, at 17–18. BK's delay in filling such Dilaudid 8 mg. prescriptions casts doubt on the prescriptions' legitimacy.

Based on the dosing instructions, six tablets each day, 840 tablets should have lasted 140 days. The number of days from July 26, 2012 through November 8, 2012, the day before BK filled the last prescription in GX 14, was 105 days. Thus, in this period, Respondent dispensed to BK a 140-day supply of Dilaudid 8 mg. in 105 days. According to my analysis, Respondent filled all but one of them significantly early, from about at least 6 days early to up to about at least 29 days early. *Id.*

Second, concerning the two Dilaudid 8 mg. prescriptions in GX 14 issued to JB, Respondent filled the second prescription at least one week early. *Id.* at 25–28.

CUSTOMER J.B.

Drug	Number of tablets/SIG	Date written	Date filled
Dilaudid 8 mg	180—1 every 3 hrs. as needed	8/15/12	8/22/12
Dilaudid 8 mg	150—1 every 3 hrs. as needed	9/6/12	9/6/12

[27] GX 14 included 24 prescriptions, but there were two copies of two of the prescriptions.

Third, concerning the two Dilaudid 8 mg. prescriptions in GX 14 issued to LB, Respondent filled the second prescription at least 5 days early.

CUSTOMER L.B.

Drug	Number of tablets/SIG	Date written	Date filled
Dilaudid 8 mg	168—1 every 4 hrs. as needed	3/13/13	3/18/13
Dilaudid 8 mg	168—1 every 4 hrs. as needed	4/10/13	4/10/13

Fourth, Respondent filled the second Dilaudid 8 mg. prescription in GX for JS at least 5 days early.

CUSTOMER J.S.

Drug	Number of tablets/SIG	Date written	Date filled
Dilaudid 8 mg	168—1 every 4 hrs. as needed	12/28/12	12/31/12
Dilaudid 8 mg	168—1 every 4 hrs. as needed	1/23/13	1/23/13

Fifth, Respondent filled the second Dilaudid 8 mg. prescription in GX 14 for HH at least six days early.

CUSTOMER H.H.

Drug	Number of tablets/SIG	Date written	Date filled
Dilaudid 8 mg	180—1 every 4–6 hrs. as needed	9/7/12	9/14/12
Dilaudid 8 mg	180—1 every 4–6 hrs. as needed	10/5/12	10/8/12

According to Dr. Gordon, the prescriptions in GX 14 exhibited multiple red flags, yet Respondent filled them all. Tr. 429–67. For none of the prescriptions in GX 14 did Dr. Gordon testify that it included any notation recognizing or addressing red flags, that its red flags were resolvable, that it was a legitimate prescription, or that the pharmacist had exercised her corresponding responsibility to ensure that the prescription was issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* at 437–38, 441, 442, 445–46, 446–47, 448–49, 450–51, 456, 458–59, 460–61, 464, 467.

Regarding these prescriptions and labels, Dr. Gordon testified that ''the pharmacist was not exercising her corresponding responsibility, that most of these prescriptions should not have been filled or at least held until it was due to be filled.'' *Id.* at 450. ''However,'' Dr. Gordon continued, ''I wouldn't have filled any of these to begin with.'' *Id.* at 451. She explained: ''The multiple red flags would alert any pharmacist that none of these prescriptions were legit because of the distance, that certain physician is a well-known pill mill writer, the Dilaudid 8, the odd quantities, . . . the diagnosis of lumbago . . . and paying cash . . . And the early fills.'' *Id.* Specifically regarding the multiple prescriptions for BK that Respondent filled on October 17, 2012 and why, in Dr. Gordon's experience, a patient would present two prescriptions for the same drug but different quantities on the same day, she testified: ''I have no idea. That's very unusual. I would not fill either one of these scripts. . . . It's a huge red flag for any pharmacist to get the same exact Dilaudid 8 from the same doctor on the same date. Huge red flag. No reasonable pharmacist would fill this.'' *Id.* at 443.

Mr. Fisher agreed that an early fill was a red flag for diversion. *Id.* at 774. He identified early fill red flags in GX 14 on at least 13 occasions. *Id.* at 635–36, 637–38, 685, 692–93, 696 (two prescriptions filled on the same day), 698, 703, 704, 711, 714, 718, 721, 725, 727. Mr. Fisher testified that filling the two prescriptions on October 17, 2012 was ''highly unusual.'' *Id.* at 696. His testimony was that it was ''reasonable'' to fill a prescription two to three days early and that a pharmacy can do so. *Id.* at 700.

In Mr. Fisher's view, early fill red flags were ''resolvable,'' meaning ''there's a number of explanations for an early fill.'' *Id.* at 686; *see also id.* at 693, 704–05, 711, 715, 719, 722–23, 725–26. Being ''honest,'' as he prefaced his statement, he acknowledged that an attempt to secure more drugs was one of those explanations. *Id.* at 687. Regarding the prescriptions for BK, he testified: ''A patient taking this medicine . . . is not going to want to run out . . . [T]he pharmacy might . . . only have 40 tablets . . . on the twelfth, and they got some more in so they call the patient . . . It also—. . . to be honest, . . . could be an attempt by a patient to secure more drugs.'' *Id.* at 686–87. When asked if an early fill ''can be reasonably explained where there is diversion or where there is no diversion,'' Mr. Fisher responded that, ''It could be either way.'' *Id.* at 687. Mr. Fisher did not explain, however, why the physician would write all four of the prescriptions on the same day, let alone break them up into smaller quantities. Mr. Fisher also suggested that ''the patient . . . [may] only come down to that area once in a while for shopping, and they fill their prescriptions whenever they get down there.'' *Id.* at 711. Mr. Fisher agreed that resolution of an early fill red flag ''could be'' and ''should be'' documented. *Id.* at 688.

Respondent's Owner and PIC testified that an ''early refill'' is a red flag that ''requires definite investigation.'' *Id.* at 1165. She then stated, however, that the term ''early refill'' does not apply to a

schedule II controlled substance and stated, regardless, that pharmacies are ''obligated by the physician order.'' *Id.* at 1167, 1170. She testified, ''[T]here are two issues here, because why . . . the patient is prevented early prescriptions? It's not a refill on schedule IIs, so it's not early refill, it's an early fill. . . . The doctor fills [sic] the order, you have to fill it. You're obligated by the physician order.'' *Id.*

In sum, both Dr. Gordon and Mr. Fisher identified about the same number of early fills in GX 14. They disagreed on how many days early a pharmacy could fill a controlled substance prescription without needing to resolve the suspicion. They also disagreed about the resolvability of early fills in general and in GX 14. Dr. Gordon testified that an early fill was not legitimate and was not resolvable. Mr. Fisher testified that red flags due to early fills were resolvable, but admitted that an attempt to secure more drugs was one of the reasons for early fill requests. Mr. Fisher agreed that a pharmacist's resolution of an early fill should be documented.

Based on the testimony of Dr. Gordon and Mr. Fisher, I find that Respondent, without resolving the red flags, filled prescriptions early on at least 13 occasions. I find that the early fill-related testimony of Respondent's owner and PIC, that a prescription is a doctor's order and a pharmacist is ''obligated'' to fill a doctor's order, was Respondent's admission to an abdication of her corresponding responsibility.

Allegation That Respondent Was Unable to Readily Retrieve Prescriptions It Had Dispensed

The Show Cause Order alleged that Respondent committed six other violations, including that Respondent was unable to readily retrieve prescriptions it had dispensed. ALJX 1, at 7.

As already discussed, the DI testified that he conducted an unannounced inspection of Respondent on April 11, 2013. Tr. 36. At that time, he stated, he asked Respondent to retrieve 12 ''problematic prescriptions'' he had identified from a Florida Prescription Drug Monitoring Program query. *Id.* at 41–42. Those dozen prescriptions were for ''anabolic steroid substances to patients that were not in the State of Florida.'' *Id.* at 42. The Show Cause Order alleged that the prescriptions were filled from February 15, 2012 to April 11, 2013, or less than two years before the date of the unannounced inspection. ALJX 1, at 7–8.

The DI testified that GX 21 consisted of Respondent's daily prescription log reports he obtained on the day of the unannounced inspection. Tr. 128. According to the DI, pages 1, 4, 6, 9, 13, and 16 of Respondent's daily prescription logs showed that Respondent had dispensed nine of the 12 prescriptions referenced in the Show Cause Order. *Id.* at 129–131; GX 21, at 1, 4, 6, 9, 13, and 16; ALJX 1, at 7–8. The DI further testified that the other three prescriptions appeared in the E–FORCSE report. Tr. 131; *see also* GX 20 (E–FORCSE query results).

The DI testified that Respondent ''was never able to locate these prescriptions for me.'' Tr. 42; *see also id.* at 49, 125. Instead, he testified that he learned of Respondent's having located many of the missing prescriptions when he saw them in Respondent's exhibits. *Id.* at 270–71; *see also* RX 12. Two of the requested prescriptions, he testified, were never located. Tr. 1185. According to Respondent's Owner and PIC, ''[t]hey was misfiled.'' *Id.* at 1189. She testified that ''if the number is assigned, it means that was prescription presented to the pharmacy. . . . I know across the board, that it's common that some prescriptions do get misfiled in pharmacies.'' *Id.* at 1189–90.

The testimony of Respondent's Owner and PIC confirmed Respondent's failure to retrieve and provide the requested prescriptions to the DI on April 11, 2013. *See id.* at 846; *see also id.* at 1186 (The first time the prescriptions were provided to the Government was as an exhibit in this proceeding.). Respondent's Owner and PIC offered excuses for that failure. *Id.* at 847–850.

I find that Respondent never provided the 12 requested prescriptions to the DI. I find that Respondent included ten of the 12 prescriptions in an exhibit for the hearing in this proceeding more than two years after they were requested during the unannounced inspection. I find that Respondent has still not provided the Government with two of the prescriptions that the DI requested on April 11, 2013.

Allegation That Respondent Shipped Controlled Substances Out-of-State Without Complying With Those States' Non-Resident Pharmacy Requirements

Next, the Show Cause Order alleged that Respondent shipped controlled substances to four States (Alabama, Illinois, Kentucky, and Vermont) without complying with those States' non-resident pharmacy requirements. ALJX 1, at 8. As support for the allegation, the Government submitted prescriptions for schedule III controlled substances (testosterone cypionate, testosterone cream, and stanozolol) that Respondent filled for seven customers whose addresses were in Alabama, Georgia, Illinois, Kentucky, Massachusetts, or Vermont. *See* GX 15; *see also* Tr. 87–88 (DI), Tr. 392–93 (Dr. Gordon), Tr. 731–32, 734 (Mr. Fisher). The Government also submitted seven FedEx shipping reports showing that Respondent shipped the prescriptions to customers outside the State of Florida. GX 15.

In further support of the allegation, the Government obtained certifications from Alabama, Illinois, Kentucky, and Vermont that Respondent had not complied with those States' out-of-state pharmacy requirements. *See* GX 24 (Alabama Board of Pharmacy Certification of Non-Licensure of Respondent for the period July 1, 1989 through April 29, 2015), GX 25 (Certification of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation that Respondent ''does not now hold nor has ever held a license under the Pharmacy Practice Act of 1987'' dated April 16, 2015), GX 26 (Kentucky Board of Pharmacy Executive Director letter dated April 14, 2015 stating that, ''I have searched the Board records and do not find that . . . [Respondent] has or ever has been issued a license/permit''), and GX 27 (Vermont Board of Pharmacy's Licensing Board Specialist Certification of Non-Licensure of Respondent for the period July 1, 1989 through April 13, 2015).

Respondent's Owner and PIC asserted that ''out-of-state patients was out of question. That was for me,'' indicating that she would not have filled out-of-state prescriptions ''[u]nder any circumstances, even the patient was really, really sick.'' Tr. 1023; *see also id.* at 44, 88–89 (DI's testimony that Respondent's Owner and PIC told him that Respondent never shipped a controlled substance out-of-state.). Yet, Respondent's Proposed Findings of Fact and Conclusions of Law admitted that ''[f]actually, . . . Respondent was not registered in Alabama, Illinois, Kentucky and Vermont when it shipped control [sic] substances to these states.'' Respondent's Proposed Findings of Fact and Conclusions of Law dated August 28, 2015 (hereinafter, Resp. Br.), at 4.

Based on the uncontroverted documentary evidence, which I find to be more persuasive than the testimony and statements of Respondent's Owner and PIC to the contrary, and Respondent's admission, I find that Respondent shipped controlled substances out-of-state to customers in Alabama, Illinois, Kentucky, and Vermont. Further, I find that, when Respondent shipped those controlled

substances to out-of-state customers, it was not licensed or permitted to do so by the States of Alabama, Illinois, Kentucky, or Vermont.

Allegation That Respondent Filled Controlled Substance Prescriptions Not Containing All of the Information Required By 21 CFR 1306.05(a) and (f)

Next, the Show Cause Order alleged that Respondent filled controlled substance prescriptions that did not contain all of the information required by 21 CFR 1306.05(a). ALJX 1, at 9. As support for the allegation, the Government submitted nine prescriptions. GX 16. The DI testified that the patient's full address was missing from six of the prescriptions. Tr. 99–101; *see also* GX 16, at 1, 3, 5, 7, 9, and 15. He testified that the prescriber's DEA registration number was missing from four of the prescriptions. Tr. 99–101; *see also* GX 16, at 1, 11, 13, and 15. The DI testified that the directions for use were missing from one of the prescriptions. Tr. 99; *see also* GX 16, at 1. He testified that the prescriber's address was missing from four of the prescriptions. Tr. 100–01; *see also* GX 16, at 7, 9, 11, and 13. The DI testified that the prescriber's name was missing from two of the prescriptions, and that the prescriber's signature was missing from one of them. Tr. 100–01; *see also* GX 16, at 11, 13, and 15, respectively.

My review and analysis of the 13 prescriptions in GX 8/8a identified information missing from prescriptions and discrepancies between information on some of the prescriptions and/or prescription labels and information on the customers' driver's licenses. *See, e.g.,* GX 8, at 15 and 17 (missing information in customer address); *id.* at 3–4 and 5–6 (discrepancies between the customer's address shown on the driver's license and shown on the prescription label); *id.* at 9–10 (discrepancies between the customer's address shown on the prescription and shown on the prescription label and driver's license); *see also* Tr. 614–15 (testimony of Mr. Fisher concerning missing information), Tr. 761–65 (testimony of Mr. Fisher concerning information discrepancies). In Mr. Fisher's opinion, Respondent did not exercise due care in entering customer addresses. Tr. 766.

Respondent's Owner and PIC admitted that Respondent filled the prescriptions in GX 16. *Id.* at 1196. She admitted that the patient's address was missing from five prescriptions. *Id.* at 1194–96; *see also* GX 16, at 3, 5, 7, 9, and 15. Respondent's Owner and PIC testified that the prescriber's DEA registration number was missing from three prescriptions, but that those numbers appeared on the prescription fill labels. Tr. 1195–96; *see also* GX 16, at 11, 13, and 15, and GX 16, at 14 and 16, respectively. Respondent did not dispute the facts underlying this allegation. *See, e.g.,* Resp. Exceptions, at 18 (''[I]t is true that twelve out of many hundreds of scripts lacked some of the information required.'').

Having examined the prescriptions and all of the other evidence in the record concerning this allegation, I find the Respondent filled controlled substance prescriptions that did not contain all of the information required by 21 CFR 1306.05(a). I also find that Respondent's Owner and PIC admitted Respondent filled prescriptions not containing all of the information required by 21 CFR 1306.05(a).

Allegation That Respondent Filled Prescriptions Written for ''Office Use'' in Violation of 21 CFR 1306.04(b)

Next, the Show Cause Order alleged that Respondent filled prescriptions written for ''office use'' in violation of 21 CFR 1306.04(b). ALJX 1, at 10. To support this allegation, the Government submitted two Respondent ''RX Order Forms,'' one for testosterone and one for testosterone propionate, for which ''Office Use'' was written on the line designated for the patient name. *See* GX 17. The DI testified that these pages were controlled substance prescriptions written for ''office use.'' Tr. 252–53.

Respondent's Owner and PIC testified that page 1 of GX 17 was a ''prescription'' for testosterone. *Id.* at 1200. She agreed that page 3 of GX 17 was a ''copy of a prescription'' for testosterone. *Id.* at 1202; *see also* Resp. Br., at 10 (''Factually, Respondent did fill the prescriptions alleged in OSC ¶ 6 for 'office use.' ''). Respondent's Owner and PIC further testified that the entity that completed and submitted the ''RX Order Forms'' was engaged in hormone replacement therapy and wanted to ''see how the patient responds'' and ''make sure that the patient don't have allergic reaction on the prescription before they dispense it.'' Tr. 1199; *see also id.* at 1201. Her testimony acknowledged that Respondent ''delivered'' the testosterone ''prescribed'' on page 1 of GX 17. *Id.* at 1200. Regarding the prescription depicted on page 3 of GX 17, however, Respondent's Owner and PIC testified to having ''a flashback,'' stating that, ''I really remember that I don't give them that cypionate.'' *Id.* at 1203.

I find that Respondent admitted filling at least two controlled substance ''prescriptions'' for ''office use'' and delivering at least one of them to an entity engaged in hormone replacement therapy for the purpose of allergy testing.

Allegation That Respondent Filled Prescriptions Written by Physicians for the Physicians' Personal Use in Violation of Florida Statute § 458.331(r)

Next, the Show Cause Order alleged that Respondent filled prescriptions written by physicians for the physicians' personal use in violation of Florida Statute § 458.331(r). ALJX 1, at 10. As support for this allegation, the Government submitted 12 documents that, according to the DI, included ''controlled substance prescriptions'' which doctors wrote ''to themselves.'' Tr. 106; *see also* GX 18. One prescription was written on Respondent's ''RX Order Form'' and had nothing written in the ''patient'' information boxes. GX 18, at 3. The labels associated with this ''prescription'' showed the same name for the patient and the prescriber. *Id.* at 4. Respondent admitted that, ''Factually, Respondent did fill the prescriptions alleged in OSC, ¶ 7 written by physicians for the physicians' personal use.'' Resp. Br., at 16.

I find that Respondent admitted filling six ''prescriptions'' which doctors wrote ''to themselves,'' and that the ''prescriptions'' were for controlled substances.

Allegation That Respondent Violated Florida State Law by Failing To Report Some Prescriptions to E–FORCSE in Violation of Florida Statute § 893.055(4)

Finally, the Show Cause Order alleged that Respondent failed to comply with Florida law by failing to report some prescriptions to E–FORCSE. ALJX 1, at 10–11; *see* Fla. Stat. § 893.055(4) (2012). In support of this allegation, the Government submitted six Dilaudid 8 mg. prescriptions written by the same doctor from July through November of 2012. *See* GX 19. The DI obtained these prescriptions during his unannounced inspection of Respondent. Tr. 107; ALJX 1, at 11. The DI testified that none of these six prescriptions was reported to E–FORCSE according to his analysis of the results of his E–FORCSE query for the period February 14, 2012 to February 4, 2013. Tr. 108–10, 115; *see also* GX 20 (E–FORCSE query results).

Further, in addition to doing his own query, the DI explained that he asked the E–FORCSE program manager to ''do a back-end query to see if these prescriptions were ever uploaded or any errors or . . . any attempts were made for these prescriptions.'' Tr. 109; *see also id.* at 119. As further support for this allegation, the Government

introduced the certified response the DI received from the program manager stating that, ''I certify, none of the prescriptions . . . were uploaded.'' GX 23, at 1 (Letter from E–FORCSE Program Manager to DI dated April 2, 2015); *see also* Tr. 118. The Program Manager's letter, the DI explained, ''shows . . . that . . . [the six prescriptions] were never uploaded'' to E–FORCSE and that there were no uploading attempts that failed due to an error. Tr. 118. The DI also testified that the second page of GX 23 ''shows the uploads that . . . [Respondent] did in that timeframe, and where those [six] prescriptions should have fallen into if . . . [Respondent] had, in fact, uploaded them.'' *Id.* The DI concluded from this evidence that ''these [six] prescriptions were never entered'' into E–FORCSE. *Id.* at 123.

Respondent's Owner and PIC did not challenge the Government's contention that the six prescriptions in GX 19 did not appear in E–FORCSE. Her testimony included that ''I fully believe it was actually entered''; ''I do not know. I did the fair attempt to provide all Schedule prescriptions, and if other prescription was in E–FORCSE, this prescription should be in E–FORCSE''; ''I know that I made a fair attempt to submit this prescription along with other prescription that was accumulated for that week. That was in a compiled file''; and ''I can fairly testify that I did the best effort to submit the prescription to the E–FORCSE.'' *Id.* at 898, 914–15, 922–23, 935, respectively.

I find that Respondent did not present evidence contesting the Government's allegation that six of the controlled substance prescriptions it filled did not appear in E–FORCSE. I find that Respondent filled, but did not report to E–FORCSE, six controlled substance prescriptions for Dilaudid 8 mg. written by the same doctor from July through November of 2012.

Discussion

Under Section 304 of the Controlled Substances Act (hereinafter, CSA or Act), ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a retail pharmacy, which is a ''practitioner'' under 21 U.S.C. 802 (21), Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). [T]hese factors are . . . considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

It is well settled that I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also MacKay* v. *Drug Enforcement Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U. S. Drug Enforcement Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enforcement Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

Under DEA's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors, the Government's evidence in support of its *prima facie* case was confined to Factors Two and Four.[28] I find that the Government's evidence with respect to Factors Two and Four satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I further find that Respondent failed to produce sufficient evidence to rebut the Government's *prima facie* case.

Specifically, I find that the record contains substantial evidence that Respondent's pharmacists violated their corresponding responsibility when they dispensed multiple prescriptions. I also find there is substantial evidence in the record that Respondent was unable to readily retrieve prescriptions it had dispensed, shipped controlled substances out-of-state without complying with States' non-resident pharmacy requirements, and filled controlled substance prescriptions that did not contain all the information required by 21 CFR 1306.05. Accordingly, I agree with the CALJ that Respondent's registration should be revoked. Further, I agree with the CALJ's conclusions concerning Respondent's non-acceptance of responsibility and the appropriate disposition of Respondent's efforts to

[28] As to Factor One, there is no evidence that the Florida Department of Health or the Florida Board of Pharmacy made a recommendation concerning Respondent and the matter before me. Respondent provided several filings, from administrative proceedings and from Respondent's lawsuit against the Florida Department of Health, involving its permit to function as a community pharmacy and the compounding side of its business at its registered location and elsewhere in Florida. According to Respondent's cover letter, it provided this material due to an Order during the Prehearing Conference on April 14, 2015. ALJX 12, at 1. Material in Respondent's submission indicated that the Florida Board of Pharmacy (1) found Respondent had waived the right to request a hearing by failing to respond in a timely manner to the Administrative Complaint against it, (2) approved, adopted, and incorporated the Administrative Complaint's factual allegations, and (3) disciplined Respondent, placing it on probation for two years and requiring quarterly inspections. *Id.* at 20–21. The materials do not establish that Respondent lacks State authority or contain a recommendation one way or another.

While there is no evidence that Florida has revoked Respondent's license, DEA has held repeatedly that a registrant's possession of a valid State license is not dispositive of the public interest inquiry. *Lon F. Alexander, M.D.,* 82 FR 49,704, 49,724 n.42 (2017) (citing *Mortimer Levin, D.O.,* 57 FR 8680, 8681 (1992)). As DEA has long held, ''[t]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Alexander,* 82 FR at 49,724 n.42 (citing *Levin,* 57 FR at 8681).

As to Factor Three, there is no evidence that Respondent has a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as the Agency has noted, there are any number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enforcement Admin.,* 664 F.3d 808 (10th Cir. 2011). The DEA has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

show its remedial measures. R.D., at 58. For the reasons set out below, I will order that Respondent's registration be revoked and that any pending application of Respondent be denied.

Factors Two and/or Four—The Registrant's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Allegations That Respondent Failed To Exercise Its Corresponding Responsibility When It Dispensed Controlled Substances Pursuant to Prescriptions Not Issued in the Usual Course of Professional Practice or for a Legitimate Medical Purpose

Under the CSA, it is ''unlawful for any person knowingly or intentionally . . . to . . . distribute[ ] or dispense, or possess with intent to . . . distribute[ ] or dispense, a controlled substance'' ''[e]xcept as authorized'' by the Act. 21 U.S.C. 841(a)(1). A pharmacy's registration authorizes it to ''dispense,'' or ''deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of . . . a practitioner.'' 21 U.S.C. 802(10).

According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). While the ''responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, . . . a corresponding responsibility rests with the pharmacist who fills the prescription.'' *Id.* The regulations establish the parameters of the pharmacy's corresponding responsibility.

> An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. [§] 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Id. As the Supreme Court has explained in the context of the Act's requirement that schedule II controlled substances may be dispensed only by written prescription, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).

The Government must show that the pharmacist acted with the requisite degree of scienter to prove a violation of the corresponding responsibility regulation.[29] *See Hills Pharmacy, LLC,* 81 FR 49,816, 49,835 (2016). According to Agency precedent, the Government may prove a violation by showing either that: (1) The pharmacist filled a prescription notwithstanding her actual knowledge that the prescription lacked a legitimate medical purpose; or (2) the pharmacist was willfully blind or deliberately ignorant to the fact that the prescription lacked a legitimate medical purpose. *Id.* To establish that a pharmacist acted with willful blindness, the Government must prove that the pharmacist had a subjective belief that there was a high probability that a fact existed and she took deliberate actions to avoid learning of that fact. *Id.* (quoting *Global-Tech Applications, Inc.,* v. *SEB S.A.,* 563 U.S. 754, 769 (2011)); *see also United States* v. *Henry,* 727 F.2d 1373, 1378 (5th Cir. 1984) (citing *United States* v. *Hayes,* 595 F.2d 258 (5th Cir.), *cert. denied,* 444 U.S. 866 (1979) (rejecting challenge that the regulation was unconstitutionally vague)) (''What is required by him [the pharmacist] is the responsibility not to fill an order that purports to be a prescription but is not a prescription within the meaning of the statute because he knows that the issuing practitioner issued it outside the scope of medical practice. . . . [A] pharmacist can know that prescriptions are issued for no legitimate medical purpose without his needing to know anything about medical science.'').

The Government did not allege that Respondent dispensed the prescriptions having actual knowledge that the prescriptions lacked a legitimate medical purpose. Instead, the Government alleged that Respondent violated the corresponding responsibility regulation as ''evidenced'' by its ''dispensing of controlled substances despite the presence of red flags of diversion that . . . [it] failed to clear prior to dispensing the drugs.'' ALJX 1, at 1–2 (citing *Holiday CVS*); *see also* Government's Proposed Findings of Fact and Conclusions of Law dated August 28, 2015 (hereinafter, Govt. Br.), at 15–16.

As discussed above, the testimony of Dr. Gordon, as well as testimony offered by Respondent's own witness, Mr. Fisher, supported the Government's allegations that the seven different factual circumstances the Government alleged to be ''red flags of diversion'' existed as alleged, and that Respondent did not resolve them before dispensing controlled substances.[30] *See also* R.D., at 9 (''Dr. Gordon testified that she will not dispense a controlled medication in the face of an unresolved red flag . . ..'') and at 13 (''Mr. Fisher acknowledged that none of the Respondent's pharmacy paperwork reflected any documentation that red flags were resolved prior to dispensing and that he did not know whether they were ever resolved.''). Further, as discussed above, the CALJ recommended crediting that documentary and testimonial evidence. I find credible the testimony of Dr. Gordon and, to the extent he agreed with Dr. Gordon, Mr. Fisher that Respondent filled controlled substance prescriptions that raised ''red flags'' without resolving, and documenting the resolution of, those red flags.

Prior Agency decisions found that prescriptions with the same ''red flags'' at issue here were so suspicious as to support a finding that the pharmacists who filled them violated the Agency's corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy.[31] 21 CFR 1306.04(a). *See, e.g., Hills Pharmacy,* 81 FR at 49,836–39 (multiple customers filling prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the

[29] The Show Cause Order alleged that ''Respondent'' violated its corresponding responsibility. Respondent and the Government stipulated that: ''The Respondent is owned and operated by Veronica Taran.'' Further, Respondent's Owner and PIC admitted that she is Respondent's pharmacist-in-charge and Respondent's only pharmacist. Tr. 1012 (''[I]n this particular practice, because there's only me, there's nobody else there, like, there's no other pharmacist there.''). When asked by her counsel whose responsibility it was to resolve any red flags, she testified that ''[u]ltimate responsibility lies up me as the pharmacist and pharmacist-in-charge.'' *Id.* at 1045. Thus, for purposes of finding and attributing liability in this case, I find that the actions and inactions of Respondent's Owner and PIC were the actions and inactions of Respondent.

[30] For example, Respondent's Owner and PIC even testified that it was not a red flag ''by itself'' for a customer to travel over 100 miles from their Florida home to Respondent to fill a controlled substance prescription. Tr. 1028. Indeed, regarding red flags, her testimony was that red flags were a stumbling block. Respondent's Owner and PIC said that ''just by strictly following these red flags, it will prevent legitimate patient from obtaining the medication.'' *Id.* at 1108.

[31] Agency precedent has defined the term ''red flag'' to mean ''a circumstance that does or should raise a reasonable suspicion as to the validity of a prescription.'' *Hills Pharmacy,* 81 FR at 49,839. This precedent, in conjunction with the terms of the corresponding responsibility regulation, means that the suspicious circumstances presented by the red flags must rise to the level necessary to support a finding that the pharmacist acted with willful blindness.

same last name and street address presenting similar prescriptions on the same day; two short-acting opiates prescribed together; long distances; drug cocktails; payment by cash); *The Medicine Shoppe,* 79 FR 59,504, 59,507, 59,512–13 (2014) (unusually large quantity of a controlled substance; pattern prescribing; irregular dosing instructions; drug cocktails); *Holiday CVS,* 77 FR 62,316, 62,317–22 (2012) (long distances; multiple customers filling prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting virtually the same prescriptions within a short time span; payment by cash); *East Main Street Pharmacy,* 75 FR 66,149, 66,163–65 (2010) (long distances; lack of individualized therapy or dosing; drug cocktails; early fills/refills; other pharmacies' refusals to fill the prescriptions).

Agency precedent has made clear that, when presented with a prescription clearly not issued for a legitimate medical purpose, a pharmacist may not intentionally close her eyes and thereby avoid positive knowledge of the real purpose of the prescription. *JM Pharmacy Group, Inc., d/b/a Farmacia Nueva and Best Pharma Corp.,* 80 FR 28,667, 28,670 (2015). Yet, that is exactly what Respondent's Owner and PIC did.

As I detailed above, the testimony of Respondent's Owner and PIC acknowledged that schedule II controlled substances are highly risky and are subject to ''a lot of diversion.'' Tr. 1129, 1116 (respectively). She also specifically testified that a prescription for a large quantity of a schedule II controlled substance raised red flags. *Id.* at 881, 882, 887. Yet, she admitted failing to address such schedule II prescriptions presented to her pharmacy in a fashion consistent with her testimony. *Id.* at 1132–39. She did not explain or justify her conscious and deliberate choice to avoid learning legitimacy-related information about schedule II prescriptions that she knew were ''highly risky,'' prone to diversion, and raised red flags. These acknowledgements and failures clearly show her subjective belief of a high probability that the various schedule II prescriptions presented to her were not legitimate and her deliberate actions to avoid learning of their illegitimacy.

Further, although Respondent challenged Dr. Gordon's expertise to testify that it charged exorbitantly high prices for controlled substances, Respondent did not offer any price-related evidence disputing Dr. Gordon's testimony. The evidence in the record that Respondent charged exorbitantly high prices for controlled substance prescriptions is further proof that Respondent knew or subjectively believed that there was a high probability that its customers were either abusing or diverting those controlled substances. *See also id.* at 362 (Dr. Gordon's testimony that ''maybe the pharmacist knew what was going on, and they were taking advantage of these patrons that were drug seeking.'') and *id.* at 465 (Dr. Gordon's testimony suggesting that Respondent ''knew . . . prescriptions were [being] diverted'' and ''was taking advantage of that patron . . . [b]ecause they knew they would pay whatever they needed to pay'' to fill the prescription.)

The so-called ''proper steps'' for handling schedule II prescriptions that Respondent's Owner and PIC constructed were actually abdications of her corresponding responsibility. According to Respondent's Owner and PIC, her responsibility, when presented with a controlled substance prescription, was limited to (1) making sure the prescriber's medical license was current; (2) checking the prescriber's DEA registration against the controlled substance in the prescription; (3) obtaining the patient's signature on the Relationship Affidavit as alleged verification of a *bona fide* doctor-patient relationship; and (4) validating that the prescriber actually signed the prescription, as opposed to its having been rubber stamped. These steps, however, do not constitute an independent exercise of professional judgment by a pharmacist evaluating the legitimacy of highly suspicious controlled substance prescriptions such as those at issue here. They were clearly insufficient to determine the legitimacy of schedule II prescriptions that Respondent's Owner and PIC herself characterized as ''highly risky'' and prone to diversion. Instead, they constituted a pharmacist's abdication of responsibility for a legitimacy assessment.

As for checking the currency of the prescriber's medical license and DEA registration, this is not enough as a prescriber must generally hold both a license and registration to even issue a prescription under the CSA. 21 CFR 1306.03(a). The fact that a practitioner possesses the requisite authority does not, however, mean that he/she acted in the usual course of professional practice in issuing any particular prescription and that the prescription was issued for a legitimate medical purpose. *Cf. Krishna-Iyer,* 74 FR at 463.

As for the ''proper step'' of having a customer sign the Relationship Affidavit, Respondent's Owner and PIC did not explain why it was reasonable for her to expect customers who were drug seekers to understand the content of that document. Moreover, even if the customers did understand the document, she offered no explanation as to why her customers would be honest and truthful in answering the questions if they were seeking controlled substances to either personally abuse or divert to others.[32]

Lastly, the ''proper step'' of ensuring that the prescription was not ''signed'' by a rubber stamp might have showed that the prescription was not an outright fraud, but it did nothing to ensure that the prescription was issued for a legitimate medical purpose. 21 CFR 1306.04(a).

Respondent's Owner and PIC also testified regarding the five CII/CIII Rx Verification Forms which were part of Respondent's ''patient files'' (*see* RXs 6 and 10) and ''kept in the regular course of business.'' [33] Tr. 824–25. She also stated that they ''assisted . . . [her] to resolve the red flags.'' *Id.* at 824. Yet, neither she nor Respondent explained why Respondent submitted only five such forms from its ''patient files'' when the Government's evidence included 60 prescriptions and 29 patients. Moreover, while the forms indicated that the prescriptions were actually written by a physician, that the physician saw and physically examined the patient, and that there were diagnosis codes, the forms contained no additional documentation as to what circumstance prompted Respondent to contact the physician and what information the physician's office provided which led the pharmacist to approve and fill the prescription. Thus, at most, the forms establish with respect to these five patients that Respondent verified each prescription with its issuer. However, long-standing case law has explained that ''[v]erification by the issuing practitioner on request of the pharmacist . . . is not an insurance policy against a fact finder's concluding that the pharmacist had the requisite knowledge despite a purported but false verification.'' *United States* v. *Henry,* 727 F.2d at 1378 (quoting *United States* v. *Hayes,* 595 F.2d 258, 261 (5th Cir. 1979)). In sum, Respondent's CII/CIII Rx Verification Forms are insufficient and do not alter my finding that Respondent

[32] Further, I find that the high prices Respondent charged for controlled substances, as discussed above, suggest that Respondent knew its customers were either abusing or diverting them.

[33] Respondent submitted one other CII/CIII Rx Verification Form. RX 5, at 9.

violated the corresponding responsibility regulation.

The Government also submitted prescriptions, in support of the Show Cause Order's corresponding responsibility allegation, that did not involve schedule II controlled substances. As discussed above, the controlled substance was testosterone cypionate and the same doctor wrote all of the prescriptions on the same day. GX 10. Respondent filled all of those prescriptions within the period of about an hour and a half. *Id.* Dr. Gordon, Mr. Fisher, and Respondent's Owner and PIC agreed that these prescriptions raised red flags. Although Respondent's Owner and PIC stated that she resolved the red flags, she did not produce any documentary evidence to support her statement and, thus, I did not afford her statement any weight. As discussed above, I found that Respondent also filled these prescriptions in the face of their red flags. The fact that Respondent's Owner and PIC acknowledged these prescriptions' red flags clearly evidenced her subjective belief of a high probability that these schedule III prescriptions were not legitimate. The fact that she simply filled them showed that she took deliberate actions to avoid learning of their illegitimacy.

Accordingly, I find the Government has proved by substantial evidence that controlled substance prescriptions Respondent, by Respondent's Owner and PIC, filled were not prescriptions issued in the usual course of professional treatment, yet Respondent, by Respondent's Owner and PIC, knowingly filled, or filled with willful blindness, those prescriptions in violation of the corresponding responsibility regulation. 21 CFR 1306.04(a); *see also Hills Pharmacy,* 81 FR at 49,835; *Superior Pharmacy I and Superior Pharmacy II,* 81 FR 31,310, 31,335 (2016); *The Medicine Shoppe,* 79 FR at 59,515–16; *East Main Street Pharmacy,* 75 FR at 66,163–65.[34]

I considered Respondent's claim that Dr. Gordon's testimony should not be credited because ''she never worked as a pharmacist in an independent pharmacy'' such as Respondent and, therefore, ''her dispensing, managing and purchasing experience is not comparable to those of [Respondent's Owner and PIC].'' Resp. Br., at 37–38. I reject this claim. I have already set out my credibility determinations, which are based on the credibility recommendations of the CALJ. Those determinations afford Dr. Gordon's testimony the appropriate weight in these proceedings regarding the practice of pharmacy in Florida. Further, Respondent's claim is simply incorrect. The corresponding responsibility of a pharmacist is the same whether the pharmacist practices at an independent pharmacy or in a chain pharmacy. In other words, the size or corporate status of the pharmacy in which a pharmacist practices does not dictate the scope of a pharmacist's obligation under federal law.

I reject Respondent's claim that the Government arbitrarily designated customers as having travelled long distances ''since it is not relying on any statutory enactment, federal or state to make such a designation.'' *Id.* at 33. Even Respondent's witness, Mr. Fisher, agreed that customers traveling long distances to fill prescriptions is a red flag. Tr. 754; *see also* R.D., at 47.

I considered Respondent's claim that Dr. Gordon's testimony about pattern prescribing created ''an unrecognized standard under, both, case law and the Florida statutory law.'' Resp. Br., at 38. I find that Respondent's claim is without merit. Numerous agency and court cases have recognized that pattern prescribing is a red flag. *See, e.g., The Medicine Shoppe,* 79 FR at 59,512; *see also United States* v. *Durante,* No. 11–277, 2011 WL 6372775, at *3 (D.N.J. Dec. 20, 2011) (''This is sufficient to establish probable cause to believe that Defendant was engaged in an extensive pattern of prescribing controlled substances without a legitimate medical purpose to a broad group of patients in his medical practice.''). Further, as already discussed, even Respondent and Respondent's own witness, Mr. Fisher, eventually admitted that pattern prescribing was a red flag of diversion.

During the hearing, Dr. Gordon testified about the level of the cash price Respondent charged for some prescriptions, including in comparison to what another pharmacy might charge. *See, e.g.,* Tr. 400, 406, 410–11, 413, 415, 417–18. Respondent's Counsel objected, stating that ''the expert is testifying in price difference against what a normal pharmacist, quote, unquote, would charge versus what . . . [Respondent] charged for certain drugs, drug being Dilaudid.'' *Id.* at 419. He continued his objection by stating that, ''I just reviewed the prehearing statement provided by the Government, and there is no mention that their expert is going to get into the price . . . differentiation . . . between a normal pharmacy and . . . [Respondent].'' *Id.* at 419–20. Respondent's Counsel subsequently elicited from Dr. Gordon that she was ''never in charge of purchasing controlled substances for resale for a small independent pharmacy.'' *Id.* at 482; *see also* Resp. Exceptions, at 2. The CALJ's recommendation was that ''the Government did not adequately notice the relative price charged for the medication . . . [because] [t]he Agency recently imposed an increasingly rigorous standard of notice.'' R.D., at 10 n.60.

I reject the Exception. As to the issue of notice, for reasons previously explained, the Agency has rejected the notion that the ''Agency recently imposed an increasingly rigorous standard of notice on its administrative prosecutors.'' *See, e.g., Wesley Pope, M.D.,* 82 FR 14,944, 14,946 n.4 (2017). Here, the Government in its Prehearing Statement gave notice that Dr. Gordon would testify about ''patients willing to pay exorbitant prices'' as well as the relative price charged for the medication by Respondent. ALJX 5 (Govt. Prehearing Statement), at 11. Accordingly, I find that the Government provided adequate notice that the prices charged by Respondent would be at issue in the proceeding.

To the extent Respondent argues that I should give no weight to Dr. Gordon's testimony, I reject its argument that I should reject her testimony because she has never purchased controlled substances for a small pharmacy. Indeed, Dr. Gordon specifically testified that she ''actually looked up the national . . . price.'' *Id.* at 503.

In its Exceptions, Respondent argues that the ''absence of Respondent's corresponding exhibit should not be interpreted as an absence of records,'' and that ''it simply means that . . . the records in Respondent's possession are the same records as contained in a corresponding Government's exhibit.'' Resp. Exceptions, at 8 n.10. In this Exception, Respondent indicates its dispute with the Government's allegation that ''Respondent failed to exercise its corresponding responsibility

[34] This case is different from *Superior Pharmacy I and Superior Pharmacy II* where the Government's evidence was insufficient to establish a corresponding responsibility violation even though Respondent dispensed controlled substance prescriptions in the face of unresolved red flags such as long distances, multiple people presenting identical or very similar prescriptions from the same prescriber on the same day, drug cocktails, two people in the same household or with the same address needing the exact same drugs, and payment by cash. 81 FR at 31,336. The Government's evidence in that case consisted only of the prescriptions allegedly dispensed without documentation of the resolution of red flags. As explained in that decision, there was no applicable law or rule requiring that documentation of the resolution of a red flag be placed on the prescription. Here, by contrast, the documentary and testimonial evidence made abundantly clear that Respondent did not carry out its corresponding responsibility.

under the regulations by failing to acknowledge and resolve red flags related to a pattern of a doctor prescribing the exact same medication in a cookie-cutter fashion to multiple patients on the same day.'' Resp. Exceptions, at 8. As the CALJ noted, however, Respondent's Owner and PIC ''conceded that the paperwork furnished to the DIs at the April 11th Inspection did not memorialize any attempts to resolve this red flag and agreed that she did not have any paperwork documenting her identification or resolution of the issue.'' R.D., at 49 (citing Tr. 1094). While Respondent's Exception purports to correlate its ''corresponding exhibit'' with the Government's evidence, Respondent fails to explain the many instances in which Respondent simply did not offer documentary evidence to support the bald assertions of Respondent's Owner and PIC that Respondent complied with the corresponding responsibility regulation. *See, e.g.,* R.D., at 49–50 (''[I]t is difficult to reconcile the multiple areas where the Respondent's recordkeeping system . . . had the capacity to note details such as red flag resolution with the absence of any documented indication that this, or any other red flags, were analyzed and resolved.'').

Further, this Agency has applied, and I apply here, the ''adverse inference rule.'' As the DC Circuit explained, ''Simply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.'' *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW)* v. *Nat'l Labor Relations Bd.,* 459 F.2d 1329, 1336 (DC Cir. 1972). The Court reiterated this rule in *Huthnance* v. *District of Columbia,* 722 F.3d 371, 378 (DC Cir. 2013). According to this legal principle, Respondent's decision not to provide records gives rise to an inference that any such evidence is unfavorable to Respondent. In any event, as explained above, the records Respondent did provide concerning the Government's allegations were insufficient to rebut those allegations.

Respondent suggested throughout the hearing and in its briefs that the Government's case was deficient. *See, e.g.,* Resp. Exceptions, at 9–10, 11, 13, 14, 15, and 16–17. Having reviewed and considered all of Respondent's claims and arguments, I find that none of them has merit. Adoption of any of them would undermine this Agency's regulatory mission, and I decline to rule against long-standing precedent.

For example, in its Exceptions, Respondent argues that the Government's Expert ''admitted that she has no evidence that . . . any of the prescriptions . . . were diverted or somehow used for or with illicit purposes.'' Resp. Exceptions, at 11. Notwithstanding the Government's Expert's testimony, there is ample circumstantial evidence that the prescriptions at issue in this proceeding were issued by a physician acting outside of the usual course of professional practice. The circumstantial evidence includes that the prescriptions were for large quantities of Dilaudid 8 mg., a highly abused narcotic; that customers were traveling long distances; and that many of the customers were paying cash and exorbitantly high prices. In other instances, the evidence showed that customers were obtaining early fills of prescriptions.

Second, Respondent suggests that the Government's failure to prove the prescribing doctors were not licensed or registered at the relevant time, or otherwise ''unable to lawfully issue the prescription[s],'' somehow exonerated Respondent. *See, e.g.,* Resp. Exceptions, at 13. Respondent cites no legal authority for this Exception. Indeed, it is fatally flawed because it suggests that Respondent's corresponding responsibility is alleviated by the prescriber's medical license, controlled substances registration, or other credential. As the language of the regulation makes clear, while the prescribing practitioner is responsible for the proper prescribing and dispensing of a controlled substance, a corresponding responsibility rests with the pharmacist who fills a controlled substance prescription, and the pharmacist who knowingly fills a ''purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' 21 CFR 1306.04(a). Thus, contrary to Respondent's suggestion, the good order of the prescribing practitioner's license, registration, or other credential does not alleviate the pharmacist's corresponding responsibility or exonerate the pharmacist in any way. I reject Respondent's Exception.

Third, Respondent claims that the Government failed to prove the existence of any indicator of controlled substance abuse specified in Fla. Admin. Code r. 64K–1.007 (adopted May 21, 2012).[35] *See, e.g.,* Resp. Exceptions, at 14–17. Respondent cites no legal basis for its claim that the provisions of this State Administrative Code section, that were not even in effect during the entire period covered by the Show Cause Order, are determinative of liability under Federal law. I reject Respondent's Exception.

Finally, Respondent suggested that the Government's case must fail because the DI did not meet with any prescriber or speak with any customer. *See, e.g.,* Resp. Br., at 35, 37. Respondent did not elaborate on its argument or cite any legal precedent for it. Again, Agency precedent has made clear that Respondent's argument is mistaken.[36] Accordingly, I reject it.

Allegation That Respondent Filled Controlled Substance Prescriptions Not Containing All of the Information Required by 21 CFR 1306.05(a) and (f)

The Show Cause Order alleged that Respondent filled controlled substance prescriptions that did not contain all the information required by 21 CFR 1306.05(a) and (f). According to that regulation, a ''corresponding liability rests upon the pharmacist . . . who fills a prescription not prepared in the form prescribed by DEA regulations.'' 21 CFR 1306.05(f). Among other things, those DEA regulations require that controlled substance prescriptions be ''dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.'' 21 CFR 1306.05(a). As found above, Respondent filled controlled substance prescriptions that did not contain all of the information required by 21 CFR 1306.05.

As discussed above, the uncontroverted evidence is not only that Respondent violated this regulation, but that Respondent admitted violating this regulation. I find, based on all of the evidence in the record, that Respondent violated 21 CFR 1306.05(a) by filling multiple controlled substance prescriptions that were not prepared in the form prescribed by DEA regulation.

[35] According to this provision, the E–FORCSE Program Manager ''may provide relevant information to the identified health care practitioners who have prescribed or dispensed controlled substances'' to an individual ''who within a 90-day time period . . . obtains a prescription for a controlled substance . . . from more than one prescriber . . . and . . . is dispensed a controlled substance . . . from five or more pharmacies.''

[36] ''While it is true that a pharmacist cannot violate his corresponding responsibility if a prescription was nonetheless issued for a legitimate medical purpose, Respondent ignores that the invalidity of a prescription can be proved by circumstantial evidence.'' *Hills Pharmacy,* 81 FR at 49,836, n.33.

Allegation That Respondent Filled Prescriptions Written for ''Office Use'' in Violation of 21 CFR 1306.04(b)

The Show Cause Order alleged that Respondent violated 21 CFR 1306.04(b) when it filled prescriptions issued for ''an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.'' ALJX 1, at 10. As explained above, GX 17 included two ''RX Order Forms'' that Respondent referred to as ''prescriptions'' and, pursuant to at least one of them, admitted delivering controlled substances to an entity engaged in hormone replacement therapy for the purpose of allergy testing. Based on Respondent's admissions, I find that Respondent filled prescriptions issued in violation of 21 CFR 1306.04(b).[37] I note, however, that 21 CFR 1306.04(b), the provision the Government cited in the Show Cause Order, prohibits the issuance, not the filling, of prescriptions.

Neither the Show Cause Order nor the Government Prehearing Statement cited a statutory or regulatory provision that prohibited the filling of a prescription issued in violation of 21 CFR 1306.04(b). In addition, the Government did not discuss the ''office use'' allegation, let alone address the legal sufficiency of this allegation in the Show Cause Order or in the Government Prehearing Statement. I find that the Government did not allege a legal basis for the revocation or suspension of Registrant's registration upon a finding that Registrant ''filled'' prescriptions issued in violation of 21 CFR 1306.04(b).

Thus, while I find that Respondent admitted filling prescriptions issued in violation of 21 CFR 1306.04(b), I also find that the Government did not comply with the requirement that the Show Cause Order ''contain a statement of the legal basis for . . . the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.'' 21 CFR 1301.37(c). Thus, I will not give any weight in the public interest assessment to Respondent's admission that it filled prescriptions issued in violation of 21 CFR 1306.04(b).

Allegation That Respondent Filled Prescriptions Written by Physicians for the Physicians' Personal Use in Violation of Florida Statute § 458.331(r)

According to the Show Cause Order, Respondent ''filled prescriptions written by physicians for the physicians' personal use, in violation of Fla. Stat. § 458.331(r) which prohibits '[p]rescribing, dispensing, or administering any medicinal drug appearing in any schedule set forth in chapter 893 by the physician to himself or herself.''' ALJX 1, at 10. The Show Cause Order also alleged that Respondent ''violated Florida law by dispensing controlled substances pursuant to these invalid prescriptions.'' *Id.* Neither it nor the Government Prehearing Statement, however, specified the provision of the allegedly violated Florida law. The CALJ referenced the corresponding responsibility provision of 21 CFR 1306.04(a) but that, of course, cannot be the provision of ''Florida law'' that the Show Cause Order referenced.

During the time period covered by the Show Cause Order, Florida law required that a pharmacist, before dispensing a controlled substance listed in schedules II through IV, first determine ''in the exercise of her or his professional judgment . . . that the order is valid.'' Fla. Stat. § 893.04(2)(a) (2009). The substances that Respondent admitted dispensing to physicians for their personal use, testosterone and phentermine, were listed in Florida law as controlled substances under schedules III and IV, respectively. Fla. Stat. § 893.03 (2011) (''Standards and schedules''). *See also* Fla. Stat. § 893.02(22) (2011) (defining a ''prescription'' as an order for drugs ''issued in good faith and in the course of professional practice . . . and meeting the requirements of s. 893.04.'').

The Respondent's argument against liability was that the Florida statute referenced in the Order to Show Cause was not sufficiently related to preventing the diversion of controlled substances. Resp. Br., at 17–18. According to Respondent, the ''primary purpose behind § 458.331 . . . is to regulate the practice of medicine and discipline physicians that have engaged in unethical and/or unprofessional behavior.'' *Id.* at 17. It argued that ''[c]learly, the primary purpose behind § 458.331 . . . in general and § 458.331(r) specifically is not 'control[ling] the supply and demand of controlled substances in both lawful and unlawful drug markets' . . . or preventing drug diversion, but disciplinary actions and remedies against offending physicians.'' *Id.* at 18 (quoting *Gonzales* v. *Raich,* 545 U.S. 1, 19 (2005)).

Respondent's argument fails as does its similar argument concerning its admitted interstate shipment of controlled substances in violation of four States' non-resident pharmacy requirements. The Florida statutes at issue concerned exactly what Respondent argued they did not. As the CALJ stated, the Florida provision cited in the Show Cause Order ''prohibits an activity that 'increases the opportunity for those persons who are self-abusing or engaged in diversion to obtain controlled substances.''' R.D., at 38 n.159 (citing *Fred Samimi, M.D.,* 79 FR 18,698, 18,710 (2014)). Further, Chapter 893, referenced in the Florida statute listed in the Show Cause Order, is entitled ''Drug Abuse Prevention and Control.'' These provisions of Florida law concern much more than physician discipline; by their very title, they go to the heart of the controlled substance anti-diversion mission—drug abuse prevention and control.

The dilemma posed by this Show Cause Order allegation is whether it, in its and the hearing record's brevity concerning this charge, sufficiently noticed Respondent of the charge being levied against it. The CALJ thought not. *See* R.D., at 39. However, Respondent defended against this charge and, in doing so, purported to understand the charge being levied against it.

I find that neither the Show Cause Order nor the Government Prehearing Statement specified a statutory provision that Respondent allegedly violated.[38] 21 CFR 1301.37(c). Thus, even though there is evidence in the record that Respondent violated Florida law when it filled prescriptions for the personal use of the prescriptions' prescribers, I did not consider this evidence when I conducted the public interest analysis of 21 U.S.C. 823(f).[39]

Other Allegations

Allegation That Respondent Was Unable To Readily Retrieve Prescriptions It Had Dispensed

The Show Cause Order alleged that Respondent was unable to ''readily retrieve prescriptions it had dispensed''

[37] After admitting that it filled ''the prescriptions alleged'' in the Show Cause Order, Respondent argued that its actions were ''legal and proper'' under 21 CFR 1307.11(a), the so-called 5% Rule. Resp. Br., at 15–16. Since I find that the Government did not allege a legal basis for the ''office use'' allegation, I need not address Respondent's argument concerning 21 CFR 1307.11(a).

[38] Neither did the Government Brief specify a statutory provision that Respondent allegedly violated.

[39] Fla. Stat. § 458.331(r) (which prohibited ''[p]rescribing, dispensing, or administering any medicinal drug appearing in any schedule set forth in chapter 893 by the physician to himself or herself'') in conjunction with Fla. Stat. § 893.04(2)(a) (which prohibited a pharmacist from dispensing a controlled substance without first determining, in the exercise of her professional judgment, that the order was valid).

in violation of 21 CFR 1304.04(h)(3) and (4). ALJX 1, at 7–8. The Show Cause Order cited 12 examples of prescriptions that Respondent allegedly did not retrieve and provide to the DI as required by law.

According to the regulation, which is applicable to inventories and records of controlled substances in schedules III through V, ''[p]aper prescriptions for Schedules III, IV, and V controlled substances shall be maintained at the registered location . . . in such form that they are readily retrievable from the other prescription records of the pharmacy.'' 21 CFR 1304.04(h)(4). The regulatory definition of ''readily retrievable'' calls for locating the records ''in a reasonable time.'' 21 CFR 1300.01(b). Agency precedent states that ''what constitutes 'a reasonable time' necessarily depends on the circumstances.'' *Edmund Chein, M.D.,* 72 FR 6580, 6593 (2007), *pet. for rev. denied, Chein* v. *Drug Enforcement Admin.,* 533 F.3d 828, 832 n.6 (DC Cir 2008), *cert. denied,* 555 U.S. 1139 (2009). According to that precedent, ''under normal circumstances if a practice is open for business, it should be capable of producing a complete set of records within several hours of the request.'' *Id.* The decision explained that ''[t]o allow a registrant an even greater period of time to produce the records would create an incentive for those who are engaged in illegal activity to obstruct investigations by stalling for time in the hopes that DEA personnel would eventually give up and leave.'' *Id.*

As found above, Respondent never provided the 12 requested prescriptions to the DI. Respondent included ten of the 12 prescriptions in an exhibit for the hearing in this proceeding more than two years after the unannounced inspection, but this is insufficient to comply with the ''readily retrievable'' requirement. As of the final day of the hearing in this proceeding, or about 28 months after the unannounced inspection, Respondent still had not provided the Government with two of the prescriptions. Accordingly, I find that the Government has proved by substantial evidence that Registrant failed to comply with the requirements of 21 CFR 1304.04(h)(3) and (4).

Allegation That Respondent Shipped Controlled Substances Out-of-State Without Complying With Those States' Non-Resident Pharmacy Requirements

The Order to Show Cause alleged that Respondent shipped controlled substances to customers in Alabama, Illinois, Kentucky, and Vermont without complying with those States' non-resident pharmacy requirements.[40] As found above, Respondent shipped controlled substances to customers in Alabama, Illinois, Kentucky, and Vermont without being licensed in, or permitted by, those States to do so. Accordingly, I find that the Government has proved by substantial evidence that Registrant failed to comply with the non-resident pharmacy requirements of four States.

Respondent admitted that it was not in compliance with any of these four States' non-resident pharmacy requirements when it shipped controlled substances to customers at addresses in those States. Further, Respondent did not challenge the Government's contention that it violated these four States' non-resident pharmacy requirements when it argued that ''[i]t should be note [sic] that other than the out-of-state dispensing instances . . . [alleged], there was no evidence that . . . [Respondent] is engaged in shipping medications to states where it does not hold a Non-resident pharmacy license.'' Resp. Br., at 9. Instead, Respondent argued that its noncompliance with these four States' non-resident pharmacy statutes was insufficiently related to preventing the diversion of controlled substances to be considered under Factor Four of 21 U.S.C. 823(f). *Id.* at 4–9 (citing *Fred Samimi,* 79 FR at 18,710). The CALJ disagreed and concluded that the out-of-state pharmacy provisions had a ''sufficient nexus'' to the Act's ''core purpose of preventing drug abuse and diversion to warrant consideration under the Public Interest Factors.'' R.D., at 43. I agree with the result the CALJ recommended.

The second public interest factor is ''experience in dispensing . . . controlled substances.'' 21 U.S.C. 823(f)(2). ''Dispense,'' according to 21 U.S.C. 802(10), means ''deliver a controlled substance to an ultimate user . . . pursuant to the lawful order of . . . a practitioner.'' Despite the testimony of Respondent's Owner and PIC and her statements to the DI, Respondent admitted that it ''dispensed'' controlled substances in violation of four States' legal requirements. Thus, I find that Respondent's experience in dispensing controlled substances includes the dispensing of controlled substances to customers living in four States in which Respondent was not licensed or legally authorized to dispense those controlled substances. *Id.* This result is consistent with Agency precedent. *Sun & Lake Pharmacy, Inc.; d/b/a the Medicine Shoppe,* 76 FR 24,523, 24,532 (2011) (finding that Respondent committed actionable misconduct when it dispensed prescriptions to residents of States in which it was not licensed.). *See also* 21 U.S.C. 802(21) (defining ''practitioner'' as meaning, in relevant part, a ''pharmacy . . . licensed, registered or otherwise permitted . . . by the . . . jurisdiction in which . . . [it] practices . . . to . . . dispense a controlled substance'').

Allegation That Respondent Violated Florida State Law by Failing To Report Some Prescriptions to E–FORCSE in Violation of Florida Statute § 893.055(4)

The Show Cause Order alleged that Respondent failed to comply with Florida State law by not reporting specified prescriptions to E–FORCSE. As discussed above, I found that Respondent did not challenge the Government's assertion that six controlled substance prescriptions it dispensed did not appear in E–FORCSE. The CALJ found ''not persuasive'' Respondent's argument that the non-reportings ''had their genesis in a good-faith technical glitch.'' R.D., at 46 n.184. He recommended finding the testimony of Respondent's Owner and PIC on this allegation ''wholly unpersuasive,'' ''even if assumed, *arguendo,* to be credible.'' *Id.*

The Florida statute that the Respondent allegedly violated required the reporting to E–FORCSE of each controlled substance dispensed ''as soon thereafter as possible, but not more than 7 days after the date the controlled substance is dispensed unless an extension is approved.'' Fla. Stat.

[40] Alabama (prescription shipped Jan. 14, 2013): Ala. Admin. Code r. 680–X–2–.07(2) (2005) (''No nonresident pharmacy shall ship, mail or deliver prescription drugs and/or devices to a patient in this state unless registered by the Alabama State Board of Pharmacy.''); Illinois (prescription shipped Jan. 27, 2012): Ill. Admin. Code tit. 68 § 1330.550(a) (2012) (''The Division shall require and provide for an annual nonresident special pharmacy registration for all pharmacies located outside of this State that dispense medications for Illinois residents and mail, ship or deliver prescription medications into this State. . . .''); Kentucky (prescription shipped March 19, 2012): Ky. Rev. Stat. § 315.0351(1) (2007) (''Every person or pharmacy located outside this Commonwealth which does business, physically or by means of the internet, facsimile, phone, mail, or any other means, inside this Commonwealth . . . shall hold a current pharmacy permit . . . issued by the Kentucky Board of Pharmacy.''); and Vermont (prescription shipped Jan. 10, 2013): Vt. Stat. Ann. tit. 26 § 2061(a) (2013) (''All drug outlets shall biennially register with the board of pharmacy.''); Vt. Stat. Ann. tit. 26 § 2022(7) (2013) (''Drug outlet' means all pharmacies, . . . and mail order vendors which are engaged in dispensing, delivery, or distribution of prescription drugs.''); *see also* 20–4–1400 Vt. Code R. § 16.1 *et seq.* (2013) (''Non-resident pharmacy' means a drug outlet . . . located outside of Vermont which dispenses prescription drugs . . . for Vermont residents . . . and which mails, ships, or delivers such prescription drugs . . . into this state. . . .'').

§ 893.055(4) (2012). Respondent, a covered ''dispenser'' under the provision, did not claim that it had been granted an extension under the statute. Fla. Stat. § 893.055(1)(c) (''`Dispenser' means a pharmacy . . . [or] dispensing pharmacist. . . .'').

I disagree with Respondent's claim that the Florida Statute did ''not provide for any penalties for non-compliance, partial compliance or reporting errors.'' Resp. Br., at 25. To the contrary, the Florida Statute contained a criminal sanction for a willful and knowing failure to report the dispensing of controlled substances. Fla. Stat. § 893.055(9) (2011) (''Any person who willfully and knowingly fails to report the dispensing of a controlled substance as required by this section commits a misdemeanor of the first degree.''); *see also* Fla. Stat. § 893.13(7)(a)(2) and (c) (2011) (A person who refuses or fails to keep any required record commits a misdemeanor of the first degree for a first violation and a felony of the third degree for a second or subsequent violation).

Based on all of the evidence in the record, I find that Respondent did not comply with the controlled substance reporting requirements of Fla. Stat. 893.055(4). Respondent's non-compliance is appropriate for consideration under Factor Four. In this case, due to the overwhelming egregiousness of other violations that Respondent committed, my consideration of Respondent's non-compliance with the controlled substance reporting requirements of Fla. Stat. 893.055(4) did not have a determinative impact on my public interest assessment.

Summary of Factors Two and Four

As discussed above, the Government presented a *prima facie* case that Respondent, with a subjective belief of a high probability that controlled substance prescriptions were not legitimate and while taking deliberate actions to avoid learning of their illegitimacy, filled multiple prescriptions for controlled substances which lacked a legitimate medical purpose. The Government also presented a *prima facie* case that Respondent was unable to readily retrieve prescriptions it had dispensed, filled controlled substance prescriptions and shipped them without meeting the out-of-state pharmacy requirements of four States, filled controlled substance prescriptions that did not contain all of the required information, and failed to report controlled substance prescriptions to E–FORCSE in violation of Florida law. Thus, I conclude that Respondent engaged in egregious misconduct which supports the revocation of its registration. *See Wesley Pope,* 82 FR 14,944, 14,985 (2017) (collecting cases).

I therefore hold that the Government has established a *prima facie* case that Respondent's continued registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest due to its numerous violations pertaining to its dispensing and recordkeeping practices and its non-compliance with State laws, the burden shifts to the Respondent to show why its continued registration would nonetheless be consistent with the public interest. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387, *pet. for rev. denied sub nom. Medicine Shoppe-Jonesborough* v. *Drug Enforcement Admin.,* 300 F. App'x 409 (6th Cir. 2008). Under Agency precedent, the Respondent must ''present sufficient mitigating evidence to assure the Administrator that it can be entrusted with the responsibility carried by such a registration.'' *Hills Pharmacy,* 81 FR at 49,845 (citing *Medicine Shoppe-Jonesborough,* 73 FR at 387 (quoting *Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (2007)) (quoting *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988))). Moreover, because past performance is the best predictor of future performance, DEA has repeatedly held that when a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for those actions and demonstrate that it will not engage in future misconduct. *East Main Street Pharmacy,* 75 FR at 66,162 (quoting *Medicine Shoppe-Jonesborough,* 73 FR at 387); *see also MacKay,* 664 F.3d at 820 (DEA may properly consider whether a physician admits fault in determining if the physician's registration should be revoked.). That acceptance of responsibility must be unequivocal. *Lon F. Alexander, M.D.,* 82 FR 49,704, 49,728 (2017) (collecting cases).

Moreover, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19,386, 19,387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a prima facie case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30,630, 30,644 (2008); *see also Paul Weir Battershell,* 76 FR 44,359, 44,369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36,751, 36,757 n.22 (2009).

Finally, the Agency has also held that '' `[n]either Jackson, nor any other agency decision, holds . . . that the Agency cannot consider the deterrent value of a sanction in deciding whether a registration should be [suspended or] revoked' '' or an application should be denied. *Wesley Pope,* 82 FR 14,944, 14,985 (2017) (quoting *Joseph Gaudio,* 74 FR 10,083, 10,094 (2009) (quoting *Southwood Pharmaceuticals, Inc.,* 72 FR 36,487, 36,504 (2007))). *See also Robert Raymond Reppy,* 76 FR 61,154, 61,158 (2011); *Michael S. Moore,* 76 FR 45,867, 45,868 (2011). This is so both with respect to the respondent in a particular case and the community of registrants. *See Pope,* 82 FR at 14,985 (quoting *Gaudio,* 74 FR at 10,095 (quoting *Southwood,* 71 FR at 36,503)). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoptions of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

In this case, the CALJ found that Respondent's acceptance of responsibility was ''limited in scope and can be fairly characterized as minimal.'' R.D., at 58. Specifically, the CALJ found that Respondent's Owner and PIC, on behalf of Respondent, accepted responsibility in ''only three carefully circumscribed'' areas: (1) that she did not document every single conversation with every single prescriber; (2) that she, as the pharmacist-in-charge, shouldered ultimate responsibility for ensuring required documentation was properly completed; and (3) that Respondent filled controlled substance prescriptions for patients who lived a significant distance from the pharmacy. R.D., at 58.

At the hearing, Respondent's counsel asked Respondent's Owner and PIC ''[w]hat is it that you're accepting responsibility for in this case?'' Tr. 1025. Respondent's Owner and PIC testified: ''That I don't have any intention to violate DEA rules.'' Tr. 1025. This is in no sense a meaningful acknowledgement of Respondent's misconduct.

In its Exceptions, Respondent contends that it ''accepted responsibility for filling long-distance prescriptions

and, as remedial measures, stopped dispensing schedule II substances all together.'' Resp. Exceptions, at 8. Respondent also argues that, through Respondent's Owner and PIC, it ''accepted the responsibility for not documenting in every instance, its efforts in resolving the red flags and as [a] remedial measure stated that it 'document[s] everything that's possible.' '' *Id.* It further contends that, ''[a]lthough . . . [Respondent's Owner and PIC] accepted responsibility for the misfiling of the prescriptions, it is easily deuced [sic] from the record and from the instituted corrective measures that the Respondent accepted the responsibility for the missing information as well.'' *Id.* at 18 n.19.

I reject Respondent's contentions. Most significantly, Respondent's Owner and PIC has entirely failed to acknowledge that Respondent violated the CSA when it knowingly dispensed numerous controlled substance prescriptions which were clearly issued outside of the usual course of professional practice and which lacked a legitimate medical purpose. And even as to the factual matters for which the CALJ found she accepted responsibility, such as failing to adequately document her conversations with prescribers, Respondent's Owner and PIC immediately equivocated by making excuses for not doing so in the future. She stated, ''Now I document every little thing that it's concerned to the conversation and the dispensing of controlled substances. However, there's a lot of conversation going on on a daily basis between doctors and offices.'' Tr. 1010–11. Similarly, after acknowledging that she filled controlled substance prescriptions for patients who lived a significant distance from the pharmacy, Respondent's Owner and PIC justified her filling of the prescriptions, asserting, without any evidence to corroborate her claim, that ''some of them are working locally and they all had a local doctor.'' *Id.* at 1026.

Respondent's Owner and PIC also testified that, ''If the DEA provide me, do not fill for 100 miles, like—that's why I said, I accepted my responsibility, I took remedial measures. I do not fill schedule II prescriptions in my pharmacy because of these conflicting red flags. Because it's a practice of Florida to travel.'' *Id.* at 1023–24. Respondent characterized this testimony as meaning that Respondent's Owner and PIC accepted responsibility for filling long-distance prescriptions. Resp. Br., at 36; *see also* Resp. Exceptions, at 8. I specifically reject Respondent's argument. Notably, this testimony began with the word ''if'' and in any event, it does not constitute an acceptance of responsibility for violating the corresponding responsibility rule. Further, the testimony was not offered in the context of addressing Respondent's filling prescriptions from its Florida customers who travelled long distances to patronize Respondent. Rather, the testimony was offered to address Respondent's filling of prescriptions for out-of-state customers, specifically customers from Kentucky about whom Respondent's Owner and PIC testified she had been ''clearly instructed'' by DEA. Tr. 1023.

Notably, at no point in the hearing did Respondent's Owner and PIC accept responsibility, let alone accept responsibility unequivocally, for violating the corresponding responsibility regulation. Notably, the testimony of Respondent's Owner and PIC manifests that she still does not acknowledge the scope of a pharmacist's obligation under 21 CFR 1306.04(a). As one example, she testified that ''[t]he prescription is an order for the pharmacist to fill. For me not to fill that prescription, I have to have a very good reason not to fill it, because it's an order from the doctor to me to fill that prescription for that patient.'' *Id.* at 1168. As the Agency has previously recognized, a registrant cannot accept responsibility for its misconduct when it does not even understand what the law requires of it. *Alexander,* 82 FR at 49,729. I agree with the CALJ's conclusion that ''there is no unequivocal acceptance of responsibility on this record that would be particularly helpful to the Respondent's efforts to avoid a sanction.'' R.D., at 58.

Here, the CALJ concluded that ''the paltry nature of the Respondent's acceptance of responsibility would have rendered remedial measure evidence largely irrelevant.'' *Id.* In addition, Respondent's misconduct included an egregious abdication of the corresponding responsibility requirement involving the dispensing of controlled substances such as Dilaudid 8 mg., a most potent and highly abused schedule II drug; the evidence also shows that Respondent committed extensive violations of other Federal and State legal requirements. Thus, due to the Respondent's ''paltry'' acceptance of responsibility and its ''intentional decision to decline to notice evidence of remedial steps'' leading to the preclusion of that evidence from consideration, the CALJ recommended that ''the record supports the imposition of a sanction.'' *Id.* I find that this is the appropriate result on the record in this case.

I agree with the CALJ's assessment that, ''[w]here no understanding is acquired about how the regulated conduct fell short of professional and federal and state legal standards, it would be difficult (even illogical) to predict improvement.'' *Id.* at 59. I also agree with the CALJ's prediction that Respondent ''is likely to proceed in the future as it has in the past if not curtailed in its ability to do so.'' *Id.* I further agree with the CALJ that the ''sheer number of established transgressions of various types, coupled with the refusal to admit that issues existed, would render a sanction less than revocation as a message to the regulated community that due diligence is not a required condition precedent to operating as a registrant.'' *Id.*

Respondent has not rebutted the Government's *prima facie* showing that its continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I will therefore order that Respondent's registration be revoked and that any pending applications be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FP1049546 issued to Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy be, and it hereby is, revoked. I further order that any pending application of Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy for renewal or modification of this registration be, and it hereby is, denied. This order is effective April 12, 2018.

Dated: February 28, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–05020 Filed 3–12–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Voluntary Protection Program Information

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled,

''Voluntary Protection Program Information,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 12, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201711-1218-002* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Voluntary Protection Program (VPP) information collection. The VPP is a partnership between labor, management, and government designed to recognize and promote excellence in safety and health management. In order to participate in the VPP, an applicant submits an application and an annual self-evaluation containing a detailed description of its safety and health management programs to the OSHA, which uses the information to conduct a preliminary analysis of the worksite's programs and to make a preliminary determination regarding the worksite's qualifications for the VPP. Occupational Safety and Health Act of 1970 section 2(b)(1) authorizes this information collection. *See* 29 U.S.C. 651(b)(1).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0239.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 30, 2017 (82 FR 41294).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 128–0239.

The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Voluntary Protection Program Information.

OMB Control Number: 1218–0239.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 3,468.

Total Estimated Number of Responses: 3,808.

Total Estimated Annual Time Burden: 90,863 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–05030 Filed 3–12–18; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: The Federal Mine Safety and Health Act of 1977 and the Code of Federal Regulations govern the application, processing, and disposition of petitions for modification. This **Federal Register** notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's website at *https://www.msha.gov/regulations/rulemaking/petitions-modification.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202. All visitors are required to check in at the receptionist's desk in Suite 4E401.

FOR FURTHER INFORMATION CONTACT: Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no

less protection for the miners affected than that provided by the standard; or (2) the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2016–031–C.
FR Notice: 81 FR 81810 (11/18/2016).
Petitioner: S & J Coal Mine, 15 Motter Drive, Pine Grove, Pennsylvania 17963–8854.
Mine: Slope #2 Mine, MSHA I.D. No. 36–09963, located in Schuylkill County, Pennsylvania.
Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2017–001–C.
FR Notice: 82 FR 16068 (3/31/2017).
Petitioner: Mettiki Coal WV, LLC, 293 Table Rock Road, Oakland, Maryland 21550.
Mine: Mountain View Mine, MSHA I.D. No. 46–09028, located in Tucker County, West Virginia.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

• *Docket Number:* M–2017–002–C.
FR Notice: 82 FR 16068 (3/31/2017).
Petitioner: Mettiki Coal WV, LLC, 293 Table Rock Road, Oakland, Maryland 21550.
Mine: Mountain View Mine, MSHA I.D. No. 46–09028, located in Tucker County, West Virginia.
Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

• *Docket Number:* M–2017–003–C.
FR Notice: 82 FR 16068 (3/31/2017).
Petitioner: Mettiki Coal WV, LLC, 293 Table Rock Road, Oakland, Maryland 21550.
Mine: Mountain View Mine, MSHA I.D. No. 46–09028, located in Tucker County, West Virginia.
Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2017–008–C.
FR Notice: 82 FR 26954 (6/12/2017).
Petitioner: Excel Mining, LLC, 4126 State Highway 194 West, Pikeville, Kentucky 41501.
Mine: Excel Mining #4 Mine, MSHA I.D. No. 15–19515, located in Pike County, Kentucky.
Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel powered equipment; design and performance requirements).

• *Docket Number:* M–2017–002–M.
FR Notice: 82 FR 34701 (7/26/2017).
Petitioner: Martin Marietta Materials, Inc., Midwest Division, 11252 Aurora Avenue, Des Moines, Iowa 50322.
Mine: Fort Calhoun Underground Mine, 5765 County Road P 30, Fort Calhoun, Nebraska 68023, MSHA I.D. No. 25–01300, located in Washington County, Nebraska.
Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

Sheila McConnell,
Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2018–04992 Filed 3–12–18; 8:45 am]
BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before April 12, 2018.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, 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: Sheila McConnell, 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: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@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 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 (Secretary) 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. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2018–001–C.
Petitioner: LCT Energy, LP, 938 Mt. Airy Drive, Suite 200, Johnstown, Pennsylvania 15904.
Mines: Maple Springs Mine, MSHA I.D. No. 36–09973, Cass No. 1 Mine, MSHA I.D. No. 36–09974, Boone Surface Mine, MSHA I.D. No. 36–10067, located in Somerset County, Pennsylvania; and Rustic Ridge Mine, MSHA I.D. No. 36–10089, located in Westmoreland County, Pennsylvania.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).
Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open

crosscut, including, but not limited to portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans require that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–002–C.

Petitioner: LCT Energy, LP, 938 Mt. Airy Drive, Suite 200, Johnstown, Pennsylvania 15904.

Mines: Maple Springs Mine, MSHA I.D. No. 36–09973, Cass No. 1 Mine, MSHA I.D. No. 36–09974, Boone Surface Mine, MSHA I.D. No. 36–10067, located in Somerset County, Pennsylvania; and Rustic Ridge Mine, MSHA I.D. No. 36–10089, located in Westmoreland County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans require that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return airway.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of

nonpermissible surveying equipment in areas where methane could be present.

(i) Nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–003–C.

Petitioner: LCT Energy, LP, 938 Mt. Airy Drive, Suite 200, Johnstown, Pennsylvania 15904.

Mines: Maple Springs Mine, MSHA I.D. No. 36–09973, Cass No. 1 Mine, MSHA I.D. No. 36–09974, Boone Surface Mine, MSHA I.D. No. 36–10067, located in Somerset County, Pennsylvania; and Rustic Ridge Mine, MSHA I.D. No. 36–10089, located in Westmoreland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of longwall faces and pillar workings, including, but not limited to portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans require that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn more than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–004–C.

Petitioner: LCT Energy, LP, 938 Mt. Airy Drive, Suite 200, Johnstown, Pennsylvania 15904.

Mines: Maple Springs Mine, MSHA I.D. No. 36–09973, Cass No. 1 Mine, MSHA I.D. No. 36–09974, Boone Surface Mine, MSHA I.D. No. 36–10067, located in Somerset County, Pennsylvania; and Rustic Ridge Mine, MSHA I.D. No. 36–10089, located in Westmoreland County, Pennsylvania.

Regulation Affected: 30 CFR 77.1914(a) (Electrical equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in shaft and slope construction, including, but not limited to portable battery-operated mine transits, total station surveying equipment, distance meters, and laptop computers. The petitioner proposes to use up-to-date, practical, and accurate technology in the preparation of mine maps and ensure the safety of the miners by providing proper and accurate mining directional control in the mine.

The petitioner states that:

(1) Application of the existing standard would result in a diminution of safety to the miners.

(2) Underground mining by its nature, and the size, complexity, and relative closeness to other abandoned mines, gas/oil wells, and other features, requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) To examine all nonpermissible electronic surveying equipment prior to use in or inby the last open crosscut to ensure the equipment is being maintained in a safe operating

condition, and have a qualified person as defined in 30 CFR 75.153, examine the equipment at intervals not to exceed 7 days. The examination results will be recorded in the weekly examination electrical equipment book. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion and damage.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(b) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut or in the return.

(c) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn out of the return.

(d) Nonpermissible surveying equipment will not be used in areas where float coal dust is in suspension.

(e) Batteries contained in the surveying equipment will be changed out or charged in fresh air and not in the return.

(f) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment.

(g) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2018–04998 Filed 3–12–18; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–021)]

Notice of Intent To Grant Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of intent to grant partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially exclusive patent license in the United States to practice the inventions described and claimed in U.S. Patent No. 7,285,306 entitled, ''Process For Self-Repair Of Insulation Material,'' KSC–12539; U.S. Patent No. 8,119,238 entitled, ''Self-Healing Wire Insulation,'' KSC–12539–2; and U.S. Patent Application Serial Number 13/523,806 entitled, ''Self-Healing Polymer Materials for Wire Insulation, Polyimides, Flat Surfaces, and Inflatable Structures,'' KSC–13366, to Drywired, LLC, having its principal place of business in Los Angeles, CA. Drywired, LLC has requested exclusivity for the following fields of use:

1. Wraps, films, and decals that can be applied to the exterior of vehicles with at least four wheels;

2. Wraps, films, and decals that can be applied to buildings, structures, or permanent improvements built upon or attached to real property; and

3. Coverings and insulations for electrical wiring and communications wiring in the following industries:

a. Mining

b. Unmanned Aerial Vehicles (UAVs)

DATES: The prospective partially exclusive patent license may be granted unless, NASA receives written objections, including evidence and argument, no later than March 28, 2018 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA *no later than* March 28, 2018 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817; email: *KSC-Patent-Counsel@mail.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Leahy, Patent Attorney, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–6553; Facsimile: 321–867–1817.

SUPPLEMENTARY INFORMATION: This notice of intent to grant a partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2018–05054 Filed 3–12–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–020)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, March 28, 2018, 1:00–5:00 p.m.; and Thursday, March 29, 2018, 9:00 a.m.–4:00 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Program Review Center (PRC), Room

9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148 or *marla.k.king@nasa.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the Toll Number 1–312–470–0117 or Toll Free Number 888–603–9752 and then the numeric passcode 4107352, followed by the # sign, on both days. **Note:** If dialing in, please ''mute'' your phone. To join via WebEx, the link is *https://nasa.webex.com/*. The meeting number on March 28 is 993 869 082 and the meeting password is P3uFaMc* (case sensitive); the meeting number on March 29 is 998 107 840 and the meeting password is Qpkvtz@7 (case sensitive).

The agenda for the meeting will include reports from the following:

—Aeronautics Committee

—Human Exploration and Operations Committee

—Science Committee

—Technology, Innovation and Engineering Committee

—Ad Hoc Task Force on STEM Education

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting. Information should be sent to Ms. Marla King via email at *marla.k.king@nasa.gov*. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–05053 Filed 3–12–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 193rd Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held. Open to the public on a space available basis.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: Arena Stage at the Mead Center for American Theater, 1101 Sixth Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the July 5, 2016 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

The upcoming meeting is:

National Council on the Arts 193rd Meeting

This meeting will be open.

Date and time: March 29, 2018; 9:00 a.m. to 11:30 a.m.

From 9:00 a.m. to 9:30 a.m.—Opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the Chairman. There also will be the following presentations (times are approximate): from 9:30 a.m. to 10:00 a.m.—*Presentation from Arena Stage* (Edgar Dobie, Executive Director, Arena Stage); from 10:00 a.m. to 10:30 a.m.—*Presentation from Opera America* (Marc Scorca, President/CEO, Opera America); from 10:30 a.m.-11:00 a.m.—*Presentation from League of American Orchestras* (Jesse Rosen, President and CEO, League of American Orchestras); and from 11:00 a.m. to 11:30 a.m.—*Preview of Upcoming Meeting in Charleston, West Virginia* (Randall Reid-Smith, Commissioner, Division of Culture and History.)

Dated: March 8, 2018.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–04997 Filed 3–12–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold twenty-six meetings of the Humanities Panel, a federal advisory committee, during April, 2018. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW,

Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: April 3, 2018

This meeting will discuss applications on the subject of Cultural History for the Media Projects: Production Grants, submitted to the Division of Public Programs.

2. Date: April 4, 2018

This meeting will discuss applications on the subjects of U.S. History and Culture for the Public Humanities Projects—Exhibitions grant program (implementation), submitted to the Division of Public Programs.

3. Date: April 5, 2018

This meeting will discuss applications for the Public Humanities Projects—Community Conversations grant program, submitted to the Division of Public Programs.

4. Date: April 9, 2018

This meeting will discuss applications on the subjects of Social and Political History for the Media Projects: Production Grants, submitted to the Division of Public Programs.

5. Date: April 9, 2018

This meeting will discuss applications for the Landmarks of American History: Workshops for School Teachers grant program, submitted to the Division of Education Programs.

6. Date: April 10, 2018

This meeting will discuss applications for the Landmarks of American History: Workshops for School Teachers grant program, submitted to the Division of Education Programs.

7. Date: April 10, 2018

This meeting will discuss applications for the Public Humanities Projects—Community Conversations grant program, submitted to the Division of Public Programs.

8. Date: April 11, 2018

This meeting will discuss applications for the Landmarks of American History: Workshops for School Teachers grant program, submitted to the Division of Education Programs.

9. Date: April 11, 2018

This meeting will discuss applications on the subject of Scholarly Communications for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

10. Date: April 12, 2018

This meeting will discuss applications for the National Digital Newspaper Program (new partners), submitted to the Division of Preservation and Access.

11. Date: April 12, 2018

This meeting will discuss applications for the National Digital Newspaper Program (continuing states), submitted to the Division of Preservation and Access.

12. Date: April 12, 2018

This meeting will discuss applications on the subject of Cultural History for the Media Projects: Production Grants, submitted to the Division of Public Programs.

13. Date: April 13, 2018

This meeting will discuss applications for the Institutes for School Teachers grant program, submitted to the Division of Education Programs.

14. Date: April 16, 2018

This meeting will discuss applications for the Institutes for School Teachers grant program, submitted to the Division of Education Programs.

15. Date: April 16, 2018

This meeting will discuss applications on the subjects of Languages, Linguistics, and Text Analysis for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

16. Date: April 17, 2018

This meeting will discuss applications on the subjects of Global History and Culture for the Public Humanities Projects—Exhibitions grant program (implementation), submitted to the Division of Public Programs.

17. Date: April 17, 2018

This meeting will discuss applications for the Seminars for School Teachers grant program, submitted to the Division of Education Programs.

18. Date: April 17, 2018

This meeting will discuss applications for the Seminars for School Teachers grant program, submitted to the Division of Education Programs.

19. Date: April 18, 2018

This meeting will discuss applications for the Institutes for College and University Teachers grant program, submitted to the Division of Education Programs.

20. Date: April 18, 2018

This meeting will discuss applications on the subjects of Digital Collections and Archives for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

21. Date: April 19, 2018

This meeting will discuss applications on the subject of Cultural History for the Media Projects: Production Grants, submitted to the Division of Public Programs.

22. Date: April 19, 2018

This meeting will discuss applications for the Institutes for College and University Teachers grant program, submitted to the Division of Education Programs.

23. Date: April 20, 2018

This meeting will discuss applications for the Seminars for College Teachers grant program, submitted to the Division of Education Programs.

24. Date: April 20, 2018

This meeting will discuss applications on the subjects of Arts and Media Studies for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

25. Date: April 23, 2018

This meeting will discuss applications on the subjects of Archaeology, Geospatial, and Visualization for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

26. Date: April 25, 2018

This meeting will discuss applications on the subjects of Public Programs and Education for the Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's

Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: March 7, 2018.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2018–04960 Filed 3–12–18; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0049]

Withdrawal of Regulatory Issue Summary 2012–10, ''NRC Staff Position on Applying Surveillance Requirements 3.0.2 and 3.0.3 to Administrative Controls Program Tests''

AGENCY: Nuclear Regulatory Commission.

ACTION: Generic communications; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Issue Summary 2012–10, ''NRC Staff Position on Applying Surveillance Requirements 3.0.2 and 3.0.3 to Administrative Controls Program Tests.'' This document is being withdrawn because it contains guidance to addressees that is no longer applicable.

DATES: The effective date of the withdrawal of RIS 2012–10,''NRC Staff Position on Applying Surveillance Requirements 3.0.2 and 3.0.3 to Administrative Controls Program Tests'' is March 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0049 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0049. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tanya M. Mensah, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3610, email: *Tanya.Mensah@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is withdrawing Regulatory Issue Summary (RIS) 2012–10, ''NRC Staff Position on Applying Surveillance Requirements 3.0.2 and 3.0.3 to Administrative Controls Program Tests'' (ADAMS Accession No. ML12079A393), because the guidance contained in the document is no longer applicable. Specifically, on August 23, 2012, RIS 2012–10 was issued to inform addresses of Enforcement Guidance Memorandum (EGM) 12–001, ''Dispositioning Noncompliance with Administrative Controls Technical Specifications Programmatic Requirements that Extend Test Frequencies and Allow Performance of Missed Tests.'' Following the issuance of EGM–12–001, the NRC staff concluded that the staff's position taken in EGM–12–001 was incorrect. In addition, the period of enforcement discretion in EGM–12–001 has expired. Therefore, by memorandum dated February 14, 2018, EGM–12–001 was withdrawn by the NRC staff (ADAMS Accession No. ML18016A475). A summary of the NRC staff's basis for withdrawing EGM–12–001 is included in the memorandum.

The NRC's generic communication website will be updated to reflect RIS 2012–10 as withdrawn. The generic communications website is accessible at *https://www.nrc.gov/reading-rm/doc-collections/gen-comm/.*

Dated at Rockville, Maryland, this 8th day of March 2018.

For the Nuclear Regulatory Commission.

Tanya M. Mensah,

Senior Project Manager, ROP and Generic Communications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–04986 Filed 3–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0045]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from February 13 to February 26, 2018. The last biweekly notice was published on February 27, 2018.

DATES: Comments must be filed by April 12, 2018. A request for a hearing must be filed by May 14, 2018.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0045. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0045, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0045.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0045, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the

petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC

Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 14, 2017. A publicly-available version is in ADAMS under Accession No. ML17261B255.

Description of amendment request: The amendments would modify Catawba Nuclear Station, Units 1 and 2, Technical Specification (TS) 3.7.8, ''Nuclear Service Water System (NSWS).'' Specifically, the proposed change would add a new Condition D for one NSWS pond return header being inoperable due to the NSWS being aligned for single pond return header operation with a Completion Time (CT) of 30 days. This would involve isolating one train of the NSWS pond return piping at the Auxiliary Building wall and maintaining the discharge crossover lines open between trains in the Auxiliary Building and Emergency Diesel Generator Buildings. This provides a common safety-related discharge path through the single remaining in-service pond return line. This alignment, single pond return header operation, allows a pond return header to be removed from service while a flow path is maintained through both trains of NSWS supplied equipment to the Standby Nuclear Service Water Pond (SNSWP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed single pond return header operation configuration for NSWS operation and the associated proposed TS and TS Bases changes have been evaluated to assess their impact on plant operation and to ensure that the design basis safety functions of safety related systems are not adversely impacted. During single pond return header operation, the operating NSWS header will be able to discharge all required NSWS flow from safety related components. PRA [Probabilistic Risk Assessment] has demonstrated that due to the limited proposed time in the single pond return header configuration, the resultant plant risk remains acceptable.

The purpose of this amendment request is to ultimately facilitate inspections and modifications of the NSWS Pond Return buried piping between the Auxiliary Building and the Discharge to the SNSWP. Therefore, NRC approval of this request will ultimately help to enhance the long-term structural integrity of the NSWS and will help to ensure the system's reliability for many years.

In general, the NSWS serves as an accident mitigation system and cannot by itself initiate an accident or transient situation. The only exception is that the NSWS piping can serve as a source of floodwater to safety related equipment in the Auxiliary Building or in the diesel generator buildings in the event of a leak or a break in the system piping. The probability of such an event is not significantly increased as a result of this proposed request. Safety related NSWS piping is tested and inspected in accordance with all applicable in-service testing and in-service inspection requirements. Given the negligible influence of flooding events on the NSWS for the submittal configuration (*i.e.,* no dominant contribution from floods), it is judged that the analyses assessing the influence of these events provide an acceptable evaluation of the contribution of the flood risk for the requested CT of 30 days. The proposed 30 day TS Required Action CT has been evaluated for risk significance and the results of this evaluation have been found acceptable. The probabilities of occurrence of accidents presented in the UFSAR [Updated Final Safety Analysis Report] will not increase as a result of implementation of this change. Because the PRA analysis supporting the proposed change yielded acceptable results, the NSWS will maintain its required availability in response to accident situations. Since NSWS availability is maintained, the response of the plant to accident situations will remain acceptable and the consequences of accidents presented in the UFSAR will not increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Implementation of this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed request does not affect the basic operation of the NSWS or any of the systems that it supports. These include the Emergency Core Cooling System, the Containment Spray System, the Containment Valve Injection Water System, the Auxiliary Feedwater System, the Component Cooling Water System, the Control Room Area Ventilation System, the Control Room Area Chilled Water System,

the Auxiliary Building Filtered Ventilation Exhaust System, or the Diesel Generators. During proposed single pond return header operation, the NSWS will remain capable of fulfilling all of its design basis requirements.

No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant, which will introduce any new type of accident outside those assumed in the UFSAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Implementation of this amendment will not involve a significant reduction in any margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed TS amendment. During single pond return header operation, the NSWS and its supported systems will remain capable of performing their required functions. No safety margins will be impacted.

The PRA analysis conducted for this proposed amendment demonstrated that the impact on overall plant risk remains acceptable during single pond return header operation. Therefore, there is not a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Duke Energy concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92, and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street—DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: October 3, 2017. A publicly-available version is in ADAMS under Accession No. ML17277A855.

Description of amendment request: The amendments would revise Surveillance Requirement (SR) 3.8.4.5 contained in Technical Specification (TS) 3.8.4, ''DC [Direct Current] Sources—Operating.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the battery charger amperage requirements of SR 3.8.4.5 contained in TS 3.8.4 does not impact the physical function of plant structures, systems, or components (SSC) or the manner in which SSCs perform their design function. The proposed change does not authorize the addition of any new plant equipment or systems, nor does it alter the assumptions of any accident analyses. The DC electrical power system, including the battery chargers, is not an initiator of any accident sequence analyzed in the Updated Final Safety Analysis Report. Rather, the DC electrical power system supports operation of equipment used to mitigate accidents. Specifically, the purpose of the battery chargers is to continuously maintain their respective battery in a charged standby condition while providing power to the system loads. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the battery charger amperage requirements of SR 3.8.4.5 contained in TS 3.8.4 does not require any modification to the plant or change equipment operation. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. Performance of battery testing is not a precursor to any accident previously evaluated. The proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The proposed change does not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the battery charger amperage requirements of SR 3.8.4.5 contained in TS 3.8.4 does not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions or the safety limits that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by the proposed change and the applicable requirements of 10 CFR 50.36(c)(2)(ii) and 10 CFR 50, Appendix A will continue to be met.

Therefore, the proposed change does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 12, 2017. A publicly-available version is in ADAMS under Accession No. ML17346B280.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.6.4.1, ''Secondary Containment,'' Surveillance Requirement (SR) 3.6.4.1.1. The proposed changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–551, Revision 3, ''Revise Secondary Containment Surveillance Requirements'' (ADAMS Accession No. ML16277A226).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change addresses conditions during which the secondary containment SRs are not met. The secondary containment is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. The consequences of an accident previously evaluated while utilizing the

proposed changes are no different than the consequences of an accident while utilizing the existing four hour Completion Time for an inoperable secondary containment. In addition, the proposed Note for SR 3.6.4.1.1 provides an alternative means to ensure the secondary containment safety function is met. As a result, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed change does not alter the protection system design, create new failure modes, or change any modes of operation. The proposed change does not involve a physical alteration of the plant; and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change addresses conditions during which the secondary containment SRs are not met. Conditions in which the secondary containment vacuum is less than the required vacuum are acceptable provided the conditions do not affect the ability of the SGT [Standby Gas Treatment] System to establish the required secondary containment vacuum under post-accident conditions within the time assumed in the accident analysis. This condition is incorporated in the proposed change by requiring an analysis of actual environmental and secondary containment pressure conditions to confirm the capability of the SGT System is maintained within the assumptions of the accident analysis. Therefore, the safety function of the secondary containment is not affected. The allowance for both an inner and outer secondary containment door to be open simultaneously for entry and exit does not affect the safety function of the secondary containment as the doors are promptly closed after entry or exit, thereby restoring the secondary containment boundary.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 18, 2017. A publicly-available version is in ADAMS under Accession No. ML17352B255.

Description of amendment request: The amendment would revise the Environmental Protection Plan to incorporate the terms and conditions of the Incidental Take Statement included in the Biological Opinion issued to Energy Northwest by the National Marine Fisheries Service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of Columbia's accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses.

Therefore there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The changes are administrative in nature and would in no way impact or alter the configuration or operation of the facility and would create no new modes of operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes are administrative in nature and would in no way affect plant or equipment operation or the accident analysis.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2 (IP2), Westchester County, New York

Date of amendment request: December 11, 2017. A publicly-available version is in ADAMS under Accession No. ML17354A007.

Description of amendment request: The amendment would revise Technical Specification (TS) Limiting Condition for Operation 3.7.13, ''Spent Fuel Pit Storage,'' and TS 4.3, ''Fuel Storage.'' Specifically, the proposed changes would (1) resolve a nonconservative TS associated with TS Limiting Condition for Operation 3.7.13, (2) negate the need for the associated compensatory measures, and (3) remove credit for the installed Boraflex panels as a neutron absorber in the criticality analysis of record. The proposed changes in the criticality analysis of record would instead credit empty cells, rod cluster control assemblies (RCCAs), and neutron leakage along the outer two storage rows of the spent fuel pit (SFP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment was evaluated for impact on the following previously evaluated events and accidents:

—Multiple Misloads
—Misplaced Assembly
—Dropped Assembly
—Misloaded Assembly
—Over Temperature
—Seismic
—Boron Dilution
—Fuel Handling Accident
—Loss of Spent Fuel Pool Cooling

Multiple Misloads, Misplaced Assembly, Dropped Assembly, Misloaded Accidents

Operation in accordance with the proposed Technical Specifications will not significantly increase the probability of multiple misloads, misplaced assembly, dropped assembly and misloaded assembly accidents because:

a. There are no changes to the equipment for fuel handling or how fuel assemblies are handled, including how fuel assemblies are inserted into and removed from SFP storage locations. There are no changes to how RCCAs will be handled, including how

RCCAs are inserted into, or removed from, a fuel assembly.

b. The processes and procedures that are currently in place are sufficiently robust. The proposed Technical Specifications utilize the same basic fuel assembly classification and storage location concepts as those currently in place. However, they do represent a minimal increase in complexity:

—The current TS for fuel storage are complex because the Boraflex neutron absorber built into the SFP racks has degraded. To address this degradation the SFP is divided into four irregularly shaped Regions (Region 1–1, Region 1–2, Region 2–1, and Region 2–2). In addition to the four regions there are six special locations known as peripheral locations in Region 2–2 which are treated as suitable for storage of fuel otherwise designated for Region 1–1 or 1–2. These regions are graphically depicted in the current TS Figure 3.7.13–5.

Each one of these regions has its own rules for fuel placement which are identified in the TS.

—The current Technical Specifications determine a minimum required burnup for each fuel assembly based on initial enrichment, burnup, and cooling time with individual fuel assembly storage location within the SFP restricted based on this minimum required burnup. The minimum required burnup is determined for each of the four regions (1–1, 1–2, 2–1, and 2–2) that utilize a total of ten curves. The proposed assembly categorization is slightly more complex due to the following:
  - The minimum required burnup is dependent on the averaged assembly peaking factor in addition to the initial enrichment, burnup, and cooling time.
  - the minimum required burnup is used to determine the reactivity category of each fuel assembly.
  - the minimum required burnup is adjusted, as necessary, to account for hafnium inserts, a reconstituted fuel assembly with missing stainless steel replacement rods, and a maximum burnup average boron concentration in excess of 950 ppm [parts per million].

—The current Technical Specifications restrict acceptable SFP storage locations to Regions 1–1, 1–2, 2–1 and 2–2 based on minimum required burnup. The proposed Technical Specifications are minimally more complex due to the following:
  - Acceptable storage locations are defined by fuel assembly category and a base configuration is specified. There are five reactivity categories. Certain cell locations in Region 2 require that Category 5 fuel assemblies contain a full length RCCA.
  - the base configurations in Region 1 and Region 2 may be changed in accordance with certain well-defined criteria. An example of a change to a base configuration is that a checkerboard area may be formed in Region 2 where all four sides of the checkerboard are rows of empty cells.

The minimal increase in complexity of current and future fuel categorization and SFP storage restrictions is offset by the significant number of fuel assemblies that have been pre-categorized in TS Tables 3.7.13–2 and Table 3.7.13–3. The minimal increase is also offset by the use of two curves to determine the minimum required burnup (instead of the 10 currently used).

Operation in accordance with the proposed TS will not significantly increase the consequences of multiple misloads, misplaced assembly, dropped assembly and misloaded assembly criticality accidents because the proposed CSA [criticality safety analysis] demonstrates that the acceptance criteria continue to be met for each of these accidents.

Over Temperature Accident

Operation in accordance with the proposed TS will not significantly increase the probability of an over temperature accident because the proposed change does not alter the manner in which the IP2 spent fuel cooling loop is designed, operated, or maintained.

Operation in accordance with the proposed TS will not significantly increase the consequences of an over temperature accident because the proposed CSA demonstrates that the acceptance criteria continue to be met for this accident.

Seismic Event

Operation in accordance with the proposed TS will not significantly increase the probability of a seismic event because there are no elements of the proposed changes that influence the occurrence of any natural event.

Operation in accordance with the proposed TS will not significantly increase the consequences of a seismic event because the proposed changes do not significantly alter the physical arrangement of the spent fuel racks and do not increase the allowable number of fuel assemblies to be stored in the pool. The proposed TS changes require two cell blockers to be in place. These cell blockers have been evaluated and they have a negligible effect on the seismic response of the SFP racks. In addition, the proposed TS changes allow for the placement of miscellaneous non-actinide materials, for example, empty or full trash baskets in fuel positions of any category, in Water Holes and in 50% Water Holes. The placement of miscellaneous materials in the identified locations has been evaluated and has a negligible effect on the seismic response of the SFP racks.

Boron Dilution Accident

Operation in accordance with the proposed TS will not significantly increase the probability of a boron dilution event because the proposed change does not alter the manner in which the IP2 spent fuel cooling system or any other plant system is designed, operated, or maintained, or otherwise increase the likelihood of adding significant quantities of unborated water into the spent fuel pit.

Operation in accordance with the proposed TS will not significantly increase the consequences of a boron dilution event because the TS minimum soluble boron concentration remains unchanged at 2000 ppm and the boron concentration required to ensure k_{eff} less than or equal to 0.95 has been evaluated at 700 ppm. The proposed CSA demonstrates that the acceptance criteria continue to be met for this accident.

Fuel Handling Accident

Operation in accordance with the proposed TS will not significantly increase the probability of a[n] FHA [fuel handling accident] because the individual fuel assemblies will be moved using the same equipment, procedures, and other administrative controls (*i.e.* fuel move sheets) that are currently used.

Operation in accordance with the proposed TS will not significantly increase the consequences of a[n] FHA because the radiological source term of a single fuel assembly will remain the same.

Loss of Spent Fuel Pool Cooling

Operation in accordance with the proposed TS will not significantly increase the probability of a loss of spent fuel pit cooling because the proposed change does not alter the manner in which the IP2 spent fuel cooling loop is designed, operated, or maintained.

Operation in accordance with the proposed TS will not significantly increase the consequences of a loss of spent fuel pit cooling because the proposed change credits empty cells whereas the thermal design basis for the spent fuel pit cooling loop provides for all fuel pit rack locations to be filled at the end of a full core discharge. The proposed TS changes require two cell blockers to be in place. These cell blockers have been evaluated and they have a negligible effect on the thermal response to a loss of spent fuel pool cooling. In addition, the proposed TS changes allow for the placement of miscellaneous non-actinide materials, for example, empty or full trash baskets in fuel positions of any category, in Water Holes and in 50% Water Holes. The placement of miscellaneous materials in the identified locations has been evaluated and has a negligible effect on the thermal response to a loss of spent fuel pool cooling.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation in accordance with the proposed TS do not create the possibility of a new or different kind of accident from any accident previously evaluated. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Operation in accordance with the proposed TS does not involve a significant reduction in a margin of safety.

The margin of safety required by 10 CFR 50.68(b)(4) remains unchanged. The evaluations in the CSA confirm that operation in accordance with the proposed amendment continues to meet the required subcriticality margins for both normal operations and accident conditions. In addition, the SFP seismic and thermal margins are essentially unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bill Glew, Associate General Counsel, Entergy Services, Inc., 639 Loyola Avenue, 22nd Floor, New Orleans, LA 70113.

NRC Branch Chief: James G. Danna.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3 (IP3), Westchester County, New York

Date of amendment request: December 8, 2017. A publicly-available version is in ADAMS under Accession No. ML17349A131.

Description of amendment request: The amendment would allow for a one-time extension to the 15-year frequency of the IP3 containment leakage rate test (*i.e.,* Integrated Leakage Rate Test (ILRT) or Type A test). Specifically, Technical Specification 5.5.15, ''Containment Leakage Rate Testing Program,'' would be revised to allow the existing ILRT frequency to be extended one time from 15 to 16 years. The next required ILRT test would be performed no later than the plant restart after the spring 2021 (3R21) refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the IP3 containment leakage rate testing program. The proposed amendment does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed amendment.

The proposed amendment adopts the NRC accepted guidelines of NEI [Nuclear Energy Institute] 94–01, Revision 3–A, for development of the IP3 performance-based testing program for the Type A testing. Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the primary containment and its components would limit leakage rates to less than the values assumed in the plant safety analyses. The potential consequences of extending the ILRT interval one-time to 16 years have been evaluated by analyzing the resulting changes in risk. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be acceptably small and determined to be within the guidelines published in the NRC Final Safety Evaluation for NEI Topical Report (TR) 94–01, Revision 3–A. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. Entergy has determined that the increase in conditional containment failure probability due to the proposed change would be very small. Therefore, it is concluded that the proposed amendment does not significantly increase the consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, for the establishment of a one-time only 16-year interval for the performance of the containment ILRT. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, for the establishment of a one-time only 16-year interval for the performance of the containment ILRT. This amendment does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the containment leakage rate testing program, as defined in the TS, ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant's safety analysis is maintained. The overall containment leakage rate limit specified by the TS is maintained, and the Type A, Type B, and Type C containment leakage tests would be performed at the frequencies established in accordance with the NRC accepted guidelines of NEI 94–01, Revision 3–A. Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that the containment would not degrade in a manner that is not detectable by an ILRT. A risk assessment using the current IP3 PSA [probabilistic safety analysis] model concluded that extending the ILRT test interval one-time from 15 years to 16 years results in a very small change to the risk profile. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bill Glew, Associate General Counsel, Entergy Services, Inc., 639 Loyola Avenue, 22nd Floor, New Orleans, LA 70113.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Date of amendment request: January 9, 2017. A publicly-available version is in ADAMS under Accession No. ML18009B037.

Description of amendment request: The proposed change would incorporate a revised alternative source term dose calculation resulting from the removal of a reduction factor credit for dual remote Control Room outside air intakes that had been previously misapplied. This would modify the loss-of-coolant accident (LOCA) dose calculation and the subsequent calculation results as described in the CPS Updated Safety Analysis Report and would revise the affected CPS Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed change results in higher Control Room X/Qs [atmospheric dispersion values] which are equivalent to reduced atmospheric dispersion. The increased Control Room X/Qs, in turn, result in higher post-accident Control Room doses. Neither the higher X/Qs, nor the resultant increase in the Control Room doses affect any initiator or precursor of any accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change results in an increase in the post-LOCA radiological dose to a Control Room occupant. However, the resultant post-LOCA Control Room dose remains within the regulatory limits of 10 CFR 50.67 [, ''Accident source term''] and 10 CFR 50, Appendix A, ''General Design Criteria for Nuclear Power Plants'' Criterion 19, ''Control Room.'' Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design function of operation of the Control Room heating, ventilation, and air-conditioning (HVAC) system, or the ability of this system to perform its design function. The only change is the removal of the Control Room dose reduction factor credit taken for providing a dual remote Control Room air intake. The proposed change does not alter the safety limits, or safety analysis associated with the operation of the plant. Accordingly, the change does not introduce any new accident initiators. Rather, this proposed change is the result of an evaluation of the Control Room doses following the most limiting LOCA that can occur at CPS. The proposed change does not introduce any new modes of plant operation. As a result, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The revised post-LOCA dose consequences to a Control Room occupant were calculated in accordance with the requirements of 10 CFR 50.67, [Regulatory Guide (RG)] 1.183, [''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors''] and NRC SRP [Standard Review Plan] Section 15.0.1, ''Radiological Consequences Analyses Using Alternative Source Terms.''

The margin of safety is considered to be that provided by meeting the applicable regulatory limits. The increased Control Room X/Qs result in an increase in Control Room dose following the design basis LOCA; however, since the Control Room dose following the design basis accident remains within the regulatory limits, there is not a significant reduction in a margin of safety.

Therefore, operation of CPS in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review it appears the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: January 24, 2018. A publicly-available version is in ADAMS under Accession No. ML18024A275.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3.7.2, ''Diesel Generator Cooling Water (DGCW) System''; 3.8.1, ''AC [Alternating Current] Sources-Operating''; and the associated TS Bases to allow an extended period to install isolation valves to support replacing degraded Core Standby Cooling System (CSCS) piping.

The proposed changes modify TS 3.7.2 to include a 7-day Completion Time (CT) when one or more required DGCW subsystem(s) are inoperable. The proposed changes to TS 3.8.1 include a 7-day CT when a Division 2 Diesel Generator (DG) and the required opposite unit Division 2 DG are inoperable. The proposed changes will only be used during four refueling outages, two for Unit 1 prior to July 1, 2024, and two for Unit 2 prior to July 1, 2023. The current planned schedule, subject to change, is L2R17 (2019), L1R18 (2020), L2R18 (2021), and L1R19 (2022).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. Non-Code line stops required to provide isolation will maintain the availability of the online unit's CSCS. The non-Code line stops being used to isolate the system during the specified refueling outages are being designed to the same or greater pressure rating and seismic requirements as the CSCS piping.

Redundancy is provided by designing the CSCS as multiple independent subsystems. Divisional separation between subsystems assures that no single failure can affect more than one division's subsystem. Therefore, assuming a single failure in any division's subsystem including the subsystem shared between units, two other divisional subsystems in each unit will remain unaffected. This ensures adequate redundancy to supply the minimum required cooling water for safe shutdown of the operating unit or mitigate the consequences of an accident.

The proposed limited use of increased CT's of the operating unit's CSCS maintains the design basis assumptions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change involves the temporary installation of new equipment (mechanical line stops) that will be designed and installed to the same or greater pressure rating and seismic design as the CSCS piping. The currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operation of the CSCS remains unchanged. The proposed change provides a limited period to restore inoperable DGCW subsystems and Division 2 DGs instead of interrupting plant operations, possibly requiring an orderly plant shutdown of the operating unit. The potential to avoid a plant transient in conjunction with maintaining availability of the DGCW subsystems and Division 2 DGs offsets any risk associated with the limited CT. The proposed change

does not impact a design basis, limiting safety system setting, or safety limit specified in TSs.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: December 15, 2017. A publicly-available version is in ADAMS under Accession No. ML17363A067.

Description of amendment request: The proposed amendment would revise the Emergency Plan for the DAEC to adopt the Nuclear Energy lnstitute's (NEl's) revised Emergency Action Level (EAL) scheme described in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' which has been endorsed by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. No actual facility equipment or accident analyses are affected by the proposed changes.

The change revises the NextEra Emergency Action Levels to be consistent with the NRC endorsed EAL scheme contained in NEI 99–01, Revision 6, ''Methodology for Development of Emergency Action Levels,'' but does not alter any of the requirements of the Operating License or the Technical Specifications.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally, the proposed change does not involve a change in the methods governing normal plant operation, and all safety functions will continue to perform as previously assumed in the accident analyses. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect [sic] on the availability, operability, or performance of safety-related systems and components. The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis.

The proposed amendment does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The changes do not adversely impact plant operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: David J. Wrona.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 19, 2017. A publicly-available version is in ADAMS under Accession No. ML17353A928.

Description of amendment request: The proposed amendment would separate the Linear Heat Generation Rate (LHGR) requirements and actions from the Average Planar Linear Heat Generation Rate (APLHGR) requirements and actions contained in Technical Specification (TS) 3.2.1. The proposed amendment adds new TS 3.2.3, ''Linear Heat Generation Rate (LHGR),'' and modifies TS 1.1, ''Definitions,'' TS 3.4.1, ''Recirculation Loops Operating,'' and TS 5.6.5, ''Core Operating Limits Report (COLR),'' to reflect the LHGR change. Modifications associated with TS 3.2.1 and the new TS 3.2.3 are also being added to the actions for TS 3.3.4.1, ''End of Cycle Recirculation Pump Trip (EOC–RPT) Instrumentation,'' and TS 3.7.7, ''The Main Turbine Bypass System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The separation of the LHGR requirements and actions from the APLHGR TS is an administrative change. No actions within the TS are changed. The addition of the LCO [limiting condition for operation] for APLHGR and the proposed LCO for LHGR to the LCO for 3.3.4.1, End of Cycle Recirculation Pump Trip (EOC–RPT) Instrumentation and the LCO for TS 3.7.7, Main Turbine Bypass System reflect within the TS requirements APLHGR and LHGR actions which are already occurring via the core monitoring processes in place. None of those changes affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. No new equipment is added nor is installed equipment being changed or operated in a different manner.

LHGR limits have been defined to provide sufficient margin between the steady-state operating condition and any fuel damage condition to accommodate uncertainties and to assure that no fuel damage results even during the worst anticipated transient condition at any time.

The proposed change does not modify the limits, change assumptions for the accident analysis, or change operation of the station. Therefore, the proposed change does not involve an increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The separation of the LHGR requirements and actions from the APLHGR TS is an administrative change. No actions within the TS are changed. The addition of the LCO for APLHGR and the proposed LCO for LHGR to the LCO for 3.3.4.1, End of Cycle

Recirculation Pump Trip (EOC–RPT) Instrumentation and the LCO for TS 3.7.7, Main Turbine Bypass System reflect within the TS requirements APLHGR and LHGR actions which are already occurring via the core monitoring processes in place. None of those changes affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. No new equipment is added nor is installed equipment being changed or operated in a different manner.

The proposed change does not modify the limits, change assumptions for the accident analysis, or change operation of the station. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is not affected by the separation of the LHGR requirements and actions from the APLHGR TS. Similarly, the margin of safety is not affected by the addition of the LCO for APLHGR and the proposed LCO for LHGR to the LCO for 3.3.4.1, End of Cycle Recirculation Pump Trip (EOC–RPT) Instrumentation and the LCO for TS 3.7.7, Main Turbine Bypass System.

Appropriate measures exist to control the values of these limits since it is required by TS that only NRC-approved methods be used to determine the limits. The proposed change continues to require operation within the core thermal limits as obtained from NRC-approved reload design methodologies and the actions to be taken if a limit is exceeded remain unchanged, again, in accordance with existing TS.

The proposed change does not modify the limits, change assumptions for the accident analysis, or change operation of the station. Therefore, the proposed change has no impact to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 18, 2017, as supplemented by letter dated February 9, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML17352A502 and ML18040A319, respectively.

Description of amendment request: The amendments would revise Technical Specification (TS) 3/4.3.1, ''Reactor Trip System Instrumentation,'' and TS 3/4.3.2, ''Engineered Safety Feature Actuation System Instrumentation,'' to increase the completion times and bypass test times at Salem Nuclear Generating Station, Unit Nos. 1 and 2. The proposed changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Travelers TSTF–411, Revision 1, ''Surveillance Test Interval Extensions for Components of the Reactor Protection System (WCAP–15376–P),'' and TSTF–418, Revision 2, ''RPS [Reactor Protection System] and ESFAS [Engineered Safety Feature Actuation System] Test Times and Completion Times (WCAP–14333),'' or are supported by plant-specific analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the completion times and bypass test time reduce the potential for inadvertent reactor trips and spurious actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes to the completion times and bypass test time do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the reactor trip system and engineered safety feature actuation system (RTS and ESFAS) signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by core damage frequency (CDF) is less than 1.0E–06 per year and the impact on large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the completion time change, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–7 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by CDF, LERF, ICCDP, ICLERP is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the RTS and ESFAS provide plant protection. The RTS and ESFAS will continue to have the same setpoints after the proposed changes are implemented. There are no design changes associated with the license amendment. The changes to completion times and bypass test time do not change any existing accident scenarios, nor create any new or different accident scenarios.

The proposed changes do not involve a modification to the physical configuration of the plant or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirement or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177.

Therefore, since the proposed changes do not impact the response of the plant to a design basis accident, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: December 20, 2017. A publicly-available version is in ADAMS under Accession No. ML17354A964.

Description of amendment request: The requested amendment proposes changes to Combined License Appendix C (and to plant-specific Tier 1 information) and associated Tier 2 information to allow a pneumatic test to be used in lieu of a hydrostatic test for the Main Control Room Emergency Habitability System (VES) consistent with American Society of Mechanical Engineers (ASME) Section III.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes allow for pneumatic testing of the VES ASME Section III components and piping. ASME Section III, ND–6000 contains the requirements for pressure testing of piping and components. ASME Section III, ND–6112.1(a) allows for a pneumatic test to be used in lieu of a hydrostatic test when components, appurtenances or systems cannot be readily dried and traces of the testing medium cannot be tolerated. Due to the design and layout of the VES, it may be difficult to dry the system following a hydrostatic test. Traces of water could result in sending a slug of water through the system or rust to form. Allowing for pneumatic testing continues to meet the ASME Section III code. The proposed changes do not affect the operation of the VES. The VES maintains its design function to maintain control room habitability.

The proposed changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events. Therefore, the probabilities of accidents previously evaluated are not affected.

The proposed changes do not affect the prevention and mitigation of other abnormal events (*e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles), or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the Updated Final Safety Analysis Report are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created.

The proposed changes do not affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes allow for pneumatic testing of the VES ASME Section III components and piping. The VES ASME Section III components and piping continue to meet the ASME Section III code. The proposed changes do not have any effect on the ability of the safety-related SSCs to perform their design basis functions. The proposed changes do not affect the ability of the VES to maintain control room habitability.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazard consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: January 31, 2018. A publicly-available version is in ADAMS under Accession No. ML18031B131.

Description of amendment request: The requested amendment proposes changes to the Technical Specification (TS) 3.4.6, Pressurizer Safety Valve, Applicability to require the pressurizer safety valves (PSVs) to be operable when the TS 3.4.14, Low Temperature Overpressure Protection (LTOP), is not required to be operable. A conforming change to the TS 3.4.6 Actions is also proposed. Additional TS changes necessary to support PSVs operability are proposed for consistency with the TS 3.4.6 change.

The request also proposes moving TS Limiting Condition for Operation Notes regarding reactor coolant pump starts from TS 3.4.4, Reactor Coolant System (RCS) Loops, 3.4.8, Minimum RCS Flow, and 3.4.14, Low Temperature Overpressure Protection (LTOP), to TS 3.4.3, RCS Pressure/Temperature (P/T) Limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events.

The proposed changes do not affect the physical design of SSCs related to the TS on Engineered Safety Features Actuation System (ESFAS), RCS P/T limits, RCS loops, RCS flow, pressurizer, PSVs, LTOP, or Reactor Vessel head vent (RVHV), as described in the Updated Final Safety Analysis Report (UFSAR). Therefore, the operation of the listed functions and components is not affected. Therefore, the proposed changes do not affect the probability of an accident previously evaluated.

The proposed changes do not affect the physical design of SSCs related to the TS on ESFAS, RCS P/T limits, RCS loops, RCS flow, pressurizer, PSVs, LTOP, or RVHV to meet their design functions. The design of the functions and components continue to meet the same regulatory acceptance criteria, codes, and standards as stated in the UFSAR. In addition, the proposed changes maintain the capabilities of the ESFAS, RCS P/T

limits, RCS loops, RCS flow, pressurizer, PSVs, LTOP, or RVHV to mitigate the consequences of an accident and to meet the applicable regulatory acceptance criteria.

The proposed changes do not affect the prevention and mitigation of other abnormal events (*e.g.,* anticipated operational occurrences, earthquakes, floods, and turbine missiles), or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created.

The proposed changes do not affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins. The proposed changes verify and maintain the physical design of SSCs related to ESFAS, RCS P/T limits, RCS loops, RCS flow, pressurizer, PSVs, LTOP, and RVHV to perform their design functions. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. Therefore, the requested amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazard consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: February 2, 2018. A publicly-available version is in ADAMS under Accession No. ML18037B114.

Description of amendment request: The requested amendment proposes departures from the generic AP1000 Design Control Document (DCD) for the plant-specific VEGP Combined License (COL) Appendix A Technical Specifications (TS) and related departures from generic DCD Tier 2 information in the Updated Final Safety Analysis Report (UFSAR) (which includes the plant-specific DCD Tier 2 information). Specifically, the proposed changes would make administrative changes to COL Appendix A, TS 5.6.3, for the core operating limits report required documentation to include analytical methods which are described elsewhere in the TS and in the UFSAR, and make an editorial change to COL Appendix A TS 5.7.2 for high radiation areas to correct a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are administrative and editorial changes consistent with the requirements described elsewhere in the TS and in the UFSAR, and do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events. The proposed changes to the analytical methods approved for maintaining core operating limits do not result in any increase in probability of an analyzed accident occurring, and prevent power oscillations and maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that fuel design limits are not exceeded for events resulting in positive reactivity insertion and reactivity feedback effects, and so that the consequences of postulated accidents are not changed. The proposed changes do not adversely affect the ability of the automatic reactor trips to perform the required safety function to trip the reactor when necessary to protect fuel design limits, and do not adversely affect the probability of inadvertent operation or failure of the automatic reactor trips.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative and editorial changes consistent with the requirements described elsewhere in the TS and in the UFSAR, and do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes to the analytical methods approved for maintaining core operating limits do not result in any increase in probability of an analyzed accident occurring, and prevent power oscillations and maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that fuel design limits are not exceeded for events resulting in positive reactivity insertion and reactivity feedback effects, and so that the consequences of postulated accidents are not changed. The proposed changes do not adversely affect the ability of the automatic reactor trips to perform the required safety function to trip the reactor when necessary to protect fuel design limits, and do not adversely affect the probability of inadvertent operation or failure of the automatic reactor trips.

These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and editorial changes consistent with the requirements described elsewhere in the TS and in the UFSAR, and maintain existing safety margins through continued application of the existing requirements of the UFSAR. The proposed changes maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that the existing fuel design limits specified in the UFSAR are not exceeded for events resulting in positive reactivity insertion and reactivity feedback effects, and so that the consequences of postulated accidents are not changed. Therefore, the proposed changes satisfy the same safety functions in accordance with the

same requirements as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazard consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: January 5, 2018. A publicly-available version is in ADAMS under Accession No. ML18008A257.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.6.3, ''Containment Isolation Valves,'' and Surveillance Requirement 3.6.3.5 to change the frequency in accordance with the Watts Bar Containment Leakage Rate Testing Program, which is described in TS 5.7.2.19. The proposed change would allow leak rate testing of the containment purge system containment isolation valves to be performed at least once every 30 months, as prescribed in Regulatory Guide 1.163.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes the augmented testing requirement for these containment isolation valves and allows the surveillance intervals to be set in accordance with the Containment Leakage Rate Testing Program. This change does not affect the system function or design. The purge valves are not an initiator of any previously analyzed accident. Leakage rates do not affect the probability of the occurrence of any accident. Operating history has demonstrated that the valves do not degrade and cause leakage as previously anticipated. Because these valves have been demonstrated to be reliable, these valves can be expected to perform the containment isolation function as assumed in the accident analyses. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes do not significantly increase the probability of an accident and are consistent with safety analysis assumptions and resultant consequences.

Therefore, the changes do not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing any normal plant operation. The change does not alter assumptions made in the safety analyses or licensing basis. Extending the test intervals has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. No change has been made to the design, function, or method of performing leakage testing. Leakage acceptance criteria have not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The only margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents, which are directly related to the containment leakage rate. The proposed change does not alter the method of performing the tests nor does it change the leakage acceptance criteria. Sufficient data has been collected to demonstrate these resilient seals do not degrade at an accelerated rate. Because of this demonstrated reliability, this change will provide sufficient surveillance to determine an increase in the unfiltered leakage prior to the leakage exceeding that assumed in the accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: October 11, 2017. A publicly-available version is in ADAMS under Accession No. ML17284A452.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.1, Table 3.3.1–1, ''Reactor Trip System (RPS) Instrumentation,'' to increase the values for the nominal trip setpoint and the allowable value for Function 14.a, ''Turbine Trip—Low Fluid Oil Pressure.'' The proposed changes are due to the planned replacement and relocation of the pressure switches from the low pressure auto-stop trip fluid oil header to the high pressure turbine electrohydraulic control (EHC) oil header. The changes are needed due to the higher EHC system operating pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reflects a design change to the turbine control system that results in the use of an increased control oil pressure system, necessitating a change to the value at which a low fluid oil pressure initiates a reactor trip on turbine trip. The low fluid oil pressure is an input to the reactor trip instrumentation in response to a turbine trip event. The value at which the low fluid oil initiates a reactor trip is not an accident initiator. A change in the nominal control oil pressure does not introduce any mechanisms that would increase the probability of an accident previously analyzed. The reactor trip on turbine trip function is initiated by the same protective signal as used for the existing auto stop low fluid oil system trip signal. There is no change in form or function of this signal and the probability or consequences of previously analyzed accidents are not impacted.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The EHC fluid oil pressure rapidly decreases in response to a turbine trip signal. The value at which the low fluid oil pressure switches initiates a reactor trip is not an accident initiator. The proposed TS change reflects the higher pressure that will be sensed after the pressure switches are relocated from the auto stop low fluid oil system to the EHC high pressure header. Failure of the new switches would not result in a different outcome than is considered in the current design basis. Further, the change does not alter assumptions made in the safety analysis but ensures that the instruments perform as assumed in the accident analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The change involves a parameter that initiates an anticipatory reactor trip following a turbine trip. The safety analyses do not credit this anticipatory trip for reactor core protection. The original pressure switch configuration and the new pressure switch configuration both generate the same reactor trip signal. The difference is that the initiation of the trip will now be adjusted to a different system of higher pressure. This system function of sensing and transmitting a reactor trip signal on turbine trip remains the same. There is no impact to safety analysis acceptance criteria as described in the plant licensing basis because no change is made to the accident analysis assumptions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 14, 2017, as supplemented by letter dated December 12, 2017.

Brief description of amendments: The amendments modified Technical Specifications (TSs) to allow temporary changes to TSs 3.5.2, ''Emergency Core Cooling Systems (ECCS)—Operating''; 3.6.6, ''Containment Spray System''; 3.7.5, ''Auxiliary Feedwater (AFW) System''; 3.7.6, ''Component Cooling Water (CCW) System''; 3.7.7, ''Nuclear Service Water System (NSWS)''; 3.7.9, ''Control Room Area Ventilation System (CRAVS)''; 3.7.11, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES)''; and 3.8.1, ''[Alternating Current] Sources—Operating,'' to permit the ''A'' Train NSWS to be inoperable for a total of 14 days to address a non-conforming condition on the ''A'' Train supply piping from the Standby Nuclear Service Water Pond.

Date of issuance: February 15, 2018.

Effective date: These license amendments are effective as of its date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 308 (Unit 1) and 287 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18030A682; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Renewed Licenses and TSs.

Date of initial notice in ***Federal Register:*** December 19, 2017 (82 FR 60226).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 2018.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: March 27, 2017.

Brief description of amendment: The amendment revised the Technical Specification (TS) requirements in order to address Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' dated January 11, 2008, as described in Technical Specifications Task Force (TSTF) Traveler TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Date of issuance: February 16, 2018.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 246. A publicly-available version is in ADAMS under Accession No. ML18025A213; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** June 6, 2017 (82 FR 26132).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1 (ANO–1), Pope County, Arkansas

Date of amendment request: August 14, 2017.

Brief description of amendment: The amendment revised the ANO–1 Technical Specification (TS)

requirements for unavailable barriers by adding Limiting Condition for Operation (LCO) 3.0.9, which allows a delay time for entering a supported system TS when the inoperability is solely due to an unavailable barrier. The change is consistent with Technical Specification Task Force (TSTF)-427, Revision 2, ''Allowance for Non Technical Specification Barrier Degradation Supported System OPERABILITY.'' In addition, the amendment corrected a typographical omission on TS page 3.0–3, which was editorial in nature.

Date of issuance: February 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 259. A publicly-available version is in ADAMS under Accession No. ML18033A175; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–51: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** October 24, 2017 (82 FR 49236).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2 (ANO–2), Pope County, Arkansas

Date of amendment request: August 14, 2017.

Brief description of amendment: The amendment revised the ANO–2 Technical Specification (TS) requirements for unavailable barriers by adding Limiting Condition for Operation (LCO) 3.0.9, which allows a delay time for entering a supported system TS when the inoperability is solely due to an unavailable barrier. The change is consistent with Technical Specification Task Force (TSTF)-427, Revision 2, ''Allowance for Non Technical Specification Barrier Degradation Supported System OPERABILITY.''

Date of issuance: February 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 309. A publicly-available version is in ADAMS under Accession No. ML18051A589; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** October 24, 2017 (82 FR 49237).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant (Calvert Cliffs), Units 1 and 2, Calvert County, Maryland

Date of amendment request: March 28, 2017.

Brief description of amendments: The amendments revised the Calvert Cliffs, Units 1 and 2, Technical Specifications (TSs) to change the low level of the refueling water tank to reflect a needed increase in the required borated water volume and change the allowable value of the refueling water tank level-low function.

Date of issuance: February 15, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of the end of CC1R24 refueling outage for Calvert Cliffs, Unit 1, and within 60 days of the end of CC2R23 refueling outage for Calvert Cliffs, Unit 2.

Amendment Nos.: 323 (Unit 1) and 301 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18029A195; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** June 19, 2017 (82 FR 27887).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 2018.

No significant hazards consideration comments received: No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 29, 2017.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements for mode change limitations in TS 3.0.4 and TS 4.0.4 based on Technical Specifications Tasks Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–359, Revision 9, ''Increase Flexibility in Mode Restraints'' (ADAMS Accession No. ML031190607).

Date of issuance: February 20, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 278 (Unit 3) and 273 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18018A559; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** September 12, 2017 (82 FR 42850).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2018.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 13, 2017, as supplemented by letter dated August 11, 2017.

Brief description of amendments: The amendments adopted the NRC-endorsed Nuclear Energy Institute (NEI) 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors.''

Date of issuance: February 16, 2018.

Effective date: As of the date of issuance and shall be implemented within a 365-day period after issuance.

Amendment Nos.: Salem—322 (Unit No. 1) and 303 (Unit No. 2); Hope Creek—210. A publicly-available version is in ADAMS under Accession No. ML17355A570; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–70, DPR–75, and NPF–57: The amendments revised the emergency action level technical bases documents.

Date of initial notice in ***Federal Register:*** March 28, 2017 (82 FR 15384). The supplemental letter dated

August 11, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 2018.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 26, 2016, as supplemented by letter dated October 26, 2017.

Brief description of amendments: The amendments correct a non-conservative Technical Specification (TS) Surveillance Requirement acceptance criterion for the diesel generator steady-state frequency in Limiting Condition for Operation 3.8.1, ''AC [Alternating Current] Sources—Operating.''

Date of issuance: February 12, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 341—Unit 1 and 334—Unit 2. A publicly-available version is in ADAMS under Accession No. ML18026A810; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** August 2, 2016 (81 FR 50740). The supplemental letter dated October 26, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 2018.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, on March 6, 2018.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–04827 Filed 3–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Pipe Rupture Hazard and Flooding Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from elements of the certification information of Tier 1 of the generic AP1000 design control document (DCD) and is issuing License Amendment Nos. 107 and 106 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively referred to as the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

The exemption revises the plant-specific Tier 1 information and corresponding changes to COL Appendix C, and the amendment changes the associated plant-specific DCD Tier 2 material incorporated into the VEGP Updated Final Safety Analysis Report (UFSAR), to address mitigation of fire protection system flooding of the Auxiliary Building identified following completion of the pipe rupture hazards analysis for the VEGP Units 3 and 4.

DATES: The exemption and amendment were issued on February 1, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was designated License Amendment Request (LAR) 17–010 and submitted by letter dated March 31, 2017, (ADAMS Accession No. ML17090A570) and revised and supplemented by letters dated August 21, October 9, November 1, December 1, and December 15, 2017, and January 3, 2018 (ADAMS Accession Nos. ML17233A325, ML17282A014, ML17305B507, ML17335A762, ML17349A928, and ML18003B082, respectively).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 107 and 106 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The

exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposed changes to plant-specific Tier 1 information and corresponding changes to COL Appendix C and associated plant-specific DCD Tier 2 material incorporated into the VEGP UFSAR, by revising information to address the need for mitigation of fire protection system flooding of the Auxiliary Building identified during completion of the pipe rupture hazards analysis. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment met all applicable regulatory criteria and was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18017A261.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18017A608 and ML18017A524, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18017A386 and ML18017A577, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated March 31, 2017, as supplemented and revised by letters dated August 21, October 9, November 1, December 1 and December 15, 2017, and January 3, 2018, Southern Nuclear Operating Company requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in Title 10 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 17–010, ''Request for License Amendment and Exemption: Pipe Rupture Hazard and Flooding Analyses.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found at ADAMS Accession No. ML18017A261 the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified AP1000 DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License as described in the request dated March 31, 2017, as supplemented and revised by letters dated August 21, October 9, November 1, December 1 and December 15, 2017 and January 3, 2018. This exemption is related to, and necessary for, the granting of License Amendment Nos.107 and 106, which is issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation (ADAMS Accession Number ML18017A261, this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated March 31, 2017 (ADAMS Accession No. ML17090A570), and revised and supplemented by letters dated August 21, October 9, November 1, December 1, and December 15, 2017, and January 3, 2018 (ADAMS Accession Nos. ML17233A325, ML17282A014, ML17305B507, ML17335A762, ML17349A928, and ML18003B082, respectively), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on June 6, 2017 (82 FR 26123). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested by letter dated March 31, 2017, (ADAMS Accession No. ML17090A570) and revised and supplemented by letters dated August 21, October 9, November 1, December 1, and December 15, 2017, and January 3, 2018 (ADAMS Accession Nos. ML17233A325, ML17282A014, ML17305B507, ML17335A762, ML17349A928, and ML18003B082, respectively).

The exemption and amendment were issued to the licensee on February 1, 2018, as part of a combined package (ADAMS Accession No. ML18017A721).

Dated at Rockville, Maryland, this 7th day of March, 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–04987 Filed 3–12–18; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Evidence To Prove Dependency of a Child, RI 25–37

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the reinstatement with change of an expired information collection, Evidence to Prove Dependency of a Child, RI 25–37.

DATES: Comments are encouraged and will be accepted until April 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0206) was previously published in the **Federal Register** on May 5, 2017, at 82 FR 21277, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 25–37 is designed to collect sufficient information for the Office of Personnel Management to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Evidence to Prove Dependency of a Child.

OMB Number: 3206–0206.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 250.

Estimated Time per Respondent: 1 Hour.

Total Burden Hours: 250 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2018–05031 Filed 3–12–18; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; November 2017

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from November 1, 2017 to November 30, 2017.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No schedule A Authorities to report during November 2017.

Schedule B

No schedule B Authorities to report during November 2017.

Schedule C

The following Schedule C appointing authorities were approved during November 2017.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Farm Service Agency	State Executive Director	DA180009	11/08/2017
			DA180024	11/03/2017
			DA180066	11/06/2017
			DA180073	11/13/2017
		State Executive Director—Kansas	DA170197	11/03/2017
		State Executive Director—Idaho	DA180044	11/03/2017
		State Executive Director—New York.	DA180058	11/03/2017
		State Executive Director—Oregon	DA180059	11/03/2017
		State Executive Director—Tennessee.	DA180061	11/03/2017
		State Executive Director—California.	DA180062	11/06/2017
		State Executive Director—Utah	DA180065	11/06/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
		State Executive Director—North Dakota.	DA180067	11/06/2017
		State Executive Director—Nebraska.	DA180068	11/06/2017
		State Executive Director—Ohio	DA180004	11/09/2017
		State Director—New Jersey	DA180077	11/09/2017
		State Executive Director—Vermont	DA180085	11/09/2017
		State Executive Director—Pennsylvania.	DA180086	11/09/2017
		State Executive Director—South Dakota.	DA180075	11/13/2017
		State Executive Director—Hawaii ..	DA180084	11/13/2017
		State Executive Director—Wyoming.	DA180091	11/13/2017
		State Executive Director—Illinois ...	DA180092	11/13/2017
		State Executive Director—Alabama	DA180049	11/27/2017
		State Executive Director, North Carolina.	DA180070	11/29/2017
	Office of the Assistant Secretary for Congressional Relations.	Special Assistant	DA180056	11/03/2017
		Staff Assistant	DA180053	11/29/2017
	Office of the Under Secretary for Marketing and Regulatory Programs.	Confidential Assistant	DA180093	11/29/2017
	Rural Housing Service	State Director—Maine	DA180030	11/01/2017
		State Director—Tennessee	DA180048	11/03/2017
		State Director—Kansas	DA180060	11/03/2017
		State Director—California	DA180063	11/06/2017
		State Director	DA180064	11/06/2017
		State Director—Utah	DA180069	11/06/2017
		State Director—South Carolina	DA180071	11/06/2017
		State Director—Nebraska	DA180050	11/07/2017
		State Director—Alabama	DA180057	11/07/2017
		State Director—Texas	DA170203	11/09/2017
		State Director—New Mexico	DA180018	11/09/2017
		State Director—North Carolina	DA180072	11/09/2017
		State Director—Florida	DA180074	11/09/2017
		State Director—Vermont, New Hampshire.	DA180076	11/09/2017
		State Director—Indiana	DA180078	11/09/2017
		State Director—Hawaii	DA180079	11/09/2017
		State Director—Oklahoma	DA180080	11/09/2017
		State Director—Ohio	DA180081	11/09/2017
		State Director—South Dakota	DA180083	11/09/2017
		State Director—Wisconsin	DA180087	11/09/2017
		State Director—Virginia	DA180088	11/09/2017
		State Director—Illinois	DA180090	11/13/2017
		State Director—North Dakota	DA180089	11/16/2017
		Senior Advisor	DA180095	11/27/2017
DEPARTMENT OF COMMERCE ...	Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Senior Director	DC180011	11/03/2017
	Office of Advocacy Center	Policy Assistant	DC180009	11/14/2017
	Office of Under Secretary	Special Advisor	DC180052	11/27/2017
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for Middle East ..	DD180004	11/01/2017
	Washington Headquarters Services	Defense Fellow	DD180017	11/02/2017
	Office of the Under Secretary of Defense (Policy).	Special Assistant, Defeat Islamic State of Iraq and Syria Task Force.	DD180013	11/06/2017
	Office of the Secretary of Defense	Protocol Officer (2)	DD180015	11/09/2017
			DD180018	11/15/2017
DEPARTMENT OF THE AIR FORCE.	Office of the Secretary	Special Assistant	DF180005	11/03/2017
	Office of the Under Secretary	Special Assistant	DF180004	11/09/2017
DEPARTMENT OF EDUCATION ...	Office of the Secretary	Executive Director, Executive Director, White House Initiative on Asian Americans and Pacific Islanders.	DB180009	11/03/2017
		Confidential Assistant (2)	DB180010	11/09/2017
			DB180011	11/09/2017
		Special Assistant	DB180003	11/20/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Communications and Outreach.	Special Assistant	DB180014	11/13/2017
DEPARTMENT OF ENERGY	Office of the Secretary of Energy Advisory Board.	Director, Office of Secretarial Boards and Councils.	DE180006	11/02/2017
	Office of the Under Secretary	Chief of Staff	DE180012	11/09/2017
		Special Assistant	DE180014	11/20/2017
	Office of Science	Physical Scientist (Senior Advisor)	DE180016	11/29/2017
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Press Secretary (2)	EP180004	11/09/2017
			EP180006	11/20/2017
	Office of the Chief Financial Officer	Special Advisor for Budgets and Audits.	EP180013	11/09/2017
	Office of Region 10—Seattle, Washington.	Senior Advisor for Public Engagement.	EP180008	11/29/2017
	Office of Region 2—New York, New York.	Special Assistant	EP180015	11/29/2017
EXPORT-IMPORT BANK	Office of the Chairman	Senior Advisor for Governmental Affairs.	EB180002	11/20/2017
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	White House Liaison	GS180003	11/13/2017
	Office of Congressional and Intergovernmental Affairs.	Deputy Associate Administrator for Congressional and Intergovernmental Affairs.	GS180005	11/20/2017
	Office of the Heartland Region	Senior Advisor	GS180004	11/22/2017
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Health.	Deputy Chief of Staff	DH180010	11/01/2017
	Office of the Assistant Secretary for Legislation.	Advisor	DH180007	11/03/2017
	Office of Intergovernmental and External Affairs.	Liaison	DH180012	11/03/2017
		Regional Director, Chicago, Illinois—Region V.	DH180011	11/07/2017
	Office of Food and Drug Administration.	Senior Advisor	DH180004	11/07/2017
	Office of the Assistant Secretary for Public Affairs.	Deputy Director of Communications.	DH180016	11/29/2017
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Policy.	Confidential Assistant	DM180013	11/01/2017
		Special Assistant	DM180015	11/02/2017
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM180025	11/01/2017
	Office of the Chief of Staff	Advance Representative	DM180021	11/09/2017
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Field Policy and Management.	Regional Administrator	DU180008	11/09/2017
DEPARTMENT OF THE INTERIOR	Office of Secretary's Immediate Office.	Senior Counsel	DI180008	11/20/2017
	Assistant Secretary—Policy, Management and Budget.	Field Coordinator	DI180009	11/20/2017
	Assistant Secretary—Indian Affairs	Counsel	DI180010	11/29/2017
DEPARTMENT OF JUSTICE	Office of Civil Rights Division	Senior Counsel	DJ170173	11/02/2017
	Office of National Security Division	Counsel	DJ180003	11/09/2017
	Office of the Attorney General	Special Assistant	DJ180025	11/09/2017
	Office of Justice Programs	Confidential Assistant	DJ180019	11/17/2017
	Office of Legal Policy	Counsel	DJ180027	11/20/2017
	Office of Legislative Affairs	Attorney Advisor and Intergovernmental Liaison.	DJ180024	11/22/2017
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant (2)	DL170121	11/02/2017
			DL170110	11/09/2017
	Office of Federal Contract Compliance Programs.	Senior Advisor	DL170102	11/09/2017
	Office of Congressional and Intergovernmental Affairs.	Confidential Assistant	DL180017	11/29/2017
		Chief of Staff	DL180014	11/09/2017
	Office of Employment and Training Administration.	Senior Policy Advisor	DL180009	11/13/2017
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Social Media Specialist	NN180004	11/29/2017
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Public Affairs Specialist	NA180001	11/20/2017
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Occupational Safety and Health Review Commission.	Confidential Assistant	SH170006	11/09/2017
	Office of Commissioners	Counsel	SH180001	11/09/2017
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Confidential Assistant	BO180001	11/14/2017
SMALL BUSINESS ADMINISTRATION.	Office of Administration	Management Support Specialist	SB180006	11/03/2017
	Office of Capital Access	Senior Advisor	SB180001	11/06/2017
	Office of Communications and Public Liaison.	Senior Advisor	SB180008	11/20/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Field Operations	Regional Administrator for Region X.	SB170045	11/22/2017
		Regional Administrator, Region VIII	SB180004	11/22/2017
		Regional Administrator, Region VII	SB180005	11/22/2017
		Regional Administrator V	SB180007	11/22/2017
DEPARTMENT OF STATE	Bureau of Near Eastern Affairs	Deputy Assistant Secretary	DS170205	11/07/2017
	Office of Policy Planning	Special Assistant	DS180003	11/16/2017
	Bureau of Legislative Affairs	Special Assistant	DS180004	11/16/2017
	Bureau of Arms Control, Verification, and Compliance.	Special Assistant	DS180006	11/16/2017
DEPARTMENT OF THE TREASURY.	Assistant Secretary (Public Affairs)	Press Assistant	DY170178	11/14/2017

The following Schedule C appointing authorities were revoked during November 2017.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Public Affairs Specialist (Speechwriter).	CT170001	11/11/2017
	Office of Public Affairs	Administrative Assistant	CT140009	11/25/2017
DEPARTMENT OF COMMERCE	Office of Business Liaison	Special Assistant	DC170082	11/11/2017
	Office of the Chief of Staff	Special Assistant to the Chief of Staff.	DC170124	11/25/2017
	Office of the Secretary	Confidential Assistant	DC170126	11/25/2017
DEPARTMENT OF ENERGY	Office of the Secretary of Energy Advisory Board.	Deputy Director, Office of Secretarial Boards and Councils.	DE170142	11/11/2017
	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor for External Affairs	DE170119	11/14/2017
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Special Assistant to the Chief of Staff.	DH170112	11/02/2017
	Office of the Assistant Secretary for Health.	Associate Director for Policy	DH170094	11/11/2017
	Office of the Assistant Secretary for Public Affairs.	Special Advisor	DH170088	11/11/2017
	Office of Intergovernmental and External Affairs.	Special Assistant	DH170199	11/21/2017
	Office of Health Reform	Senior Policy Advisor	DH170141	11/26/2017
DEPARTMENT OF JUSTICE	Office of Environment and Natural Resources Division.	Special Assistant and Counsel	DJ170106	11/25/2017
DEPARTMENT OF THE TREASURY.	Department of the Treasury	Deputy Executive Secretary	DY170105	11/12/2017
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT170085	11/25/2017
	Office of the Secretary	White House Liaison	DT170048	11/25/2017

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2018–05032 Filed 3–12–18; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:45 p.m. on Thursday, March 15, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact

Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: March 8, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–05098 Filed 3–9–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82822; File No. SR–NASDAQ–2018–017]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Rule 7014 To Eliminate the Small Cap Incentive Program and the Limit Up Limit Down Pricing Program

March 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Exchange's transaction fees at Rule 7014 to eliminate the Small Cap Incentive Program and the Limit Up Limit Down Pricing Program, as described below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 1, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.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 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 purpose of the proposed rule change is to amend Rule 7014 of the Exchange's Rules to eliminate the Small Cap Incentive Program (''SCIP'') and the Limit Up Limit Down (''LULD'') Pricing Program.

SCIP Program

The SCIP is a rebate program that presently applies to Exchange market markers (''Nasdaq Market Makers'') registered in Nasdaq-listed companies with a market capitalization (''cap'') of less than $100 million. Under the program, Nasdaq Market Makers registered in a designated SCIP symbol receive an additional displayed liquidity rebate of $0.0005 per share executed for executions at or above $1.00 (''SCIP Rebate'') if their percent of time at the NBBO is above 50% for the month (''NBBO Test''). The SCIP Rebate is in addition to all other applicable displayed rebates. For shares executed below $1.00, Nasdaq Market Makers are subject to the following rates: (i) The rebate to add liquidity is 0.10% of the total dollar volume; and (ii) the fee to remove liquidity is 0.25% of the total dollar volume.

The Exchange established the SCIP to encourage Nasdaq Market Makers to improve market quality for Nasdaq-listed companies with market caps of under $100 million. Although the program has had some limited success, it has not been effective to the extent intended when introduced. Accordingly, the Exchange no longer believes that the operation of the SCIP is an appropriate allocation of its limited resources and it proposes to eliminate the program.

LULD Pricing Program

The LULD program is a rebate program designed to provide incentives to market participants to provide liquidity during periods of extraordinary volatility in a select group of NMS Stocks chosen by the Exchange (''LULD Liquidity Symbols'').

Specifically, for LULD Liquidity Symbol securities priced $1 or more, the Exchange offers an incentive in the form of a $0.0010 per share executed rebate to Nasdaq Market Makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Limit State based on an NBO that equals the lower price band and does not cross the NBB (''Limit Down Limit State''). To be eligible, the Nasdaq Market Maker must be registered as a market maker for the LULD Liquidity Symbol.

Similarly, for LULD Liquidity Symbol securities priced $1 or more, the Exchange provides a $0.0010 per share executed rebate to Nasdaq Market Makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Straddle State based on an NBB that is below the lower price band (''Limit Down Straddle State'').

Finally, the Exchange provides an incentive to all market participants that enter Orders in an LULD Liquidity Symbol during a Trading Pause and receive an execution of that Order. The Exchange provides a $0.0005 per share executed rebate, which is provided upon execution of the eligible Order in the reopening process at the conclusion of the Trading Pause.

The Exchange intended for the LULD Pricing Program to improve market quality by promoting liquidity and price discovery for LULD Liquidity Symbols that have triggered Limit Up/Limit Down processes. Subsequent to the introduction of the LULD Pricing Program, certain enhancements to the LULD Plan have been implemented which reduced LULD pauses and supported a more orderly resumption of securities subject to LULD pauses. Therefore, the LULD Pricing Program is no longer needed and the Exchange proposes to eliminate it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposals to eliminate the SCIP and the LULP Pricing Program are reasonable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

because neither Pricing Program has been effective to the extent intended. In addition, improvements to the implementation of the LULD Plan have made the LULD Pricing Program unnecessary. Furthermore, the Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is equitable to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposals are equitable and not unfairly discriminatory because the elimination of the SCIP and the LULD Pricing Program will apply uniformly to all similarly situated members.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed elimination of the SCIP and the LULD Pricing Program will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Further, the Exchange does not believe that elimination of the programs will impose a burden on competition among market participants because the impact of the proposal will apply equally to all members that presently qualify for the programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–NASDAQ–2018–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–017, and should be submitted on or before April 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04963 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82824; File No. SR–NYSEArca–2018–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt a New NYSE Arca Rule 8.900–E and To List and Trade Shares of the Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF Under Proposed NYSE Arca Equities Rule 8.900–E

March 7, 2018.

On January 8, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new NYSE Arca Rule 8.900–E to permit it to list and trade Managed Portfolio Shares. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange also proposed to list and trade shares of Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF under proposed NYSE Arca Rule 8.900–E. The proposed rule change was published for comment in the **Federal Register** on January 26, 2018.[3] The Commission has received five comment letters on the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 12, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 26, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NYSEArca–2018–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04965 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 82549 (January 19, 2018), 83 FR 3846.

[4] *See* letters from: (1) Terence W. Norman, Founder, Blue Tractor Group, LLC, dated February 6, 2018; (2) Simon P. Goulet, Co-Founder, Blue Tractor Group, LLC, dated February 13, 2018; (3) Todd J. Broms, Chief Executive Officer, Broms & Company LLC, dated February 16, 2018; (4) Kevin S. Haeberle, Associate Professor of Law, William & Mary Law School, dated February 16, 2018; and (5) Gary L. Gastineau, President, ETF Consultants.com, Inc., dated March 6, 2018. The comment letters are available at *https://www.sec.gov/comments/sr-nysearca-2018-04/nysearca201804.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82823; File No. SR–MIAX–2018–09]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 7, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2018, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to introduce a cap on the amount of Member Participant Identifier (''MPID'')[3] fees that are assessed by the Exchange on an Electronic Exchange Member (''EEM'')[4] per month. The Exchange is not proposing any new fees; the Exchange is simply proposing to introduce a monthly cap on certain existing fees.

The amount of MPID fees assessed by the Exchange on a particular EEM in a particular month is based on the number of MPIDs assigned to the particular EEM in the System[5] in a given month, for each month the Member[6] is credentialed to use such MPID in the production environment.[7] EEMs request MPID assignments from the Exchange. EEMs are assessed a monthly MPID fee of $200.00 for the first MPID assigned, $100.00 each for the second through fifth MPID assigned, and $50.00 each for the sixth MPID and any additional MPIDs assigned. The Exchange assesses MPID fees in order to cover the administrative costs it incurs in assigning and managing these identifiers for each EEM.

The Exchange now proposes to cap MPID fees at $1,000.00 per month per EEM, regardless the actual number of MPIDs assigned to such EEM. As a practical matter, using the current fee table in Section 5e) of the Fee Schedule, the 14th MPID assigned to an EEM and each MPID thereafter would not incur an additional MPID fee, as the EEM would reach the cap of $1,000.00 after assignment of the 13th MPID for that month.

The Exchange believes that establishing a monthly cap on MPID fees will give Members greater flexibility to accommodate their varying business models and customer configurations, as many Members often request multiple MPIDs from the Exchange, and the Exchange does not want MPID costs to serve as a barrier for requesting multiple MPIDs. The Exchange notes that several other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An MPID is a code used in the MIAX Options system to identify the participant to MIAX Options and to the participant's Clearing Member respecting trades executed on MIAX Options. Participants may use more than one MPID.

[4] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] *See* Securities Exchange Act Release No. 68645 (January 14, 2013), 78 FR 4175 (January 18, 2013) (SR–MIAX–2012–05).

exchanges offer fee caps on certain non-transaction fees as well.[8]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b)[9] of the Act in general, and furthers the objectives of Section 6(b)(4)[10] of the Act, in that it is designed to provide for an equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities, because it applies equally to all Members and any persons using the facilities or services of the Exchange. The Exchange also believes that the proposal furthers the objectives of Section 6(b)(5)[11] of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that the proposed amendment to establish a fee cap on MPID fees is reasonable, equitable, and not unfairly discriminatory. The proposal to cap the total amount of MPID fees that can be assessed upon an EEM to a maximum of $1,000.00 per month is designed to promote just and equitable principles of trade by encouraging Members to configure their MPID assignments with greater granularity and for MPID costs to not serve as a barrier for requesting multiple MPIDs. Because any EEM is eligible to take advantage of the fee cap, the Exchange believes the fee cap is fair and equitable and not unreasonably discriminatory because it applies equally to all Members, and access to such fee cap is offered on terms that are not unfairly discriminatory.

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. The Exchange believes that the proposed rule change would promote transparency by providing Members with more flexibility to configure their MPIDs with greater granularity by offering a reasonably designed fee structure and fee cap. Additionally, respecting intra-market competition, the fee cap on MPID assignments is available to all Members, thus providing all Members with an even playing field with respect to amount of fees that can be assessed by the Exchange for MPID assignments. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2)[13] 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 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–MIAX–2018–09 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–MIAX–2018–09. 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–MIAX–2018–09 and should be submitted on or before April 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04964 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* the Nasdaq Phlx LLC Pricing Schedule, Section VI(D), Remote Specialist Fee (fee cap of $4,500 per month). *See also* the Nasdaq ISE, LLC Schedule of Fees, Section V(D), INET Port Fees (fee cap of $4,000 per month for OTTO Port Fee).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82825; File No. SR–NASDAQ–2017–074]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Adopt the Midpoint Extended Life Order

March 7, 2018.

I. Introduction

On July 21, 2017, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the Midpoint Extended Life Order (''MELO''). The proposed rule change was published for comment in the **Federal Register** on August 9, 2017.[3] On August 9, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 21, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission initially received three comment letters on the proposed rule change.[7] On October 30, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[8] On November 3, 2017, the Commission published notice of Amendment No. 2 and instituted proceedings under Section 19(b)(2)(B) of the Act [9] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[10] The Commission received one additional comment letter on the proposed rule change in response to the Order Instituting Proceedings.[11] On February 5, 2018, pursuant to Section 19(b)(2) of the Act,[12] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[13] On February 22, 2018, the Exchange filed Amendment No. 3 to the proposed rule change.[14] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal

The Exchange proposed to offer the MELO order type. A MELO would be a non-displayed order priced at the midpoint between the National Best Bid and Offer (''NBBO'') and would not be eligible to execute until a minimum period of one half of a second (''Holding Period'') has passed after acceptance of the order by the system.[15] Once eligible to trade, MELOs would be ranked in time priority at the NBBO midpoint among other MELOs.[16] If a limit price is assigned to a MELO, the order would be: (1) Eligible for execution in time priority after satisfying the Holding Period if upon acceptance of the order by the system, the midpoint price is within the limit set by the participant; or (2) held until the midpoint falls within the limit set by the participant, at which time the Holding Period would commence and thereafter the system would make the order eligible for execution in time priority.[17]

If a MELO is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) during the Holding Period, the system would restart the Holding Period.[18] Similarly, if a MELO is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) after it has become eligible to execute, the order would have to satisfy a new Holding Period.[19]

Movements in the NBBO while a MELO is in the Holding Period would not reset the Holding Period, even if, as a result of the NBBO move, the MELO's limit price is less aggressive than the NBBO midpoint.[20] Also, if a MELO has met the Holding Period, but the NBBO midpoint is no longer within its limit, it would nonetheless be ranked in time priority among other MELOs if the NBBO later moves such that the midpoint is within the order's limit price (*i.e.,* no new Holding Period).[21]

MELOs may be entered via any of the Exchange's communications protocols and the type of communications protocol used would not affect how the system handles MELOs.[22] If there is no NBB or NBO, the Exchange would accept MELOs but would not allow MELO executions until there is an NBBO.[23] MELOs would be eligible to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81311 (August 3, 2017), 82 FR 37248 (''Notice'').

[4] In Amendment No. 1, the Exchange updated the proposal to reflect the approval of the proposal by the Exchange's Board of Directors on July 21, 2017. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm.* Because Amendment No. 1 is a technical amendment that does not alter the substance of the proposed rule change, it is not subject to notice and comment.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 81668, 82 FR 45095 (September 27, 2017). The Commission designated November 7, 2017 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities, dated August 30, 2017 (''Citadel Letter''); Ray Ross, Chief Technology Officer, The Clearpool Group, dated September 12, 2017 (''Clearpool Letter''); and Joanna Mallers, Secretary, FIA Principal Traders Group, dated September 19, 2017 (''FIA PTG Letter'').

[8] In Amendment No. 2, the Exchange: (1) Modified the proposal to prevent MELOs from executing when there is a non-displayed order priced more aggressively than the NBBO midpoint resting on the Nasdaq book; (2) provided additional description, clarification, and rationale for certain aspects of the proposal; and (3) responded to several concerns raised by commenters on the proposal. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm.*

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *See* Securities Exchange Act Release No. 82013, 82 FR 52075 (November 9, 2017) (''Order Instituting Proceedings'').

[11] *See* Letter to Brent J. Fields, Secretary, Commission, from Edward K. Shin, dated December 8, 2017 (''Shin Letter'').

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Securities Exchange Act Release No. 82629, 83 FR 5822 (February 9, 2018). The Commission designated March 7, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change.

[14] In Amendment No. 3, the Exchange proposed to publish weekly aggregated statistics showing the number of shares and transactions of MELOs executed on the Exchange by security. This information would be published on *Nasdaqtrader.com* with a two-week delay for MELO executions in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'') and a four-week delay for MELO executions in all other NMS stocks. The Exchange also proposed to publish monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on the Exchange. This information would be published on *Nasdaqtrader.com* no earlier than one month following the end of the month for which trading was aggregated. Amendment No. 3 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm.*

[15] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[16] *See id.*

[17] *See id.*

[18] *See id.* The Exchange noted that any change to a MELO that would result in a change in the order's timestamp would result in the MELO being considered altered, and thus the order would be subject to a new Holding Period before being eligible to trade and its priority would be based on the new timestamp. *See* Amendment No. 2 at n.16.

[19] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[20] *See* Amendment No. 2 at n.11.

[21] *See* proposed Nasdaq Rule 4702(b)(14)(A); Amendment No. 2 at n.15.

[22] *See* Amendment No. 2 at n.10.

[23] *See id.* at 12. If there is no NBB or NBO upon entry of a MELO, the system would hold the order

Continued

trade if the NBBO is locked.[24] If the NBBO is crossed, MELOs would be held by the system until such time that the NBBO is no longer crossed, at which time they would be eligible to trade.[25] MELOs may be cancelled at any time, including during the Holding Period.[26]

MELOs would be active only during Market Hours.[27] MELOs entered during Pre-Market Hours would be held by the system in time priority until Market Hours.[28] MELOs entered during Post-Market Hours would not be accepted by the system, and MELOs remaining unexecuted after 4:00 p.m. ET would be cancelled by the system.[29] MELOs would not be eligible for the Nasdaq opening, halt, and closing crosses.[30]

MELOs must be entered with a size of at least one round lot, and any shares of a MELO remaining after an execution that are less than one round lot would be cancelled.[31] MELOs may have a minimum quantity order attribute.[32] MELOs may not be designated with a time-in-force of immediate or cancel (''IOC'') and are ineligible for routing.[33] They also may not have the discretion, reserve size, attribution, intermarket sweep order, display, or trade now order attributes.[34]

Once a MELO becomes eligible to execute by existing unchanged for the Holding Period, the MELO may only execute against other eligible MELOs.[35] MELOs would not execute if there is a resting non-displayed order priced more aggressively than the NBBO midpoint, and they instead would be held until the resting non-displayed order is no longer on the Nasdaq book or the NBBO midpoint matches the price of the resting non-displayed order.[36] MELO executions would be reported to Securities Information Processors and provided in Nasdaq's proprietary data feed without any new or special indication.[37] The Exchange would, however, publish delayed weekly aggregated statistics, as well as delayed monthly aggregated block-sized trading statistics, for MELO executions.[38] Specifically, the Exchange would publish on *Nasdaqtrader.com* weekly aggregated statistics showing the number of shares and transactions of MELOs executed on Nasdaq by security.[39] This information would be published with a two-week delay for NMS stocks in Tier 1 of the LULD Plan, and a four-week delay for all other NMS stocks.[40] The Exchange also would publish on *Nasdaqtrader.com* monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on Nasdaq.[41] This information would be published no earlier than one month following the end of the month for which trading was aggregated.[42] Under the proposal, a transaction would be considered ''block-sized'' if it meets any of the following criteria: (1) 10,000 or more shares; (2) $200,000 or more in value; (3) 10,000 or more shares and $200,000 or more in value; (4) 2,000 to 9,999 shares; (5) $100,000 to $199,999 in value; or (6) 2,000 to 9,999 shares and $100,000 to $199,999 in value.[43]

As proposed, MELOs would be subject to real-time surveillance to determine if the order type is being abused by market participants.[44] In addition, the Exchange intends to implement a process, at the same time as the implementation of MELOs, to monitor the use of MELOs with the intent to apply additional measures, as necessary, to ensure their usage is appropriately tied to the intent of the order type.[45] The Exchange stated that this process may include metrics tied to participant behavior, such as the percentage of MELOs that are cancelled prior to the completion of the Holding Period, the average duration of MELOs, and the percentage of MELOs where the NBBO midpoint is within the limit price when received.[46] The Exchange stated that it is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior.[47] According to the Exchange, manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the MELO order type may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[48]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[49] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[50] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[51] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has carefully considered the MELO order type and finds that it is consistent with the Act. The Commission believes that the MELO order type could create

in time priority, together with any other MELOs received while there is no NBB or NBO. *See id.* Once there is an NBBO, the Holding Period would begin for the held MELOs based on time priority. *See id.*

[24] *See id.* at 12–13.

[25] *See id.* at 13.

[26] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[27] *See* proposed Nasdaq Rule 4702(b)(14)(B). Market Hours begin after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs). *See* Nasdaq Rule 4703(a).

[28] *See* proposed Nasdaq Rule 4702(b)(14)(B). ''Pre-Market Hours'' means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. *See* Nasdaq Rule 4701(g). A MELO entered during Pre-Market Hours would be held by the system until the completion of the Opening Cross (or 9:30 a.m. ET if no Opening Cross occurs), ranked in the time that it was received by the Nasdaq book upon satisfaction of the Holding Period. *See* Amendment No. 2 at 11–12.

[29] *See* proposed Nasdaq Rule 4702(b)(14)(B). ''Post-Market Hours'' means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. *See* Nasdaq Rule 4701(g).

[30] *See* proposed Nasdaq Rule 4703(l); Amendment No. 2 at 12. MELOs in existence at the time a halt is initiated would be ineligible to execute and held by the system until trading has resumed and the NBBO has been received by Nasdaq. *See* proposed Nasdaq Rule 4702(b)(14)(A).

[31] *See* proposed Nasdaq Rule 4702(b)(14)(B).

[32] *See id.*

[33] *See id.;* Amendment No. 2 at 11 and 13.

[34] *See* Amendment No. 2 at 13–14.

[35] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[36] *See id.;* Amendment No. 2 at 9.

[37] *See* Amendment No. 2 at 15.

[38] *See* proposed Nasdaq Rule 4702(b)(14)(A); Amendment No. 3 at 3–6.

[39] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] *See* Amendment No. 2 at 22.

[45] *See id.*

[46] *See id.*

[47] *See id.* at 22–23.

[48] *See id.* at 23.

[49] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78f(b)(8).

additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.

As noted above, the Commission received four comment letters on the proposed rule change.[52] One commenter supported the proposed rule change, stating that MELOs could provide a valuable tool for investors (particularly institutional investors) seeking to execute in large size to effectively implement their investment strategies on an exchange and could attract longer-term market participants to Nasdaq.[53] This commenter also stated the benefits to investors of trading MELOs on an exchange as compared to off-exchange trading venues.[54] In particular, the commenter noted that trading on an exchange is open to all participants, and is a far fairer, more transparent way for markets to operate in contrast to off-exchange trading venues.[55]

Two commenters expressed the concern that MELOs would create a separate order book within the Nasdaq matching system where only MELOs could interact with each other.[56] One of these commenters stated that the proposal represents an unprecedented level of exchange-based order flow segmentation.[57] This commenter acknowledged the existence of limited exchange-based mechanisms that have the effect of restricting some order flow interaction, but contended that the proposal goes significantly beyond any such existing restrictions.[58] The other commenter also asserted that artificially introducing latency negatively impacts the price discovery and formation functions of the Exchange.[59]

In addition, one commenter remarked that market participants with marketable held orders or resting orders seeking to execute against marketable held order flow would be unlikely to utilize MELOs because marketable held orders are typically required to be executed fully and promptly.[60] According to the commenter, as use of the MELO order book increases, liquidity in the non-MELO order book could be negatively impacted to the detriment of retail investors.[61] In addition, the commenter stated that investors submitting resting MELOs would not be able to interact with marketable held order flow.[62] The commenter suggested that the Exchange could partially mitigate the negative impacts of MELO order segmentation by revising its proposal to allow any order to immediately interact with a resting MELO as long as it is priced beyond the midpoint.[63]

In contrast, one commenter stated that allowing MELOs to interact with non-MELOs would defeat the purpose of the MELO order type.[64] This commenter also stated that it does not believe that the proposal would negatively impact liquidity or price discovery on the Nasdaq market because the MELO order type should have little to no detrimental effect on participants using other order types.[65] According to this commenter, to the extent that the MELO order type would provide incentives for order flow to be directed to a fair access exchange and away from private market centers, price discovery for the broader markets might improve.[66]

The Exchange responded to these comments in Amendment No. 2, and stated that although MELOs may forgo the opportunity to interact with other liquidity on the Exchange, MELO users will have accepted this possibility in return for the ability to interact with other market participants with the same time horizon.[67] The Exchange also compared MELOs to the minimum quantity order attribute, as well as the retail price improving orders available on Nasdaq BX, Inc.[68] The Exchange stated that both of these types of orders provide the opportunity to interact with orders meeting certain characteristics, and consequently may miss the opportunity to receive an execution if the contra-side order does not meet the specified characteristics.[69] The Exchange also stated that it is not unfair or discriminatory that non-displayed orders resting on Nasdaq that are priced more aggressively than the NBBO midpoint would not participate in MELO executions.[70] According to the Exchange, the use of resting non-displayed orders and MELOs would be available to all Exchange participants, who need to evaluate which order type best serves their investment needs.[71] The Exchange also noted that it conducted a pro forma study of the effect of applying MELOs to the current market by reviewing all executions occurring on Nasdaq in August 2017, and found that only 0.37% of resting non-displayed orders traded at a price better than the prevailing midpoint at the time of execution.[72] According to the Exchange, consequently, the number of situations in which a participant would have to consider the trade-offs between posting a non-displayed buy (sell) order at a higher (lower) price as compared to submitting a MELO is minimal.[73] In addition, the Exchange reiterated that all members may use MELOs and thus have access to MELO liquidity.[74] Finally, the Exchange amended the proposal to provide that MELOs would not execute if there is a resting non-displayed order priced more aggressively than the NBBO midpoint; rather, MELOs would be held until the resting non-displayed order is no longer on the Nasdaq book or the NBBO midpoint matches the price of the resting non-displayed order.[75]

The Commission believes that the proposed MELO order type is reasonably designed to enhance midpoint execution quality on the Exchange. The Commission notes that the concept of exchange order types or attributes that permit market participants to elect not to execute against certain contra-side interest is not novel. Existing order functionalities, such as the minimum quantity and post-only conditions, enable market participants to direct their orders to execute only if certain conditions are met by contra-side order flow. The Commission also notes that the Holding Period introduced by the Exchange's proposal is specific to MELOs and thus does not introduce latency with respect to any other type of trading interest on the Exchange. Moreover, as noted above, the MELO order type (including its Holding Period) could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons. In addition, the Commission notes that, unlike a scenario in which orders are directed among multiple separate trading venues where price priority might not be available among the orders,

[52] *See supra* notes 7 and 11.

[53] *See* Clearpool Letter at 1–3.

[54] *See id.* at 2.

[55] *See id.*

[56] *See* Citadel Letter at 1–3; FIA PTG Letter at 2.

[57] *See* Citadel Letter at 1. This commenter noted that the proposal would result in two orders on the Exchange failing to interact when one order is a MELO and the other order is not. *See id.* at 3.

[58] *See id.*

[59] *See* FIA PTG Letter at 2.

[60] *See* Citadel Letter at 1–2.

[61] *See id.* at 2.

[62] *See id.*

[63] *See id.*

[64] *See* Clearpool Letter at 3.

[65] *See id.*

[66] *See id.*

[67] *See* Amendment No. 2 at 19.

[68] *See id.*

[69] *See id.*

[70] *See id.* at 20.

[71] *See id.*

[72] *See id.* at 21.

[73] *See id.*

[74] *See id.*

[75] *See id.* at 9; proposed Nasdaq Rule 4702(b)(14)(A).

the Exchange's proposal would ensure that a MELO does not execute at a price that is inferior to the price of a resting non-displayed order (*i.e.,* a resting order priced more aggressively than the NBBO midpoint). Finally, the Commission notes that all Nasdaq members may utilize MELOs if they so choose. Accordingly, the Commission believes that the Exchange's proposal represents a reasonable effort to enhance the ability of longer-term trading interest to participate effectively on an exchange, without discriminating unfairly against other market participants or inappropriately or unnecessarily burdening competition.

One commenter raised the concern that, under the proposal, MELO executions would be reported to the Securities Information Processors and provided on Nasdaq's proprietary data feed in the same manner as all other transactions on Nasdaq.[76] This commenter stated that this approach likely would raise concerns about market fairness and introduce significant complexity for investors, broker-dealers, and regulators when attempting to analyze market activity and assess execution quality.[77] This commenter noted, by way of example, that investors may see their orders executed on Nasdaq at worse prices than other contemporaneous executions on Nasdaq and that, without Nasdaq labeling MELO executions as such, investors may not know why this has occurred.[78] This commenter also asserted that, without labeling MELO executions differently than other executions on Nasdaq, broker-dealer routing logic may be influenced by liquidity that is not actually accessible, and regulators may experience difficulties in accurately filtering market data when evaluating compliance with regulatory requirements such as best execution.[79] This commenter urged the Commission to require that executions resulting from MELOs be marked as such on the tape.[80]

By contrast, one commenter stated that it does not believe that the lack of specific identification of MELOs in trade reports would result in any difficulties for the markets, or complexity for investors or other market participants when assessing execution quality.[81] According to this commenter, MELO users would be provided with anonymity and confidentiality, which the commenter asserted are critical tools in preventing potentially predatory counterparties from determining intention and using that information to generate short-term profits at the expense of longer-term investors.[82] In addition, this commenter stated that exchanges currently offer many order types that when executed do not indicate exactly which order types were used.[83]

The Exchange responded to these comments in Amendment No. 2, and noted that transactions in MELOs would be reported to the Securities Information Processors and provided in Nasdaq's proprietary data feed in the same manner as all other transactions occurring on Nasdaq are done currently (*i.e.,* without any new or special indication that a transaction is a MELO execution).[84] According to the Exchange, not identifying MELO executions in real-time is important to ensuring that investors are protected from market participants that would otherwise take advantage of the knowledge of MELO executions and undermine the usefulness of the order type.[85] In particular, according to the Exchange, MELO is designed to increase access to, and participation on, Nasdaq for investors that are less concerned with the time to execution, but rather are looking to source liquidity, often in greater size, at the NBBO midpoint against a counterparty order that has the same objectives.[86] The Exchange noted that the proposal is designed to help ensure that members with MELOs are not disadvantaged by other order types entered by participants that have the benefit of knowing, and reacting to, rapid changes in the market.[87] Moreover, in Amendment No. 3, the Exchange proposed to publish delayed execution volume statistics for MELOs. As discussed above, the Exchange proposed to publish weekly aggregated volume statistics regarding the number of shares and transactions of MELOs executed on the Exchange by security, as well as monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on the Exchange.[88] The weekly aggregated information would be published on *Nasdaqtrader.com* with a two-week delay for NMS stocks in Tier 1 of the LULD Plan and a four-week delay for all other NMS stocks.[89] The monthly aggregated information would be published on *Nasdaqtrader.com* no earlier than one month following the end of the month for which trading was aggregated.[90]

The Commission notes that the proposed MELO order type is intended to provide additional execution opportunities on the Exchange for market participants that may not be as sensitive to very short-term changes in the NBBO and are willing to wait a prescribed period of time following their order submission to receive a potential execution against other market participants that have similarly elected to forgo an immediate execution. In particular, the proposed MELO order type is intended to mitigate the risk that an opportunistic low-latency trader will be able to execute against a member's order at a time that is disadvantageous to the member, such as just prior to a change in the NBBO. The Commission also believes that the proposal to publish delayed aggregated statistics for MELO executions is reasonably designed to provide transparency regarding MELO executions on the Exchange without undermining the usefulness of the order type by limiting the potential information leakage and the resulting market impact that could be associated with non-delayed identification of individual MELO executions.

One commenter asserted that allowing MELOs to be cancelled at any time during the Holding Period does not appear to be consistent with the intended use of the order type.[91] Instead, according to this commenter, a MELO should only be permitted to be cancelled after the Holding Period has expired and the order has been placed in the order book.[92] Another commenter expressed concern that high-frequency traders and algorithms could take advantage of MELOs.[93] By contrast, one commenter did not have an issue with providing market participants the ability to cancel MELOs during the Holding Period.[94] This commenter stated that it believes this would be an important feature of the MELO order type because many firms use algorithms to source liquidity simultaneously from multiple venues.[95] According to the commenter, to the extent that liquidity is found elsewhere than Nasdaq within the

[76] *See* Citadel Letter at 3.

[77] *See id.*

[78] *See id.*

[79] *See id.*

[80] *See id.* Alternatively, the commenter suggested that Nasdaq offer the MELO order type on a separate exchange. *See id.*

[81] *See* Clearpool Letter at 2.

[82] *See id.*

[83] *See id.*

[84] *See* Amendment No. 2 at 25.

[85] *See id.*

[86] *See id.* at 17.

[87] *See id.* at 9.

[88] *See* proposed Nasdaq Rule 4702(b)(14)(A).

[89] *See id.*

[90] *See id.*

[91] *See* Citadel Letter at 4.

[92] *See id.*

[93] *See* Shin Letter.

[94] *See* Clearpool Letter at 3.

[95] *See id.*

Holding Period, it would be critically important that the firm be able to cancel its orders from Nasdaq and re-allocate those shares to other venues.[96] This commenter stated that it does not believe any market participants would be harmed in such a circumstance.[97]

In Amendment No. 2, the Exchange responded that MELOs may be cancelled at any time, including during the Holding Period, to allow members to effectively manage risk.[98] The Exchange also acknowledged that the potential exists for some participants to use MELOs in a way that conflicts with the stated intention of the order type to allow longer term investors the opportunity to safely find like-minded counterparties at the midpoint on Nasdaq.[99] For this reason, the Exchange represented that MELOs would be subject to real-time surveillance to determine if the order type is being abused by market participants.[100] The Exchange also stated that it plans to implement a process, at the same time as the implementation of MELOs, to monitor the use of MELOs, with the intent to apply additional measures, as necessary, to ensure that their usage is appropriately tied to the intent of the order type.[101] According to the Exchange, this process may include metrics tied to participant behavior, such as the percentage of MELOs cancelled prior to completion of the Holding Period, the average duration of MELOs, and the percentage of MELOs where the NBBO midpoint is within the limit price when received.[102] The Exchange stated that manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that frustrates the purposes of the MELO order type may be subject to penalties or other requirements to discourage such behavior, should it occur.[103]

The Commission believes that the Exchange's proposed measures are reasonably designed to deter potential improper use of the proposed MELO order type. In particular, the Commission notes that the Exchange has represented that it will conduct real-time surveillance to monitor the use of MELOs and ensure that such usage is appropriately tied to the intent of the order type.[104] Moreover, importantly, the Exchange will measure the metrics noted above that reflect participant behavior with respect to MELOs, such as the percentage of a participant's MELOs that are cancelled prior to the completion of the Holding Period.[105] As the Exchange represented in its filing, the Commission expects the Exchange to continue to evaluate whether additional measures may be necessary to ensure that MELOs are used in a manner consistent with the intended purpose of the order type.[106]

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 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–NASDAQ–2017–074 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–NASDAQ–2017–074. 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–NASDAQ–2017–074, and should be submitted on or before April 3, 2018.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. As discussed above, in Amendment No. 3, the Exchange proposed to provide on *Nasdaqtrader.com* certain delayed aggregated volume statistics for MELOs executed on the Exchange. The Commission notes that Amendment No. 3 is designed to provide transparency regarding MELO executions on the Exchange. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[107] to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[108] that the proposed rule change (SR–NASDAQ–2017–074), as modified by Amendment Nos. 1, 2, and 3 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

Brent J. Fields,

Secretary.

[FR Doc. 2018–04979 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33043; 812–14882]

Corporate Capital Trust, Inc., et al.

March 8, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

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[96] *See id.*
[97] *See id.*
[98] *See* Amendment No. 2 at 8.
[99] *See id.* at 22.
[100] *See id.*
[101] *See id.*
[102] *See id.*
[103] *See id.* at 23.
[104] *See id.* at 22–23.
[105] *See id.* at 22.
[106] *See id.*
[107] 15 U.S.C. 78s(b)(2).
[108] *Id.*
[109] 17 CFR 200.30–3(a)(12).

Notice of application for an order to amend a prior order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits certain business development companies (''BDCs'') and registered closed-end investment companies (''closed-end funds'') to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

Applicants: Corporate Capital Trust, Inc. (''CCT I''), a BDC; Corporate Capital Trust II (''CCT II''), a BDC; KKR Income Opportunities Fund (''KIO''), a closed-end fund; FS/KKR Advisor, LLC (''FS/KKR Advisor''); KKR Credit Advisors (US) LLC (''KKR Credit''); the investment advisory subsidiaries and relying advisers of KKR Credit set forth on Schedule A to the application (collectively, with FS/KKR Advisor and KKR Credit, the ''Existing KKR Credit Advisers''); KKR Capital Markets Holdings L.P. and its capital markets subsidiaries and other indirect, wholly- or majority-owned subsidiaries of KKR & Co. L.P. (''KKR'') set forth on Schedule A to the application (collectively, the ''KCM Companies''); KKR Financial Holdings LLC (''KFN'') and its wholly-owned subsidiaries set forth on Schedule A to the application (together with wholly-owned subsidiaries of KFN that may be formed in the future, the ''KFN Subsidiaries.''); and the Existing Affiliated Funds set forth on Schedule A to the application.

Filing Dates: The application was filed on March 6, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 2, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 555 California Street 50th Floor, San Francisco, CA 94104

FOR FURTHER INFORMATION CONTACT: Bruce MacNeil, Senior Counsel, at (202) 551–6817 or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. On June 19, 2017, the Applicants received an order under Sections 17(d) and 57(i) of the Act and Rule 17d–1 thereunder, permitting certain joint transactions that otherwise may be prohibited by Sections 17(d) and 57(a)(4) and Rule 17d–1 (the ''Prior Order'').[1] Unless stated otherwise, defined terms used in the application have the meanings provided in the application for the Prior Order (the ''Prior Application'').

2. The Applicants seek an order (the ''Order'') to amend the Prior Order to extend the relief granted therein to Future Regulated Entities whose investment adviser is a KKR Credit Adviser.[2] Applicants also seek to amend the Prior Order to add FS/KKR Advisor as an Applicant and to remove CNL Fund Advisors Company and CNL Fund Advisors II, LLC as Applicants.[3]

3. FS/KKR Advisor is a Delaware limited liability company, and, prior to relying on the requested relief, will be registered as an investment adviser under the Advisers Act and controlled by KKR Credit.

4. Applicants state that the legal analysis in the Prior Application is equally applicable to this application.

Applicants' Conditions:

If the Order is granted, the Conditions of the Prior Order, as stated in the Prior Application, will remain in effect.

[1] Corporate Capital Trust, Inc., et al. (File No. 812–14408), Investment Company Act Release Nos. 32642 (May 22, 2017) (notice) and 32683 (June 19, 2017) (order).

[2] Per the Order, the term ''Future Regulated Entity'' would mean a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser is a KKR Credit Adviser that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

[3] CNL Fund Advisors Company and CNL Fund Advisors II, LLC currently serve as investment adviser to CCT I and CCT II, respectively.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05072 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33042; 812–14849]

Nationwide Fund Advisors and ETF Series Solutions

March 8, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Nationwide Fund Advisors (the ''Initial Adviser''), a business trust organized under the laws of the state of Delaware registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end

management investment company with multiple series.

FILING DATES: The application was filed on December 1, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 2, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541 and Michael D. Barolsky, Esq., U.S. Bancorp Fund Services, LLC, 615 E Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds (as defined below) to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its

[1] Applicants request that the order apply to the new series of the Trust described in the application as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05039 Filed 3–12–18; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82697; File No. SR–BOX–2018–07]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Short Term Option Series Program

February 13, 2018.

Correction

In notice document 2017–03306 beginning on page 7279 in the issue of Tuesday, February 20, 2017, make the following correction:

On page 7282, in the first column, in the twelfth through thirteenth lines, ''March 9, 2018'' should read ''March 13, 2018''.

[FR Doc. C1–2018–03306 Filed 3–12–18; 8:45 am]

BILLING CODE 1301–00–P

DEPARTMENT OF STATE

[Public Notice: 10356]

Determination Under the Foreign Assistance Act of 1961 for Assistance for Iraq

Pursuant to the authority vested in me by section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961 (FAA), and the President's Memorandum of Delegation dated December 4, 2017, I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of any agency of the U.S. government, and military education and training from the Department of Defense, for the purposes and under the authorities of chapter 9 of Part I of the FAA. I therefore direct the drawdown of up to $22,000,000 of articles and services from the inventory and resources of any agency of the U.S. government, and military education and training from the Department of Defense, to provide assistance for Iraq.

This determination shall be reported to Congress and published in the **Federal Register**.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2018–05036 Filed 3–12–18; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice: 10307]

60-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *May 14, 2018.*

ADDRESSES:

You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2018–0008'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov*.
- *Regular Mail:* Send written comments to: PPT Forms Officer, U.S. Department of State, CA/PPT/S/L/LA, 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs (CA/PPT/S/L/LA).
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents :* 643,400.
- *Estimated Number of Responses:* 643,400.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 107,233 hours.

• *Frequency:* On occasion.
• *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq.*, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Our regulations in the Code of Federal Regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must make a report of the lost or stolen passport to the Department of State before they receive a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS–64 collects information identifying the person who held the lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport. False statements made knowingly or willfully on passport forms, in affidavits, or other supporting documents, are punishable by fine and/or imprisonment under U.S. law. (18 U.S.C. 1001, 1542–1544).

Methodology:

Passport applicants can submit their form electronically on *www.travel.state.gov* or call the National Passport Information enter at 1–877–487–2778. Applicants can also download the form from the internet or obtain one at any Passport Agency or Acceptance Facility.

Barry J. Conway,

Deputy Assistant Secretary, Acting, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2018–04956 Filed 3–12–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Categorical Exclusion and Record of Decision for Ontario International Airport JCKIE ONE RNAV Arrival Procedure

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

ACTION: Notice of availability.

SUMMARY: The FAA, Western Service Area is issuing this notice to advise the public of the availability of the Categorical Exclusion/Record of Decision (CATEX/ROD) for the Area Navigation (RNAV) standard instrument arrival (STAR) procedure for the Ontario International Airport (KONT) in Ontario, CA. The FAA reviewed the action and determined it to be categorically excluded from further environmental documentation.

FOR FURTHER INFORMATION CONTACT: Ms. Janelle Cass, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547 (206) 231–2231 or *https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/ONT/.*

SUPPLEMENTARY INFORMATION: The KONT JCKIE STAR procedure is designed to provide aircraft arriving KONT from the east, a nighttime arrival procedure when curfew hours are in place for the Long Beach Airport (KLGB) ROOBY TWO RNAV STAR and the John Wayne KSNA DSNEE TWO RNAV STAR. This alternative routing will provide a high level of safety and efficiency benefits similar to the EAGLZ STAR with the use of performance based navigation (PBN) technology. The JCKIE ONE STAR procedure will operate between the approximate hours of 11:00 p.m. to 6:00 a.m. but would depend on dynamic airspace safety and air traffic conditions which could include, but are not limited, to air traffic volume, weather conditions, airport demands, and air traffic control workload.

Right of Appeal: This CATEX/ROD constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. 46110. Issued in Des Moines, WA, on Mar 7, 2018.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center, Air Traffic Organization.

[FR Doc. 2018–05037 Filed 3–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0267]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Motor Carrier Records Change Form

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this ICR titled ''Motor Carrier Records Change Form,'' is to more efficiently collect information the Office of Registration and Safety Information (MC–RS) requires to process name and address changes and reinstatements of operating authority.

DATES: Please send your comments by April 12, 2018. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2017–0267. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of

Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeff Secrist, Division Chief, East-South Division, FMCSA Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–385–2367 Email Address: *jeff.secrist@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Records Change Form.

OMB Control Number: 2126–0060.

Type of Request: Renewal information collection.

Respondents: For-hire motor carriers, brokers and freight forwarders.

Estimated Number of Respondents: 44,900.

Estimated Time per Response: 15 minutes per response.

Expiration Date: July 31, 2018.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 11,225 hours [44,900 annual responses × 0.25 hours].

Background

FMCSA registers for-hire motor carriers under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905(c). 49 CFR part 365.413 states for-hire motor carriers, brokers and freight forwarders are required to notify the Office of Registration and Safety Information when they change the name or form of business. Currently, the name change request can be filed online through the Licensing and Insurance (L&I) website, or companies can fax or mail a letter requesting either name or address changes. Carriers can also request reinstatement of a revoked operating authority either via fax or online via the L&I website. About 39% of name change, address change, and reinstatement requests are received by mail; 38% are filed online; and 23% are filed by faxing a request letter to MC–RS. The information collected is then entered in the L&I database by FMCSA staff. This enables FMCSA to maintain up-to-date records so that the agency can recognize the entity in question in case of enforcement actions or other procedures required to ensure that the carrier is fit, willing and able to provide for-hire transportation services, and so that entities whose authority has been revoked can resume operation if they are not otherwise blocked from doing so. This multi-purpose form simplifies the process of gathering the information needed to process the entities' requests in a timely manner, with the least amount of effort for all parties involved. This multi-purpose form is filed by registrants on an as-needed basis. This multi-purpose form is on the FMCSA website so entities could access and print/fax/email the form to MC–RS.

The form prompts users to report the following data points (whichever are relevant to their records change request): (1) What are the legal/doing business as (dba) names of the entity/representative? (2) What is the contact information of entity/representatives (phone number, address, fax number, email address)? (3) What are the requested changes to name or address of entity? (4) What is the docket MC/MX/FX number of the entity? (5) What is the US DOT number of the entity? (6) Is there any change in ownership, management or control of the entity? (7) What kind of changes is the entity making to the company? (8) Which authority does the entity/representative wish to reinstate, motor carrier or broker? (9) Does the entity/representative authorize the fee for the name change or reinstatement? (10) Does the entity/representative authorize the reinstatement of operating authority or name/address change? (11) What is the credit card information (name, number, expiration date, address, date) for the card used to pay the fee?

The Agency received three comments on the 60-day notice (82 FR 50481). The comments were not directly related to the information collection. Therefore, FMCSA did not make any changes to the information collection.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: March 5, 2018.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–05005 Filed 3–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on March 15, 2018, from Noon to 3:00 p.m., Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board. An agenda for this meeting will be available no later than 5:00 p.m. EST, March 2, 2018 at: *https://ucrplan.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: March 8, 2018.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–05152 Filed 3–9–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0428]

Hours of Service of Drivers: Electronic Logging Devices; Application for Exemption; Truck Renting and Leasing Association, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the Truck Renting and Leasing Association Inc. (TRALA) has requested an exemption until December 31, 2018, from the electronic logging device (ELD) requirements for all drivers of property-carrying commercial motor vehicles rented for 30 days or fewer. A waiver for the same purpose and group of drivers was issued to TRALA on January 19, 2018, and expires on April 19, 2018. TRALA states that the waiver period, which is limited to 90 days, is not sufficient to address the ELD problems that they and their short-term lessors are encountering. This request, if granted, would provide rental-vehicle owners, carriers, and drivers with additional time to develop compliance strategies for dealing with the unique issues relating to the use of ELDs in short-term rental vehicles. TRALA believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would continue to remain subject to the hours-of-service regulations as well as the requirements to maintain a paper record of duty status. FMCSA requests public comment on TRALA's application for exemption.

DATES: Comments must be received on or before April 12, 2018.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2016–0428 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0428), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2016–0428'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in 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 and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

TRALA is a national trade association of companies whose members rent and lease vehicles. TRALA's membership encompasses the full spectrum of the industry, including major independent firms such as Budget, Enterprise Truck Rental, Penske Truck Leasing, Ryder System, and U Haul, as well as small and medium size businesses that generally participate as members of four leasing group systems, three of which are affiliated with a major manufacturer. TRALA states that it has nearly 500 members whose vehicles account for between 25–30% of all commercial motor vehicles (CMVs) on the highways today.

TRALA advised that operators of short-term CMV rentals face challenges in complying with the ELD requirements that no other segment of the industry faces. Businesses renting CMVs to customers must offer ELD compliance options for a variety of technical platforms. Motor carrier fleets use rental vehicles to meet seasonal

demand, surges in other demands, or to replace breakdowns; these fleets will already have an ELD platform that in many cases will be different from the one installed on a rental truck.

TRALA states that FMCSA has recognized the unique compliance concerns of the short-term CMV rental vehicle market by granting a partial exemption from the ELD requirements for vehicles rented for no longer than 8 days (82 FR 47306, October 11, 2017). In addition, FMCSA has granted an ELD waiver to TRALA until April 19, 2018, for CMVs rented for no longer than 30 days (83 FR 2868, January 19, 2018).

TRALA states that since FMCSA's October 11, 2017, decision granting an exemption of only 8 days for rental trucks, TRALA members have taken several steps to resolve the ELD issues. These include meeting with customers, building cloud-based portal systems between ELD providers, and purchasing thousands of ELDs for rental trucks. Nevertheless, TRALA members and their customers state that they need additional time to come into full compliance with ELD requirements.

IV. Request for Exemption

TRALA is requesting an exemption until December 31, 2018, from the ELD requirements in 49 CFR part 395, as applied to drivers of property-carrying CMVs rented for any reason for no longer than 30 days. Lessors of short-term CMV rentals are struggling to meet the current April 19, 2018, waiver expiration deadline. TRALA states that its members continue to work diligently with their customers, developing systems that will allow renters to record and report their hours seamlessly, and partnering with ELD providers to give the most options available to rental customers.

According to TRALA, every customer's needs are unique. An additional period through the end of this year to prepare for this transition would allow their members to continue resolving the issues presented by new technology and the need for individual customer-based compliance strategies. It would also allow lessors to meet seasonal demand for short-term rental vehicles through the holiday season in November and December of this year without disruptions.

TRALA states that allowing short-term CMV rental truck drivers to not comply with ELD requirements until December 31, 2018, will not have any impact on safety, nor will it provide a safe harbor for drivers who may try to avoid compliance with the hours-of-service (HOS) regulations in general. Nearly half the States now impose daily rental fees which are a significant disincentive to rent solely for the purpose of avoiding the ELD regulations.

TRALA also states that, if the exemption is granted, law enforcement officers would be better able to identify short-term rental vehicles. Under 49 CFR 390.21(e), a CMV rented for a period not to exceed 30 days is not required to be marked with the name and USDOT number of the operating motor carrier if the vehicle otherwise is marked with the lessor's name and USDOT number, and a copy of the rental agreement is carried in the vehicle in accordance with that provision. Enforcement officials inspecting such a vehicle would examine the short-term rental agreement to determine that the ELD requirement does not apply to that vehicle. The official would then check the driver's paper record of duty status for compliance with the HOS regulations.

According to TRALA, their members represent about 25–30% of CMVs on the road and are a key component of the trucking industry. Allowing a further exemption through December 31, 2018, to continue the transition efforts ongoing since the final rule was published will give all businesses that use rental trucks comfort that systems can be deployed to better address the difficulties confronted by the rental truck market.

A copy of TRALA's application for exemption is available for review in the docket for this notice.

Issued on: March 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–05001 Filed 3–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2018–0001]

Proposed Information Collections; Comment Request (No. 68)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Alcohol and Tobacco Tax and Trade Bureau (TTB) invites comments on the proposed or continuing information collections listed below in this document.

DATES: Comments are due on or before May 14, 2018.

ADDRESSES: As described below, you may send comments on the information collections listed in this document using the ''Regulations.gov'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *https://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2018–0001 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, to submit comments via the internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2018–0001 at *https://www.regulations.gov.* A link to that docket is posted on the TTB website at *https://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone (202) 453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on the information collections listed in this document to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing

effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in comments.

For each information collection listed below, we invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collections (forms, recordkeeping requirements, or questionnaires):

Title: Drawback on Distilled Spirits Exported.

OMB Number: 1513–0042.

TTB Form Number: F 5110.30.

Abstract: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5062, persons who export tax-paid distilled spirits may claim drawback of the excise tax paid on those spirits, under regulations prescribed by the Secretary of the Treasury (the Secretary). Under the TTB regulations, persons use TTB F 5110.30 to claim drawback of the Federal alcohol excise taxes paid on exported distilled spirits. The form requests, among other information, data regarding the claimant, the tax-paid spirits exported, and the amount of tax to be refunded. This information collection is necessary to protect the revenue as it allows TTB to verify that the excise tax has been paid on the spirits and that the spirits have been exported.

Current Actions: TTB is submitting this information collection for extension purposes only, and the information collection remains unchanged. However, due to a decrease in the use of TTB F 5110.30, TTB is decreasing the estimated total annual burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 800.

Title: Application and Permit to Ship Puerto Rican Spirits to the United Statement Without Payment of Tax.

OMB Number: 1513–0043.

TTB Form Number: F 5110.31.

Abstract: The IRC at 26 U.S.C. 7652 imposes excise tax on Puerto Rican distilled spirits shipped to the United States for consumption or sale. The IRC at 26 U.S.C. 5232 provides that distilled spirits imported or brought into the United States in bulk containers may be withdrawn from Customs custody and transferred to the bonded premises of a distilled spirits plant without payment of tax. In addition, the IRC at 26 U.S.C. 5314 allows Puerto Rican spirits, including denatured distilled spirits, to be brought into the United States without payment of tax under certain circumstances. Under the TTB regulations in 27 CFR part 26, applicants use TTB F 5110.31 to apply for, and to document, the shipment of Puerto Rican spirits to the United States without payment of tax. The form identifies the consignor in Puerto Rico, the consignee in the United States receiving the spirits, and the amount of spirits to be shipped without payment of tax. This information is necessary to protect the revenue.

Current Actions: TTB is submitting this information collection for extension purposes. However, TTB is decreasing the estimated number of respondents to this collection from 20 to 10 and is decreasing the estimated annual burden hours from 750 to 375.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 375.

Title: Report of Removal, Transfer, or Sale of Processed Tobacco.

OMB Number: 1513–0130.

TTB Form Number: F 5250.2.

Abstract: The IRC at 26 U.S.C. 5722 requires manufacturers and importers of tobacco products, processed tobacco, or cigarette papers and tubes to make reports containing such information, in such form, at such times, and for such periods as the Secretary by regulation prescribes. While processed tobacco is not subject to Federal excise tax, taxable tobacco products may be manufactured using processed tobacco. Therefore, to protect the revenue by minimizing diversion of processed tobacco to illegal manufacturers, TTB has issued regulations that require manufacturers and importers of tobacco products or processed tobacco to report on form TTB F 5250.2 on a daily basis each transfer or sale of processed tobacco to entities that do not hold a TTB tobacco-related permit.

Current Actions: TTB is submitting this information collection for extension purposes only, and the information collection is unchanged. However, TTB is decreasing the number of annual number of respondents, responses, and burden hours associated with this information collection. Since TTB first required this information collection in 2009, TTB has reported that all manufacturers and importers of tobacco products and/or processed tobacco were potential respondents to this collection. However, based on recent data, TTB finds that only a small number of such entities sell or transfer processed tobacco to non-TTB permit holders. Therefore, TTB is reducing the reported annual number of respondents to this collection from 800 to 15, the annual number of responses from 4,800 to 3,175, and the estimated number of annual burden hours from 2,400 to 1,575.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden Hours: 1,575.

Dated: March 8, 2018.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2018–05034 Filed 3–12–18; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Schedule of Excess Risks

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Schedule of Excess Risks.

DATES: Written comments should be received on or before May 14, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Schedule of Excess Risks.

OMB Number: 1530–0062.

Transfer of OMB Control Number: The Financial Management Service (FMS) and Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 285–A.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Emergency.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,132 total.

Estimated Time per Respondent: New Applicants—20 hours; Renewals—5 hours.

Estimated Total Annual Burden Hours: 5,600.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 6, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–04955 Filed 3–12–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of a person currently included in OFAC's Specially Designated Nationals and Blocked Persons List.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*http://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 7, 2018 OFAC updated the SDN List for the following person, whose property and interests in property continue to be blocked under the relevant sanctions authority listed below.

Entity

EMPRESA CUBANA DE PESCADOS Y MARISCOS (a.k.a. CARIBBEAN EXPORT ENTERPRISE; a.k.a. CARIBEX), Paris, France; Milan, Italy; Moscow, Russia; Madrid, Spain; Cologne, Germany; Downsview, Ontario, Canada; Tokyo, Japan [CUBA]

-to-

EMPRESA CUBANA DE PESCADOS Y MARISCOS (a.k.a. CARIBBEAN EXPORT ENTERPRISE; a.k.a. ''CARIBEX''), Paris, France; Milan, Italy; Moscow, Russia; Madrid, Spain; Cologne, Germany; Downsview, Ontario, Canada; Tokyo, Japan [CUBA].

Designated pursuant to the Cuban Assets Control Regulations, 31 CFR part 515.

Dated: March 7, 2018.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2018–04981 Filed 3–12–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Exchange of Coin

AGENCY: United States Mint, Treasury.

ACTION: Notice of Change in Numismatic Customer Return Policy.

SUMMARY: The United States Mint has modified its Numismatic Customer Return Policy to address the issue of excessive returns. Effective immediately, the United States Mint reserves the right to limit or refuse a return or to charge a fee for excessive returns. In addition, the United States Mint reserves the right to suspend accounts of customers with a pattern of excessive returns.

DATES: This change is applicable upon publication.

FOR FURTHER INFORMATION CONTACT: Cortez Carrington, Numismatic and Bullion Directorate, United States Mint, at (202) 354–6679; or *cortez.carrington@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

The revised policy may be reviewed in its entity at *https://catalog.usmint.gov/customer-service/faqs/.* A press release explaining the policy modification is available at *https://www.usmint.gov/news/press-releases.*

Dated: March 6, 2018.

David Croft,

Acting Deputy Director, United States Mint.

[FR Doc. 2018–05002 Filed 3–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Special Medical Advisory Group will meet on April 11, 2018 in SimLEARN Center (Building 3) at the Orlando VA Medical Center, 13800 Veterans Way, Orlando, Florida, 32827 from 9:15 a.m. to 3:30 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on VHA Modernization, VA New Hampshire Vision 2025 Task Force recommendations, and an update on provider payments within Community Care.

Fifteen (15) minutes will be allocated at the end of the meeting for receiving oral presentations from the public—No more than 3 minutes each. Members of the public may submit written statements for review by the Committee to: Department of Veterans Affairs, Office of Under Secretary for Health (10), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov.*

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7000. All persons attending the meeting will go through security screening, please bring photo ID.

Dated: March 8, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–04984 Filed 3–12–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 49 March 13, 2018

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170720687–8212–01]

RIN 0648–BH06

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letters of Authorization (LOAs) to the Navy to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to issuing any final rule and making final decisions on the issuance of the requested MMPA authorizations. Agency responses to public comments will be summarized in the final notice of our decision. The Navy's activities qualify as military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than April 26, 2018.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2018–0037, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal, Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0037,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.
- *Fax:* (301) 713–0376; Attn: Jolie Harrison.

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

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS; phone: (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Summary of Request

On June 16, 2017, NMFS received an application from the Navy requesting incidental take regulations and LOAs to take individuals of 39 marine mammal species by Level A and B harassment incidental to training and testing activities (categorized as military readiness activities) from the use of sonar and other transducers, in-water detonations, airguns, and impact pile driving/vibratory extraction in the AFTT Study Area over five years. In addition, the Navy is requesting incidental take authorization for up to nine mortalities of four marine mammal species during ship shock trials, and authorization for up to three takes by serious injury or mortality from vessel

strikes over the five-year period. The Navy's training and testing activities would occur over five years beginning November 2018. On August 4, 2017, the Navy sent an amendment to its application and Navy's rulemaking and LOA application was considered final and complete.

The Navy's requests for two five-year LOAs, one for training and one for testing activities to be conducted within the AFTT Study Area (which includes areas of the western Atlantic Ocean along the east coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico), covers approximately 2.6 million square nautical miles (nmi^2) of ocean area, oriented from the mean high tide line along the U.S. coast and extends east to the 45-degree west longitude line, north to the 65-degree north latitude line, and south to approximately the 20-degree north latitude line. Please refer to the Navy's rulemaking and LOA application, specifically Figure 1.1–1 for a map of the AFTT Study Area and Figures 2.2–1 through Figure 2.2–3 for additional maps of the range complexes and testing ranges. The following types of training and testing, which are classified as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA, would be covered under the LOAs (if authorized): Amphibious warfare (in-water detonations), anti-submarine warfare (sonar and other transducers, in-water detonations), expeditionary warfare (in-water detonations), surface warfare (in-water detonations), mine warfare (sonar and other transducers, in-water detonations), and other warfare activities (sonar and other transducers, impact pile driving/vibratory extraction, airguns). In addition, ship shock trials, a specific testing activity related to vessel evaluation would be conducted.

This will be NMFS' third rulemaking for AFTT activities under the MMPA. NMFS published the first rule effective from January 22, 2009 through January 22, 2014 on January 27, 2009 (74 FR 4844) and the second rule applicable from November 14, 2013 through November 13, 2018 on December 4, 2013 (78 FR 73009). For this third rulemaking, the Navy is proposing to conduct similar activities as they have conducted over the past nine years under the previous two rulemakings.

Background of Request

The Navy's mission is to organize, train, equip, and maintain combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. This mission is mandated by federal law (10 U.S.C. 5062), which ensures the readiness of the naval forces of the United States. The Navy executes this responsibility by establishing and executing training programs, including at-sea training and exercises, and ensuring naval forces have access to the ranges, operating areas (OPAREAs), and airspace needed to develop and maintain skills for conducting naval activities.

The Navy proposes to conduct training and testing activities within the AFTT Study Area. The Navy has been conducting military readiness activities in the AFTT Study Area for well over a century and with active sonar for over 70 years. The tempo and types of training and testing activities have fluctuated because of the introduction of new technologies, the evolving nature of international events, advances in warfighting doctrine and procedures, and changes in force structure (organization of ships, weapons, and personnel). Such developments influenced the frequency, duration, intensity, and location of required training and testing activities. This rulemaking and LOA request reflects the most up to date compilation of training and testing activities deemed necessary to accomplish military readiness requirements. The types and numbers of activities included in the proposed rule accounts for fluctuations in training and testing in order to meet evolving or emergent military readiness requirements.

The Navy's rulemaking and LOA request covers training and testing activities that would occur for a 5-year period following the expiration of the current MMPA authorization for the AFTT Study Area, which expires on November 13, 2018.

Description of the Specified Activity

The Navy is requesting authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that acoustic and explosives stressors are most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in the AFTT Draft Environmental Impact Statement (EIS)/Overseas EIS (OEIS) (DEIS/OEIS) and in the Navy's rulemaking and LOA application (*www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) and are summarized here.

Overview of Training and Testing Activities

The Navy routinely trains in the AFTT Study Area in preparation for national defense missions. Training and testing activities and exercises covered in the Navy's rulemaking and LOA application are briefly described below, and in more detail within chapter 2 of the AFTT DEIS/OEIS. Each military training and testing activity described meets mandated Fleet requirements to deploy ready forces.

Primary Mission Areas

The Navy categorizes its activities into functional warfare areas called primary mission areas. These activities generally fall into the following seven primary mission areas: Air warfare; amphibious warfare; anti-submarine warfare (ASW); electronic warfare; expeditionary warfare; mine warfare (MIW); and surface warfare (SUW). Most activities addressed in the AFTT DEIS/OEIS are categorized under one of the primary mission areas; the testing community has three additional categories of activities for vessel evaluation, unmanned systems, and acoustic and oceanographic science and technology (inclusive of ship shock trials). Activities that do not fall within one of these areas are listed as ''other warfare activities.'' Each warfare community (surface, subsurface, aviation, and expeditionary warfare) may train in some or all of these primary mission areas. The testing community also categorizes most, but not all, of its testing activities under these primary mission areas.

The Navy describes and analyzes the impacts of its training and testing activities within the AFTT DEIS/OEIS and the Navy's rulemaking and LOA application (documents available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*). In its assessment, the Navy concluded that sonar and other transducers, in-water detonations, airguns, and pile driving/extraction were the stressors that would result in impacts on marine mammals that could rise to the level of harassment (also serious injury or mortality in ship shock trials or by vessel strike) as defined under the MMPA. Therefore, the rulemaking and LOA application provides the Navy's assessment of potential effects from these stressors in terms of the various warfare mission areas in which they would be conducted. In terms of Navy's primary warfare areas, this includes:

- Amphibious warfare (in-water detonations)
- anti-submarine warfare (sonar and other transducers, in-water detonations)
- expeditionary warfare (in-water detonations)
- surface warfare (in-water detonations)
- mine warfare (sonar and other transducers, in-water detonations)
- other warfare activities (sonar and other transducers, impact pile driving/vibratory extraction, airguns)

The Navy's training and testing activities in air warfare and electronic warfare do not involve sonar or other transducers, in-water detonations, pile driving/extraction, airguns or any other stressors that could result in harassment, serious injury, or mortality of marine mammals. Therefore, the activities in air warfare or electronic warfare are not discussed further, but are analyzed fully in the Navy's AFTT DEIS/OEIS.

Amphibious Warfare

The mission of amphibious warfare is to project military power from the sea to the shore (*i.e.,* attack a threat on land by a military force embarked on ships) through the use of naval firepower and expeditionary landing forces. Amphibious warfare operations include small unit reconnaissance or raid missions to large-scale amphibious exercises involving multiple ships and aircraft combined into a strike group.

Amphibious warfare training ranges from individual, crew, and small unit events to large task force exercises. Individual and crew training include amphibious vehicles and naval gunfire support training. Such training includes shore assaults, boat raids, airfield or port seizures, and reconnaissance. Largescale amphibious exercises involve ship-to-shore maneuver, naval fire support, such as shore bombardment, and air strike and attacks on targets that are in close proximity to friendly forces.

Testing of guns, munitions, aircraft, ships, and amphibious vessels and vehicles used in amphibious warfare are often integrated into training activities and, in most cases, the systems are used in the same manner in which they are used for fleet training activities. Amphibious warfare tests, when integrated with training activities or conducted separately as full operational evaluations on existing amphibious vessels and vehicles following maintenance, repair, or modernization, may be conducted independently or in conjunction with other amphibious ship and aircraft activities. Testing is performed to ensure effective ship-to-shore coordination and transport of personnel, equipment, and supplies. Tests may also be conducted periodically on other systems, vessels, and aircraft intended for amphibious operations to assess operability and to investigate efficacy of new technologies.

Anti-Submarine Warfare (ASW)

The mission of anti-submarine warfare is to locate, neutralize, and defeat hostile submarine forces that threaten Navy forces. ASW is based on the principle that surveillance and attack aircraft, ships, and submarines all search for hostile submarines. These forces operate together or independently to gain early warning and detection, and to localize, track, target, and attack submarine threats. ASW training addresses basic skills such as detection and classifying submarines, as well as evaluating sounds to distinguish between enemy submarines and friendly submarines, ships, and marine life. More advanced training integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using either exercise torpedoes (*i.e.,* torpedoes that do not contain a warhead) or simulated weapons. These integrated ASW exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft.

Testing of ASW systems is conducted to develop new technologies and assess weapon performance and operability with new systems and platforms, such as unmanned systems. Testing uses ships, submarines, and aircraft to demonstrate capabilities of torpedoes, missiles, countermeasure systems, and underwater surveillance and communications systems. Tests may be conducted as part of a large-scale fleet training event involving submarines, ships, fixed-wing aircraft, and helicopters. These integrated training events offer opportunities to conduct research and acquisition activities and to train aircrew in the use of new or newly enhanced systems during a largescale, complex exercise.

Expeditionary Warfare

The mission of expeditionary warfare is to provide security and surveillance in the littoral (at the shoreline), riparian (along a river), or coastal environments. Expeditionary warfare is wide ranging and includes defense of harbors, operation of remotely operated vehicles, defense against swimmers, and boarding/seizure operations. Expeditionary warfare training activities include underwater construction team training, dive and salvage operations, and insertion/extraction operations via air, surface, and subsurface platforms.

Mine Warfare (MIW)

The mission of MIW is to detect, classify, and avoid or neutralize (disable) mines to protect Navy ships and submarines and to maintain free access to ports and shipping lanes. MIW also includes offensive mine laying to gain control of or deny the enemy access to sea space. Naval mines can be laid by ships, submarines, or aircraft. MIW neutralization training includes exercises in which ships, aircraft, submarines, underwater vehicles, unmanned vehicles, or marine mammal detection systems search for mine shapes. Personnel train to destroy or disable mines by attaching underwater explosives to or near the mine or using remotely operated vehicles to destroy the mine.

Testing and development of MIW systems is conducted to improve sonar, laser, and magnetic detectors intended to hunt, locate, and record the positions of mines for avoidance or subsequent neutralization. MIW testing and development falls into two primary categories: mine detection and classification, and mine countermeasure and neutralization. Mine detection and classification testing involves the use of air, surface, and subsurface vessels and uses sonar, including towed and sidescan sonar, and unmanned vehicles to locate and identify objects underwater. Mine detection and classification systems are sometimes used in conjunction with a mine neutralization system. Mine countermeasure and neutralization testing includes the use of air, surface, and subsurface units to evaluate the effectiveness of tracking devices, countermeasure and neutralization systems, and general purpose bombs to neutralize mine threats. Most neutralization tests use mine shapes, or non-explosive practice mines, to evaluate a new or enhanced capability. For example, during a mine neutralization test, a previously located mine is destroyed or rendered nonfunctional using a helicopter or manned/unmanned surface vehicle based system that may involve the deployment of a towed neutralization system.

A small percentage of MIW tests require the use of high-explosive mines to evaluate and confirm the ability of the system to neutralize a high-explosive mine under operational conditions. The majority of MIW systems are deployed by ships, helicopters, and unmanned vehicles. Tests may also be conducted in support of scientific research to support these new technologies.

Surface Warfare (SUW)

The mission of SUW is to obtain control of sea space from which naval forces may operate, and entails offensive action against other surface, subsurface, and air targets while also defending against enemy forces. In surface warfare, aircraft use cannons, air-launched cruise missiles, or other precision-guided munitions; ships employ torpedoes, naval guns, and surface-to-surface missiles; and submarines attack surface ships using torpedoes or submarine-launched, anti-ship cruise missiles. SUW includes surface-to-surface gunnery and missile exercises, air-to-surface gunnery and missile exercises, and submarine missile or torpedo launch events, and other munitions against surface targets.

Testing of weapons used in SUW is conducted to develop new technologies and to assess weapon performance and operability with new systems and platforms, such as unmanned systems. Tests include various air-to-surface guns and missiles, surface-to-surface guns and missiles, and bombing tests. Testing events may be integrated into training activities to test aircraft or aircraft systems in the delivery of ordnance on a surface target. In most cases the tested systems are used in the same manner in which they are used for fleet training activities.

Other Warfare Activities

Naval forces conduct additional training and maintenance activities which fall under other primary mission areas that are not listed above. The AFTT DEIS/OEIS combines these training activities together in an ''other activities'' grouping for simplicity. These training activities include, but are not limited to, sonar maintenance for ships and submarines, submarine navigation and under ice certification, elevated causeway system, oceanographic research, and surface ship object detection. These activities include the use of various sonar systems, impact pile driving/vibratory extraction, and air guns.

Overview of Major Training Activities and Exercises Within the AFTT Study Area

A major training exercise is comprised of several ''unit level'' range exercises conducted by several units operating together while commanded and controlled by a single commander. These exercises typically employ an exercise scenario developed to train and evaluate the strike group in naval tactical tasks. In a major training exercise, most of the activities being directed and coordinated by the strike group commander are identical in nature to the activities conducted during individual, crew, and smaller unit level training events. In a major training exercise, however, these disparate training tasks are conducted in concert, rather than in isolation.

Some integrated or coordinated anti-submarine warfare exercises are similar in that they are comprised of several unit level exercises but are generally on a smaller scale than a major training exercise, are shorter in duration, use fewer assets, and use fewer hours of hull-mounted sonar per exercise. These coordinated exercises are conducted under anti-submarine warfare. Three key factors used to identify and group the exercises are the scale of the exercise, duration of the exercise, and amount of hull-mounted sonar hours modeled/used for the exercise.

NMFS considered the effects of all training exercises, not just these major training exercises in this proposed rule.

Overview of Testing Activities Within the AFTT Study Area

The Navy's research and acquisition community engages in a broad spectrum of testing activities in support of the fleet. These activities include, but are not limited to, basic and applied scientific research and technology development; testing, evaluation, and maintenance of systems *(e.g.,* missiles, radar, and sonar) and platforms *(e.g.,* surface ships, submarines, and aircraft); and acquisition of systems and platforms to support Navy missions and give a technological edge over adversaries. The individual commands within the research and acquisition community are the Naval Air Systems Command, Naval Sea Systems Command, and the Office of Naval Research.

Testing activities occur in response to emerging science or fleet operational needs. For example, future Navy experiments to develop a better understanding of ocean currents may be designed based on advancements made by non-government researchers not yet published in the scientific literature. Similarly, future but yet unknown Navy operations within a specific geographic area may require development of modified Navy assets to address local conditions. However, any evolving testing activities that would be covered under this rule would be expected to fall within the range of platforms, operations, sound sources, and other equipment described in this rule and to have impacts that fall within the range (*i.e.,* nature and extent) of those covered within the rule. For example, the Navy identifies ''bins'' of sound sources to facilitate analyses—*i.e.,* they identify frequency and source level bounds to a bin and then analyze the worst case scenario for that bin to understand the impacts of all of the sources that fall within a bin. While the Navy might be aware that sound source *e.g.,* XYZ1 will definitely be used this year, sound source *e.g.,* XYZ2 might evolve for testing three years from now, but if it falls within the bounds of the same sound source bin, it has been analyzed and any resulting take authorized (as long as the take accounting is done correctly).

Some testing activities are similar to training activities conducted by the fleet. For example, both the fleet and the research and acquisition community fire torpedoes. While the firing of a torpedo might look identical to an observer, the difference is in the purpose of the firing. The fleet might fire the torpedo to practice the procedures for such a firing, whereas the research and acquisition community might be assessing a new torpedo guidance technology or testing it to ensure the torpedo meets performance specifications and operational requirements.

Naval Air Systems Command Testing Activities

Naval Air Systems Command testing activities generally fall in the primary mission areas used by the fleets. Naval Air Systems Command activities include, but are not limited to, the testing of new aircraft platforms (*e.g.,* the F–35 Joint Strike Fighter aircraft), weapons, and systems (*e.g.,* newly developed sonobuoys) that will ultimately be integrated into fleet training activities. In addition to the testing of new platforms, weapons, and systems, Naval Air Systems Command also conducts lot acceptance testing of weapons and systems, such as sonobuoys.

The majority of testing activities conducted by Naval Air Systems Command are similar to fleet training activities, and many platforms and systems currently being tested are already being used by the fleet or will ultimately be integrated into fleet training activities. However, some testing activities may be conducted in different locations and in a different manner than similar fleet training activities and, therefore, the analysis for those events and the potential environmental effects may differ.

Naval Sea Systems Command Testing Activities

Naval Sea Systems Command activities are generally aligned with the

primary mission areas used by the fleets. Additional activities include, but are not limited to, vessel evaluation, unmanned systems, and other testing activities. In the Navy's rulemaking and LOA application, pierside testing at Navy and contractor shipyards consists only of system testing.

Testing activities are conducted throughout the life of a Navy ship, from construction through deactivation from the fleet, to verification of performance and mission capabilities. Activities include pierside and at-sea testing of ship systems, including sonar, acoustic countermeasures, radars, launch systems, weapons, unmanned systems, and radio equipment; tests to determine how the ship performs at sea (sea trials); development and operational test and evaluation programs for new technologies and systems; and testing on all ships and systems that have undergone overhaul or maintenance.

One ship of each new class (or major upgrade) of combat ships constructed for the Navy typically undergoes an at-sea ship shock trial to allow the Navy to assess the survivability of the hull and ship's systems in a combat environment as well as the capability of the ship to protect the crew.

Office of Naval Research Testing Activities

As the Department of the Navy's science and technology provider, the Office of Naval Research provides technology solutions for Navy and Marine Corps needs. The Office of Naval Research's mission is to plan, foster, and encourage scientific research in recognition of its paramount importance as related to the maintenance of future naval power and the preservation of national security. The Office of Naval Research manages the Navy's basic, applied, and advanced research to foster transition from science and technology to higher levels of research, development, test, and evaluation. The Office of Naval Research is also a parent organization for the Naval Research Laboratory, which operates as the Navy's corporate research laboratory and conducts a broad multidisciplinary program of scientific research and advanced technological development. Testing conducted by the Office of Naval Research in the AFTT Study Area includes acoustic and oceanographic research, large displacement unmanned underwater vehicle (innovative naval prototype) research, and emerging mine countermeasure technology research.

The proposed training and testing activities were evaluated to identify specific components that could act as stressors (acoustic and explosive) by having direct or indirect impacts on the environment. This analysis included identification of the spatial variation of the identified stressors.

Description of Acoustic and Explosive Stressors

The Navy uses a variety of sensors, platforms, weapons, and other devices, including ones used to ensure the safety of Sailors and Marines, to meet its mission. Training and testing with these systems may introduce acoustic (sound) energy into the environment. The Navy's rulemaking and LOA application describes specific components that could act as stressors by having direct or indirect impacts on the environment. This analysis included identification of the spatial variation of the identified stressors. The following subsections describe the acoustic and explosive stressors for biological resources within the AFTT Study Area. Stressor/resource interactions that were determined to have de minimus or no impacts (*i.e.,* vessel, aircraft, or weapons noise) were not carried forward for analysis in the Navy's rulemaking and LOA application. NMFS has reviewed the Navy's analysis and conclusions and finds them complete and supportable.

Acoustic Stressors

Acoustic stressors include acoustic signals emitted into the water for a specific purpose, such as sonar, other transducers (devices that convert energy from one form to another—in this case, to sound waves), and airguns, as well as incidental sources of broadband sound produced as a byproduct of impact pile driving and vibratory extraction. Explosives also produce broadband sound but are characterized separately from other acoustic sources due to their unique characteristics. Characteristics of each of these sound sources are described in the following sections.

In order to better organize and facilitate the analysis of approximately 300 sources of underwater sound used for training and testing by the Navy including sonars, other transducers, airguns, and explosives, a series of source classifications, or source bins, were developed.

Sonar and Other Transducers

Active sonar and other transducers emit non-impulsive sound waves into the water to detect objects, safely navigate, and communicate. Passive sonars differ from active sound sources in that they do not emit acoustic signals; rather, they only receive acoustic information about the environment, or listen. In the Navy's rulemaking and LOA request, the terms sonar and other transducers are used to indicate active sound sources unless otherwise specified.

The Navy employs a variety of sonars and other transducers to obtain and transmit information about the undersea environment. Some examples are mid-frequency hull-mounted sonars used to find and track enemy submarines; high-frequency small object detection sonars used to detect mines; high frequency underwater modems used to transfer data over short ranges; and extremely high-frequency (>200 kilohertz [kHz]) Doppler sonars used for navigation, like those used on commercial and private vessels. The characteristics of these sonars and other transducers, such as source level, beam width, directivity, and frequency, depend on the purpose of the source. Higher frequencies can carry more information or provide more information about objects off which they reflect, but attenuate more rapidly. Lower frequencies attenuate less rapidly, so may detect objects over a longer distance, but with less detail.

Propagation of sound produced underwater is highly dependent on environmental characteristics such as bathymetry, bottom type, water depth, temperature, and salinity. The sound received at a particular location will be different than near the source due to the interaction of many factors, including propagation loss; how the sound is reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency sounds propagate. The effects of these factors are explained in Appendix D (Acoustic and Explosive Concepts) of the AFTT DEIS/OEIS. Because of the complexity of analyzing sound propagation in the ocean environment, the Navy relies on acoustic models in its environmental analyses that consider sound source characteristics and varying ocean conditions across the AFTT Study Area.

The sound sources and platforms typically used in naval activities analyzed in the Navy's rulemaking and LOA request are described in Appendix A (Navy Activity Descriptions) of the AFTT DEIS/OEIS. Sonars and other transducers used to obtain and transmit information underwater during Navy training and testing activities generally fall into several categories of use described below.

Anti-Submarine Warfare

Sonar used during ASW would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in the Navy's

rulemaking and LOA request. Types of sonars used to detect enemy vessels include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. In addition, acoustic targets and decoys (countermeasures) may be deployed to emulate the sound signatures of vessels or repeat received signals.

Most ASW sonars are mid frequency (1–10 kHz) because mid-frequency sound balances sufficient resolution to identify targets with distance over which threats can be identified. However, some sources may use higher or lower frequencies. Duty cycles can vary widely, from rarely used to continuously active. For example, a submarine's mission revolves around its stealth; therefore, submarine sonar is used infrequently because its use would also reveal a submarine's location. ASW sonars can be wide-ranging in a search mode or highly directional in a track mode.

Most ASW activities involving submarines or submarine targets would occur in waters greater than 600 feet (ft) deep due to safety concerns about running aground at shallower depths. Sonars used for ASW activities would typically be used beyond 12 nautical miles (nmi) from shore. Exceptions include use of dipping sonar by helicopters, maintenance of systems while in port, and system checks while transiting to or from port.

Mine Warfare, Small Object Detection, and Imaging

Sonars used to locate mines and other small objects, as well those used in imaging (*e.g.,* for hull inspections or imaging of the seafloor), are typically high frequency or very high frequency. Higher frequencies allow for greater resolution and, due to their greater attenuation, are most effective over shorter distances. Mine detection sonar can be deployed (towed or vessel hull-mounted) at variable depths on moving platforms (ships, helicopters, or unmanned vehicles) to sweep a suspected mined area. Hull-mounted anti-submarine sonars can also be used in an object detection mode known as ''Kingfisher'' mode. Sonars used for imaging are usually used in close proximity to the area of interest, such as pointing downward near the seafloor.

Mine detection sonar use would be concentrated in areas where practice mines are deployed, typically in water depths less than 200 ft and at established training or testing minefields or temporary minefields close to strategic ports and harbors. Kingfisher mode on vessels is most likely to be used when transiting to and from port. Sound sources used for imaging could be used throughout the AFTT Study Area.

Navigation and Safety

Similar to commercial and private vessels, Navy vessels employ navigational acoustic devices including speed logs, Doppler sonars for ship positioning, and fathometers. These may be in use at any time for safe vessel operation. These sources are typically highly directional to obtain specific navigational data.

Communication

Sound sources used to transmit data (such as underwater modems), provide location (pingers), or send a single brief release signal to bottom-mounted devices (acoustic release) may be used throughout the AFTT Study Area. These sources typically have low duty cycles and are usually only used when it is desirable to send a detectable acoustic message.

Classification of Sonar and Other Transducers

Sonars and other transducers are grouped into classes that share an attribute, such as frequency range or purpose of use. Classes are further sorted by bins based on the frequency or bandwidth; source level; and, when warranted, the application in which the source would be used, as follows:

- Frequency of the non-impulsive acoustic source.
  - Low-frequency sources operate below 1 kHz
  - Mid-frequency sources operate at and above 1 kHz, up to and including 10 kHz
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz
  - very high-frequency sources operate above 100 kHz but below 200 kHz
- Sound pressure level of the non-impulsive source.
  - Greater than 160 decibels (dB) re 1 micro Pascal (μPa), but less than 180 dB re 1 μPa
  - Equal to 180 dB re 1 μPa and up to 200 dB re 1 μPa
  - Greater than 200 dB re 1 μPa
- Application in which the source would be used.
  - Sources with similar functions that have similar characteristics, such as pulse length (duration of each pulse), beam pattern, and duty cycle

The bins used for classifying active sonars and transducers that are quantitatively analyzed in the AFTT Study Area are shown in Table 1 below. While general parameters or source characteristics are shown in the table, actual source parameters are classified.

TABLE 1—SONAR AND TRANSDUCERS QUANTITATIVELY ANALYZED

Source class category	Bin	Description
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF3	LF sources greater than 200 dB.
	LF4	LF sources equal to 180 dB and up to 200 dB.
	LF5	LF sources less than 180 dB.
	LF6	LF sources greater than 200 dB with long pulse lengths.
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1–10 kHz.	MF1	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–53C and AN/SQS–61).
	MF1K	Kingfisher mode associated with MF1 sonars.
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22 and AN/AQS–13).
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS).
	MF6	Active underwater sound signal devices (*e.g.,* MK84).
	MF8	Active sources (greater than 200 dB) not otherwise binned.
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.

TABLE 1—SONAR AND TRANSDUCERS QUANTITATIVELY ANALYZED—Continued

Source class category	Bin	Description
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.
	MF14	Oceanographic MF sonar.
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10–100 kHz.	HF1	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).
	HF3	Other hull-mounted submarine sonars (classified).
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).
	HF5	Active sources (greater than 200 dB) not otherwise binned.
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	HF8	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–61).
Very High-Frequency Sonars (VHF): Non-tactical sources that produce signals between 100–200 kHz.	VHF1	VHF sources greater than 200 dB.
Anti-Submarine Warfare (ASW): Tactical sources (*e.g.,* active sonobuoys and acoustic counter-measures systems) used during ASW training and testing activities.	ASW1	MF systems operating above 200 dB.
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).
	ASW3	MF towed active acoustic countermeasure systems (*e.g.,* AN/SLQ–25).
	ASW4	MF expendable active acoustic device countermeasures (*e.g.,* MK 3).
	ASW5	MF sonobuoys with high duty cycles.
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (*e.g.,* MK 46, MK 54, or Anti-Torpedo Torpedo).
	TORP2	Heavyweight torpedo (*e.g.,* MK 48).
	TORP3	Heavyweight torpedo (*e.g.,* MK 48).
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars used for ship navigation and safety.	FLS2	HF sources with short pulse lengths, narrow beam widths, and focused beam patterns.
Acoustic Modems (M): Systems used to transmit data through the water.	M3	MF acoustic modems (greater than 190 dB).
Swimmer Detection Sonars (SD): Systems used to detect divers and sub-merged swimmers.	SD1–SD2	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security.
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS1	MF SAS systems.
	SAS2	HF SAS systems.
	SAS3	VHF SAS systems.
	SAS4	MF to HF broadband mine countermeasure sonar.
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes.	BB1	MF to HF mine countermeasure sonar.
	BB2	HF to VHF mine countermeasure sonar.
	BB4	LF to MF oceanographic source.
	BB5	LF to MF oceanographic source.
	BB6	HF oceanographic source.
	BB7	LF oceanographic source.

Notes: ASW: Anti-submarine Warfare; BB: Broadband Sound Sources; FLS: Forward Looking Sonar; HF: High-Frequency; LF: Low-Frequency; M: Acoustic Modems; MF: Mid-Frequency; SAS: Synthetic Aperture Sonars; SD: Swimmer Detection Sonars; TORP: Torpedoes; VHF: Very High-Frequency; dB: decibels.

Airguns

Airguns are essentially stainless steel tubes charged with high-pressure air via a compressor. An impulsive sound is generated when the air is almost instantaneously released into the surrounding water. Small airguns with capacities up to 60 cubic inches would be used during testing activities in various offshore areas in the AFTT Study Area, as well as near shore at Newport, RI.

Generated impulses would have short durations, typically a few hundred milliseconds, with dominant frequencies below 1 kHz. The root-mean-square sound pressure level (SPL) and peak pressure (SPL peak) at a distance 1 meter (m) from the airgun would be approximately 215 dB re 1 µPa and 227 dB re 1 µPa, respectively, if operated at the full capacity of 60 cubic inches. The size of the airgun chamber can be adjusted, which would result in lower SPLs and sound exposure level (SEL) per shot.

Pile Driving/Extraction

Impact pile driving and vibratory pile removal would occur during construction of an Elevated Causeway System, a temporary pier that allows the offloading of ships in areas without a permanent port. Construction of the elevated causeway could occur in sandy shallow water coastal areas at Joint Expeditionary Base Little Creek-Fort Story in the Virginia Capes Range Complex or Marine Corps Base Camp Lejeune in the Navy Cherry Point Range Complex.

Installing piles for elevated causeways would involve the use of an impact hammer (impulsive) mechanism with both it and the pile held in place by a crane. The hammer rests on the pile, and the assemblage is then placed in position vertically on the beach or, when offshore, positioned with the pile in the water and resting on the seafloor. When the pile driving starts, the hammer part of the mechanism is raised up and allowed to fall, transferring energy to the top of the pile. The pile is thereby driven into the sediment by a repeated series of these hammer blows. Each blow results in an impulsive sound emanating from the length of the pile into the water column as well as from the bottom of the pile through the sediment. Because the impact wave travels through the steel

pile at speeds faster than the speed of sound in water, a steep-fronted acoustic shock wave is formed in the water (Reinhall and Dahl, 2011) (note this shock wave has very low peak pressure compared to a shock wave from an explosive). An impact pile driver generally operates on average 35 blows per minute.

Pile removal involves the use of vibratory extraction (non-impulsive), during which the vibratory hammer is suspended from the crane and attached to the top of a pile. The pile is then vibrated by hydraulic motors rotating eccentric weights in the mechanism, causing a rapid up and down vibration in the pile. This vibration causes the sediment particles in contact with the pile to lose frictional grip on the pile. The crane slowly lifts up on the vibratory driver and pile until the pile is free of the sediment. Vibratory removal creates continuous non-impulsive noise at low source levels for a short duration.

The source levels of the noise produced by impact pile driving and vibratory pile removal from an actual elevated causeway pile driving and removal are shown in Table 2.

TABLE 2—ELEVATED CAUSEWAY SYSTEM PILE DRIVING AND REMOVAL UNDERWATER SOUND LEVELS

Pile size and type	Method	Average sound levels at 10 m
24-in. Steel Pipe Pile	Impact [1]	192 dB re 1 μPa SPL peak. 182 dB re 1 μPa^{2}s SEL (single strike).
24-in. Steel Pipe Pile	Vibratory [2]	146 dB re 1 μPa SPL rms. 145 dB re 1 μPa^{2}s SEL (per second of duration).

[1] Illingworth and Rodkin (2016).
[2] Illingworth and Rodkin (2015).
Notes: dB re 1 μPa: Decibels referenced to 1 micropascal; in.: inch; rms: root mean squared; SEL: Sound Exposure Level; SPL: Sound Pressure Level.

In addition to underwater noise, the installation and removal of piles also results in airborne noise in the environment. Impact pile driving creates in-air impulsive sound about 100 dBA re 20 μPa at a range of 15 m (Illingworth and Rodkin, 2016). During vibratory extraction, the three aspects that generate airborne noise are the crane, the power plant, and the vibratory extractor. The average sound level recorded in air during vibratory extraction was about 85 dBA re 20 μPa (94 dB re 20 μPa) within a range of 10–15 m (Illingworth and Rodkin, 2015).

The size of the pier and number of piles used in an Elevated Causeway System (ELCAS) event is assumed to be no greater than 1,520 ft long, requiring 119 supporting piles. Construction of the ELCAS would involve intermittent impact pile driving over approximately 20 days. Crews work 24 hours (hrs) a day and would drive approximately 6 piles in that period. Each pile takes about 15 minutes to drive with time taken between piles to reposition the driver. When training events that use the ELCAS are complete, the structure would be removed using vibratory methods over approximately 10 days. Crews would remove about 12 piles per 24-hour period, each taking about six minutes to remove.

Pile driving for ELCAS training would occur in shallower water, and sound could be transmitted on direct paths through the water, be reflected at the water surface or bottom, or travel through bottom substrate. Soft substrates such as sand bottom at the proposed ELCAS locations would absorb or attenuate the sound more readily than hard substrates (rock), which may reflect the acoustic wave. Most acoustic energy would be concentrated below 1,000 hertz (Hz) (Hildebrand, 2009).

Explosive Stressors

This section describes the characteristics of explosions during naval training and testing. The activities analyzed in the Navy's rulemaking and LOA application that use explosives are described in Appendix A (Navy Activity Descriptions) of the AFTT DEIS/OEIS. Explanations of the terminology and metrics used when describing explosives in Navy's rulemaking and LOA application are in also in Appendix D (Acoustic and Explosive Concepts) of the AFTT DEIS/OEIS.

The near-instantaneous rise from ambient to an extremely high peak pressure is what makes an explosive shock wave potentially damaging. Farther from an explosive, the peak pressures decay and the explosive waves propagate as an impulsive, broadband sound. Several parameters influence the effect of an explosive: The weight of the explosive warhead, the type of explosive material, the boundaries and characteristics of the propagation medium, and, in water, the detonation depth. The net explosive weight, the explosive power of a charge expressed as the equivalent weight of trinitrotoluene (TNT), accounts for the first two parameters. The effects of these factors are explained in Appendix D (Acoustic and Explosive Concepts) of the AFTT DEIS/OEIS.

Explosions in Water

Explosive detonations during training and testing activities are associated with high-explosive munitions, including, but not limited to, bombs, missiles, rockets, naval gun shells, torpedoes, mines, demolition charges, and explosive sonobuoys. Explosive detonations during training and testing involving the use of high-explosive munitions, including bombs, missiles, and naval gun shells could occur near the water's surface. Explosive detonations associated with torpedoes and explosive sonobuoys would occur in the water column; mines and demolition charges could be detonated in the water column or on the ocean bottom. Most detonations would occur in waters greater than 200 ft in depth, and greater than 3 nmi from shore, although mine warfare, demolition, and some testing detonations would occur in shallow water close to shore.

In order to better organize and facilitate the analysis of explosives used by the Navy during training and testing that could detonate in water or at the water surface, explosive classification bins were developed. The use of explosive classification bins provides the same benefits as described for acoustic source classification bins in Section 1.4.1 (Acoustic Stressors) of the Navy's rulemaking and LOA application.

Explosives detonated in water are binned by net explosive weight. The bins of explosives that are proposed for use in the AFTT Study Area are shown in Table 3 below.

TABLE 3—EXPLOSIVES ANALYZED

Bin	Net explosive weight [1] (lb.)	Example explosive source
E1	0.1–0.25	Medium-caliber projectile.
E2	>0.25–0.5	Medium-caliber projectile.
E3	>0.5–2.5	Large-caliber projectile.
E4	>2.5–5	Mine neutralization charge.
E5	>5–10	5-inch projectile.
E6	>10–20	Hellfire missile.
E7	>20–60	Demo block/shaped charge.
E8	>60–100	Light-weight torpedo.
E9	>100–250	500 lb. bomb.
E10	>250–500	Harpoon missile.
E11	>500–650	650 lb mine.
E12	>650–1,000	2,000 lb bomb.
E14 [2]	>1,741–3,625	Line charge.
E16	>7,250–14,500	Littoral Combat Ship full ship shock trial.
E17	>14,500–58,000	Aircraft carrier full ship shock trial.

[1] Net Explosive Weight refers to the equivalent amount of TNT the actual weight of a munition may be larger due to other components.
[2] E14 is not modeled for protected species impacts in water because most energy is lost into the air or to the bottom substrate due to detonation in very shallow water.

Propagation of explosive pressure waves in water is highly dependent on environmental characteristics such as bathymetry, bottom type, water depth, temperature, and salinity, which affect how the pressure waves are reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher frequency components of explosive broadband noise can propagate. Appendix D (Acoustic and Explosive Concepts) in the AFTT DEIS/OEIS explains the characteristics of explosive detonations and how the above factors affect the propagation of explosive energy in the water. Because of the complexity of analyzing sound propagation in the ocean environment, the Navy relies on acoustic models in its environmental analyses that consider sound source characteristics and varying ocean conditions across the AFTT Study Area.

Other Stressor—Vessel Strike

There is a very small chance that a vessel utilized in training or testing activities could strike a large whale. Vessel strikes are not specific to any particular training or testing activity, but rather a limited, sporadic, and incidental result of Navy vessel movement within the Study Area. Vessel strikes from commercial, recreational, and military vessels are known to seriously injure and occasionally kill cetaceans (Abramson *et al.,* 2011; Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Douglas *et al.,* 2008; Laggner, 2009; Lammers *et al.,* 2003; Van der Hoop *et al.,* 2012; Van der Hoop *et al.,* 2013), although reviews of the literature on ship strikes mainly involve collisions between commercial vessels and whales (Jensen and Silber, 2003; Laist *et al.,* 2001). Vessel speed, size, and mass are all important factors in determining potential impacts of a vessel strike to marine mammals (Conn & Silber, 2013; Gende *et al.,* 2011; Silber *et al.,* 2010; Vanderlaan and Taggart, 2007; Wiley *et al.,* 2016). For large vessels, speed and angle of approach can influence the severity of a strike. The average speed of large Navy ships ranges between 10 and 15 knots and submarines generally operate at speeds in the range of 8–13 knots, while a few specialized vessels can travel at faster speeds. By comparison, this is slower than most commercial vessels where full speed for a container ship is typically 24 knots (Bonney and Leach, 2010). Additional information on Navy vessel movements is provided in Proposed Activities section. Large Navy vessels (greater than 18 m in length) within the offshore areas of range complexes and testing ranges operate differently from commercial vessels in ways that may reduce potential whale collisions. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times, when a ship or surfaced submarine is moving through the water (underway). A primary duty of personnel standing watch on surface ships is to detect and report all objects and disturbances sighted in the water that may indicate a threat to the vessel and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per vessel safety requirements, personnel standing watch also report any marine mammals sighted in the path of the vessel as a standard collision avoidance procedure. All vessels use extreme caution and proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions. Vessel strikes have the potential to result in incidental take from serious injury and/or mortality.

Proposed Activities

Proposed Training Activities

The Navy's proposed activities are presented and analyzed as a representative year of training to account for the natural fluctuation of training cycles and deployment schedules that generally influences the maximum level of training from occurring year after year in any five-year period. Both unit-level training and major training exercises are adjusted to meet this representative year, as discussed below. For the purposes of this application, the Navy assumes that some unit-level training would be conducted using synthetic means *(e.g.,* simulators). Additionally, the Proposed Activity assumes that some unit-level active sonar training will be accounted for within major training exercises.

The Optimized Fleet Response Plan and various training plans identify the number and duration of training cycles that could occur over a five-year period. The Proposed Activity considers fluctuations in training cycles and deployment schedules that do not follow a traditional annual calendar but instead are influenced by in-theater demands and other external factors. Similar to unit-level training, the Proposed Activity does not analyze a maximum number carrier strike group Composite Training Unit Exercises (one

type of major exercise) every year, but instead assumes a maximum number of exercises would occur during two years of any five-year period and that a lower number of exercises would occur in the other three years.

The training activities that the Navy proposes to conduct in the AFTT Study Area are summarized in Table 4. The table is organized according to primary mission areas and includes the activity name, associated stressors applicable to this rulemaking and LOA request, number of proposed activities and locations of those activities in the AFTT Study Area. For further information regarding the primary platform used (*e.g.,* ship or aircraft type) see Appendix A (Navy Activity Descriptions) of the AFTT DEIS/OEIS.

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Table 4. Proposed Training Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Annual # of Activities*	*5-Year # of Activities*	*Location*[2]	*Duration per Activity*
Major Training Exercise – Large Integrated ASW							
Acoustic	Composite Training Unit Exercise	Aircraft carrier and its associated aircraft integrate with surface and submarine units in a challenging multi-threat operational environment in order to certify them for deployment.	ASW1, ASW2, ASW3, ASW4, ASW5, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12	2–3[1]	12	VACAPES RC Navy Cherry Point RC JAX RC	21 days
Major Training Exercises – Medium Integrated Anti-Submarine Warfare							
Acoustic	Fleet Exercises/Sustainment Exercise	Aircraft carrier and its associated aircraft integrates with surface and submarine units in a challenging multi-threat operational environment in order to maintain their ability to deploy.	ASW1, ASW2, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12	4	20	JAX RC	Up to 10 days
				2	10	VACAPES RC	
Integrated/Coordinated Training – Small Integrated Anti-Submarine Warfare Training							
Acoustic	Naval Undersea Warfare Training Assessment Course	Multiple ships, aircraft, and submarines integrate the use of their sensors to search for, detect, classify, localize, and track a threat submarine in order to launch an exercise torpedo.	ASW1, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF12	6	30	JAX RC	2-5 days
				3	15	Navy Cherry Point RC	
				3	15	VACAPES RC	
Integrated/Coordinated Training – Medium Coordinated Anti-Submarine Warfare Training							
Acoustic	Anti-Submarine Warfare Tactical Development Exercise	Surface ships, aircraft, and submarines coordinate to search for, detect, and track	ASW1, ASW3, ASW4, HF1,	2	10	JAX RC	5-7 days
				1	5	Navy Cherry Point RC	

Table 4. Proposed Training Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Annual # of Activities*	*5-Year # of Activities*	*Location*[2]	*Duration per Activity*
		submarines.	LF6, MF1, MF3, MF4, MF5, MF11, MF12	1	5	VACAPES RC	
Integrated/Coordinated Training – Small Coordinated Anti-Submarine Warfare Training							
Acoustic	Group Sail	Surface ships and helicopters search for, detect, and track threat submarines.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11, MF12	4	20	JAX RC	2-3 days
				5	25	JAX RC	
				72	360	Navy Cherry Point RC	
				321	1,605	VACAPES RC	
Explosive	Integrated Live Fire Exercise	Naval forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- and large-caliber guns.	E1, E3, E6, E10	2	10	VACAPES RC	6-8 hrs
				2	10	JAX RC	
Explosive	Missile Exercise Air-to-Surface	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E6, E8, E10	102	510	JAX RC	1 hr
				52	260	Navy Cherry Point RC	
				88	440	VACAPES RC	
Explosive	Missile Exercise Air-to-Surface – Rocket	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	10	50	GOMEX RC	1 hr
				102	510	JAX RC	
				10	50	Navy Cherry Point RC	
				92	460	VACAPES RC	
Explosive	Missile Exercise Surface-to-Surface	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E10	16	80	JAX RC	2-5 hrs
				12	60	VACAPES RC	

Table 4. Proposed Training Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Annual # of Activities*	*5-Year # of Activities*	*Location*[2]	*Duration per Activity*
Acoustic, Explosive	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship (made environmentally safe for sinking according to U.S. Environmental Protection Agency standards), with a variety of munitions.	TORP2, E5, E8, E9, E10, E11	1	5	SINKEX Box	4-8 hrs, possibly over 1-2 days
Other Training Activities							
Acoustic	Elevated Causeway System	A temporary pier is constructed off the beach. Supporting pilings are driven into the sand and then later removed.	Impact hammer or vibratory extractor	1	5	Lower Chesapeake Bay	Up to 20 days for construction, and up to 10 days for removal
				1	5	Navy Cherry Point RC	
Acoustic	Submarine Navigation	Submarine crews operate sonar for navigation and object detection while transiting into and out of port during reduced visibility.	HF1, MF3	169	845	NSB New London	Up to 2 hrs
				3	15	NSB Kings Bay	
				3	15	NS Mayport	
				84	420	NS Norfolk	
				23	115	Port Canaveral, FL	
Acoustic	Submarine Sonar Maintenance	Maintenance of submarine sonar systems is conducted pierside or at sea.	MF3	12	60	Other AFTT Areas	Up to 1 hr
				66	330	NSB New London	
				9	45	JAX RC	
				2	10	NSB Kings Bay	
				34	170	NS Norfolk	
				86	430	Northeast RC	
				2	10	Port Canaveral, FL	

Table 4. Proposed Training Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Annual # of Activities*	*5-Year # of Activities*	*Location*[2]	*Duration per Activity*
				13	63	Navy Cherry Point RC	
				47	233	VACAPES RC	
Acoustic	Submarine Under Ice Certification	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events.	HF1	3	15	JAX RC	Up to 6 hrs per day over 5 days
				3	15	Navy Cherry Point RC	
				9	45	Northeast RC	
				9	45	VACAPES RC	
Acoustic	Surface Ship Object Detection	Surface ship crews operate sonar for navigation and object detection while transiting in and out of port during reduced visibility.	HF8, MF1K	76	380	NS Mayport	Up to 2 hrs
				162	810	NS Norfolk	
Acoustic	Surface Ship sonar Maintenance	Maintenance of surface ship sonar systems is conducted pierside or at sea.	HF8, MF1	50	250	JAX RC	Up to 4 hours
				50	250	NS Mayport	
				120	600	Navy Cherry Point RC	
				235	1,175	NS Norfolk	
				120	600	VACAPES RC	

[1] For activities where the maximum number of events could vary between years, the information is presented as 'representative-maximum' number of events per year. For activities where no variation is anticipated, only the maximum number of events within a single year is provided.

[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the AFTT Study Area. Where multiple locations are provided within a single cell, the number of activities could occur in any of the locations, not in each of the locations.

* For anti-submarine warfare tracking exercise – Ship, the Proposed Activity, 50 percent of requirements are met through synthetic training or other training exercises

Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville; NS: Naval Station; NSB: Naval Submarine Base; NSWC: Naval Surface Warfare Center; RC: Range Complex; VACAPES: Virginia Capes

Table 5. Proposed Naval Air Systems Command Testing Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Activity Description*	*Source Bin*	*Annual # of Activities*[1]	*5-Year # of Activities*	*Location*[2]	*Duration per Activity*
Anti-Submarine Warfare							
Acoustic	Anti-Submarine Warfare Torpedo Test	This event is similar to the training event torpedo exercise. Test evaluates anti-submarine warfare systems onboard rotary-wing (e.g., helicopter) and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	MF5, TORP1	20–43	146	JAX RC	2 -6 flight hrs per event
				40–121	362	VACAPES RC	
Acoustic, Explosive	Anti-Submarine Warfare Tracking Test – Helicopter	This event is similar to the training event anti-submarine warfare tracking exercise – helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking system perform to specifications.	MF4, MF5, E3	4–6	24	GOMEX RC	2 flight hrs per event
				0–12	24	JAX RC	
				2–27	35	Key West RC	
				28–110	304	Northeast RC	
				137–280	951	VACAPES RC	
Acoustic, Explosive	Anti-Submarine Warfare Tracking Test – Maritime Patrol Aircraft	The test evaluates the sensors and systems used by maritime patrol aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	ASW2, ASW5, E1, E3, MF5, MF6	10–15	60	GOMEX RC	4-6 flight hrs per event
				19	95	JAX RC	
				10–12	54	Key West RC	
				14–15	72	Navy Cherry Point RC	
				36–45	198	Northeast Point RC	
				25	125	VACAPES RC	
Acoustic	Kilo Dip	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MF4	2–6	14	GOMEX RC	1.5 flight hrs per event
				0–6	6	JAX RC	
				0–6	6	Key West RC	
				0–4	8	Northeast RC	
				20–40	140	VACAPES RC	
Acoustic, Explosive	Sonobuoy Lot Acceptance Test	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a production lot or group of sonobuoys in	ASW2, ASW5, HF5, HF6, LF4,	160	800	Key West RC	6 flight hrs per event

		advance of delivery to the fleet for operational use.	MF5, MF6, E1, E3, E4				
Mine Warfare							
Acoustic	Airborne Dipping Sonar Minehunting Test	A mine-hunting dipping sonar system deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HF4	16-32	96	NSWC Panama City	2 flight hrs per event
				6-18	42	VACAPES RC	
Explosive	Airborne Mine Neutralization System Test	A test of the airborne mine neutralization system evaluates the system's ability to detect and destroy mines from an airborne mine countermeasures capable helicopter. The airborne mine neutralization system uses up to four unmanned underwater vehicles equipped with high-frequency sonar, video cameras, and explosive and non-explosive neutralizers	E4	20-27	107	NSWC Panama City	2.5 flight hrs per event
				25-45	145	VACAPES RC	
Acoustic	Airborne Sonobuoy Minehunting Test	A mine-hunting system made up of a field of sonobuoys deployed by a helicopter. A field of sonobuoys, using high-frequency sonar, is used to detect and classify bottom and moored mines.	HF6	52	260	NSWC Panama City	2 flight hrs per event
				24	120	VACAPES RC	
Surface Warfare							
Explosive	Air-to-Surface Bombing Test	This event is similar to the training event bombing exercise air-to-surface. Fixed-wing aircraft test the delivery of bombs against surface maritime targets with the goal of evaluating the bomb, the bomb carry and delivery system, and any associated systems that may have been newly developed or enhanced.	E9	20	100	VACAPES RC	2 flight hrs per event
Explosive	Air-to-Surface Gunnery Test	This event is similar to the training event gunnery exercise	E1	25–55	215	JAX RC	2-2.5 flight hrs

		air-to-surface. Fixed-wing and rotary-wing aircrews evaluate new or enhanced aircraft guns against surface maritime targets to test that the guns, gun ammunition, or associated systems meet required specifications or to train aircrews in the operation of a new or enhanced weapon system.		110–140	640	VACAPES RC	per event
Explosive	Air-to-Surface Missile Test	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapon system or as part of another system's integration test.	E6, E9, E10	0–10	20	GOMEX RC	2-4 flight hrs per event
				29–38	167	JAX RC	
				117–148	663	VACAPES RC	
Explosive	Rocket Test	Rocket tests evaluate the integration, accuracy, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward-flying helicopter.	E3	15–19	87	JAX RC	1.5-2.5 hrs per event
				31–35	167	VACAPES RC	
Other Testing Activities							
Acoustic	Undersea Range System Test	Following installation of a Navy underwater warfare training and testing range, tests of the nodes (components of the range) will be conducted to include node surveys and testing of node transmission functionality.	MF9	4–20	42	JAX RC	8 hrs

[1] For activities where the maximum number of events could vary between years, the information is presented as 'representative-maximum' number of events per year. For activities where no variation is anticipated, only the maximum number of events within a single year is provided.

[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the AFTT Study Area.

Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville; NSWC: Naval Surface Warfare Center; RC: Range Complex; VACAPES: Virginia Capes

Testing activities covered in this rulemaking and LOA request are described in Table 5 through Table 7. The five-year Proposed Activity presented here is based on the level of testing activities anticipated to be conducted into the reasonably foreseeable future, with adjustments that account for changes in the types and tempo (increases or decreases) of testing activities to meet current and future military readiness requirements. The Proposed Activity includes the testing of new platforms, systems, and related equipment that will be introduced after November 2018 and during the period of the rule. The majority of testing activities that would be conducted under the Proposed Activity are the same as or similar as those conducted currently or in the past. The Proposed Activity includes the testing of some new systems using new technologies and takes into account inherent uncertainties in this type of testing.

Under the Proposed Activity, the Navy proposes a range of annual levels of testing that reflects the fluctuations in testing programs by recognizing that the maximum level of testing will not be conducted each year, but further indicates a five-year maximum for each activity that will not be exceeded. The Proposed Activity contains a more realistic annual representation of activities, but includes years of a higher maximum amount of testing to account for these fluctuations.

Naval Air Systems Command

Table 5 summarizes the proposed testing activities for the Naval Air Systems Command analyzed within the AFTT Study Area.

Table 6 summarizes the proposed testing activities for the Naval Sea Systems Command analyzed within the AFTT Study Area.

Table 6. Proposed Naval Sea Systems Command Testing Activities Analyzed within the AFTT Study Area.

Stressor Category	*Activity Name*	*Activity Description*	*Source Bin*	*Annual # of Activities*[1]	*5-Year # of Activities*	*Location*[2]	*Duration*
Anti-Submarine Warfare							
Acoustic	Anti-Submarine Warfare Mission Package Testing	Ships and their supporting platforms (e.g., helicopters, unmanned aerial systems) detect, localize, and attack submarines.	ASW1, ASW2, ASW3, ASW5, MF1, MF4, MF5, MF12, TORP1	42	210	JAX RC	1-2 wks, with 4-8 hrs of active sonar use with intervals on non-activity in between
				4	20	Newport, RI	
				4	20	NUWC Newport	
				26	130	VACAPES RC	
Acoustic	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	ASW3, ASW4, HF1, LF5, M3, MF1, MF1K, MF3, MF5, MF9, MF11, TORP2	2	10	JAX RC Navy Cherry Point RC Northeast RC VACAPES RC	From 4 hrs to 11 days
				1	5	JAX RC Navy Cherry Point RC VACAPES RC	
				2	10	offshore Fort Pierce, FL GOMEX RC JAX RC SFOMF Northeast RC VACAPES RC	
				4	20	JAX RC	
				2	10	Navy Cherry Point RC	
				8	40	NUWC Newport	
				12	60	VACAPES RC	
Acoustic	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities.	ASW3, HF1, HF3, HF8, M3, MF1, MF1K, MF3, MF9, MF10	1	5	NSB New London NS Norfolk Port Canaveral, FL	Up to 3 wks total per ship, with each source run independently and not continuously during this time.
				11	55	Bath, ME	
				5	25	NSB New London	
				4	20	NSB Kings Bay	
				8	40	Newport, RI	
				13	65	NS Norfolk	
				2	10	Pascagoula, MS	
				3	15	Port Canaveral, FL	
				2	10	PNS	
Acoustic	Submarine Sonar Testing/ Maintenance	Pierside testing of submarine systems occurs periodically following major	HF1, HF3, M3, MF3	16	80	Norfolk, VA	Up to 3 wks, with intermittent use of active sonar
				24	120	PNS	

		maintenance periods and for routine maintenance.		31-35	167	VACAPES RC	
Acoustic	Surface Ship Sonar Testing/ Maintenance	Pierside and at-sea testing of ship systems occur periodically following major maintenance periods and for routine maintenance.	ASW3, MF1, MF1K, MF9, MF10	1	5	JAX RC	Up to 3 wks, with intermittent use of active sonar
				1	5	NS Mayport	
				3	15	NS Norfolk	
				3	15	VACAPES RC	
Acoustic, Explosive	Torpedo (Explosive) Testing	Air, surface, or submarine crews employ explosive and non-explosive torpedoes against artificial targets.	ASW3, HF1, HF5, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, E8, E11	4	20	GOMEX RC offshore Fort Pierce, FL Key West RC Navy Cherry Point RC Northeast RC VACAPES RC	1-2 day during daylight hrs
				2	10	GOMEX RC JAX RC Northeast RC VACAPES RC	
Acoustic	Torpedo (Non-Explosive) Testing	Air, surface, or submarine crews employ non-explosive torpedoes against submarines or surface vessels. When performed on a testing range, these torpedoes may be launched from a range craft or fixed structures and may use artificial targets.	ASW3, ASW4, HF1, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, TORP 3	7	35	GOMEX RC	Up to 2 wks
				11	55	offshore Fort Pierce, FL	
				2	8	JAX RC	
				7	35	Navy Cherry Point RC	
				8	38	Northeast RC	
				30	150	NUWC Newport	
				11	55	VACAPES RC	
Acoustic	Counter-measure Testing	Countermeasure testing involves the testing of systems that will detect, localize, track, and attack incoming weapons	ASW3, HF5, TORP1, TORP2	5	25	GOMEX RC JAX RC NUWC Newport VACAPES RC Key West RC	From 4 hrs to 6 days, depending on countermeasure being tested

		including marine vessel targets. Testing includes surface ship torpedo defense systems and marine vessel stopping payloads.		2-4	14	GOMEX RC JAX RC Northeast RC VACAPES RC	
Mine Warfare							
Acoustic, Explosive	Mine Counter-measure and Neutralization Testing	Air, surfacc, and subsurface vessels neutralize threat mines and mine-like objects.	E4, E11	13	65	NSWC Panama City	1-10 days, with intermittent use of countermeasure/ neutralization system during this period
				6	30	VACAPES RC	
Acoustic, Explosive	Mine Counter-measure Mission Package Testing	Vessels and associated aircraft conduct mine countermeasure operations.	HF4, SAS2, E4	19	95	GOMEX RC	1-2 wks with intervals of mine countermeasure mission package use during this time
				10	50	JAX RC	
				11	55	NSWC Panama City	
				2	10	SFOMF	
				5	25	VACAPES RC	
Acoustic	Mine Detection and Classification Testing	Air, surface, and subsurface vessels and systems detect, classify, and avoid mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HF1,HF 4, HF8, MF1, MF1K, MF9	6	30	GOMEX RC	Up to 24 days, with up to 12 hrs of acoustic activity each day
				10	50	Navy Cherry Point RC	
				47-55	250	NSWC Panama City	
				7-12	43	Riviera Beach, FL	
				4	20	SFOMF	
				3	15	VACAPES RC	
Surface Warfare							
Explosive	Gun Testing – Large Caliber	Crews defend against targets with large-caliber guns.	E3, E5	12	60	GOMEX RC JAX RC Key West RC Navy Cherry Point RC Northeast RC VACAPES RC	1-2 wks
				1	5	GOMEX RC	
				1	5	JAX RC	
				1	5	Key West RC	
				1	5	Navy Cherry Point RC	
				1	5	Northeast RC	
				33	165	NSWC Panama City	
				5	25	VACAPES RC	

Explosive	Gun Testing – Medium-Caliber	Airborne and surface crews defend against targets with medium-caliber guns.	E1	12	60	GOMEX RC JAX RC Key West RC Navy Cherry Point RC Northeast RC VACAPES RC	1-2 wks, with intervals of gun testing
				102	510	NSWC Panama City	
				5	24	VACAPES RC	
Explosive	Missile and Rocket Testing	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6, E10	13	65	GOMEX RC JAX RC Key West RC Navy Cherry Point RC Northeast RC VACAPES RC	1 day to 2 wks
				1	5	GOMEX RC	
				2	10	JAX RC	
				5	25	Northeast RC	
				22	110	VACAPES RC	
Unmanned Systems							
Acoustic, Explosive	Unmanned Underwater Vehicle Testing	Testing involves the development or upgrade of unmanned underwater vehicles. This may include testing of mine detection capabilities, evaluating the basic functions of individual platforms, or complex events with multiple vehicles.	ASW4, FLS2, HF1, HF4, HF5, HF6, HF7, LF5, MF9, MF10, SAS1, SA2, SAS3, VHF1, E8	16	80	GOMEX RC JAX RC NUWC Newport	Up to 35 days. Some propulsion systems (gliders) could operate continuously for multiple months.
				41	205	GOMEX RC	
				25	125	JAX RC	
				145-146	727	NSWC Panama City	
				308-309	1,541	NUWC Newport	
				9	45	Riviera Beach, FL	
				42	210	SFOMF	
Vessel Evaluation							
Explosive	Large Ship Shock Trial	Underwater detonations are used to test new ships or major upgrades.	E17	0-1	1	GOMEX JAX RC VACAPES RC	Typically over 4 wks, with 1 detonation per week. However, smaller charges may be detonated on consecutive days.

Explosive	Surface Warfare Testing	Tests capability of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	E1, E5, E8	2	10	GOMEX RC	7 days
				13	65	JAX RC	
				1	5	Key West RC	
				10	50	Northeast RC	
				9	45	VACAPES RC	
Acoustic	Undersea Warfare Testing	Ships demonstrate capability of countermeasure systems and underwater surveillance, weapons engagement, and communications systems. This tests ships' ability to detect, track, and engage underwater targets.	ASW3, ASW4, HF4, HF8, MF1, MF1K, MF4, MF5, MF9, MF10, TORP1, TORP2	2	10	JAX RC Northeast RC VACAPES RC	Up to 10 days
				0-2	4	JAX RC Northeast RC VACAPES RC Navy Cherry Point RC SFOMF	
				2	10	GOMEX RC	
				6	30	JAX RC	
				3	15	Northeast RC	
				2	10	VACAPES RC	
Explosive	Small Ship Shock Trial	Underwater detonations are used to test new ships or major upgrades.	E16	0-3	3	JAX RC VACAPES RC	Typically over 4 wks, with 1 detonation per week. However, smaller charges may be detonated on consecutive days.
Acoustic	Submarine Sea Trials – Weapons System Testing	Submarine weapons and sonar systems are tested at-sea to meet integrated combat system certification	HF1, M3, MF3, MF9, MF10, TORP2	2	10	offshore Fort Pierce, FL	Up to 7 days

		requirements.		2	10	GOMEX RC	
				6	30	JAX RC	
				6	30	Northeast RC	
				2	10	SFOMF	
				6	30	VACAPES RC	
Other Testing Activities							
Acoustic	Insertion/ Extraction	Testing of submersibles capable of inserting and extracting personnel and payloads into denied areas from strategic distances.	MF3, MF9	4	20	Key West RC	Up to 30 days
				264	1,320	NSWC Panama City	
Acoustic	Acoustic Component Testing	Various surface vessels, moored equipment, and materials are tested to evaluate performance in the marine environment.	FLS2, HF5, HF7, LF5, MF9, SAS2	33	165	SFOMF	1 day to multiple months
Acoustic	Semi-Stationary Equipment Testing	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	AG, ASW3, ASW4, HF5, HF6, LF4, LF5, MF9, MF10, SD1,SD 2	4	20	Newport, RI	From 20 min to multiple days
				11	55	NSWC Panama City	
				190	950	NUWC Newport	
Acoustic	Towed Equipment Testing	Surface vessels or unmanned surface vehicles deploy and tow equipment to determine functionality of towed systems.	HF6, LF4, MF9	36	180	NUWC Newport	Typically 2-8 hrs
Acoustic	Signature Analysis Operations	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	ASW2, HF1, LF4, LF5, LF6, M3, MF9, MF10	1	5	JAX RC	Periodically over multiple days
				59	295	SFOMF	

Notes: JEB LC-FS: Joint Expeditionary Base Little Creek-Fort Story; NS: Naval Station; NSB: Naval Submarine Base; NSWC: Naval Surface Warfare Center; NUWC: Naval Undersea Warfare Center; PNS: Portsmouth Naval Shipyard; SFOMF: South Florida Ocean Measurement Facility Testing Range

[1] For activities where the maximum number of events could vary between years, the information is presented as 'representative-maximum' number of events per year. For activities where no variation is anticipated, only the maximum number of events within a single year is provided.

[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the AFTT Study Area. Where multiple locations are provided within a single cell, the number of activities could occur in any of the locations, not in each of the locations.

Office of Naval Research

Table 7 summarizes the proposed testing activities for the Office of Naval Research analyzed within the AFTT Study Area.

Table 7. Proposed Office of Naval Research Testing Activities Analyzed within the AFTT Study Area.

Stressor Activity	*Activity Name*	*Activity Description*	*Source Bin*	*Annual # of Activities*	*5-Year # of Activities*	*Location*	*Duration*
Acoustic and Oceanographic Science and Technology							
Acoustic, Explosive	Acoustic and Oceanographic Research	Research using active transmissions from sources deployed from ships and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	AG, ASW2, BB4, BB5, BB6, BB7, LF3, LF4, LF5, MF8, MF9, E1, E3	4	18	GOMEX RC	Up to 14 days
				7	35	Northeast RC	
				2	8	VACAPES RC	
Acoustic	Emerging Mine Countermeasure Technology Research	Test involves the use of broadband acoustic sources on unmanned underwater vehicles.	BB1, BB2, SAS4	1	5	JAX RC	Up to 14 days
				2	10	Northeast RC	
				1	5	VACAPES RC	

Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville, Florida; RC: Range Complex; VACAPES: Virginia Capes

Summary of Acoustic and Explosive Sources Analyzed for Training and Testing

Table 8 through Table 11 show the acoustic source classes and numbers, explosive source bins and numbers, airgun sources, and pile driving and removal activities associated with Navy training and testing activities in the AFTT Study Area that were analyzed in the Navy's rulemaking and LOA application. Table 8 shows the acoustic source classes (*i.e.,* LF, MF, and HF) that could occur in any year under the Proposed Activity for training and testing activities. Under the Proposed Activity, acoustic source class use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Proposed Activity takes into account that annual variability.

Table 8. Acoustic Source Classes Analyzed and Numbers Used during Training and Testing Activities.

Source Class Category	*Bin*	*Description*	*Unit*[1]	*Training*		*Testing*	
				Annual[2]	*5-year Total*	*Annual*[2]	*5-year Total*
Low-Frequency (LF): Sources that produce signals less than 1 kHz	LF3	LF sources greater than 200 dB	H	0	0	1,308	6,540
	LF4	LF sources equal to 180 dB and up to 200 dB	H	0	0	971	4,855
			C	0	0	20	100
	LF5	LF sources less than 180 dB	H	9	43	1,752	8,760
	LF6	LF sources greater than 200 dB with long pulse lengths	H	145 – 175	784	40	200
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1 – 10 kHz	MF1	Hull-mounted surface ship sonars (*e.g.*, AN/SQS-53C and AN/SQS-61)	H	5,005 – 5,605	26,224	3,337	16,684
	MF1K	Kingfisher mode associated with MF1 sonars	H	117	585	152	760
	MF3	Hull-mounted submarine sonars (*e.g.*, AN/BQQ-10)	H	2,078 – 2,097	10,428	1,257	6,271
	MF4	Helicopter-deployed dipping sonars (*e.g.*, AN/AQS-22 and AN/AQS-13)	H	591 – 611	2,994	370 – 803	2,624
	MF5	Active acoustic sonobuoys (*e.g.*, DICASS)	C	6,708– 6,836	33,796	5,070 – 6,182	27,412
	MF6	Active underwater sound signal devices (*e.g.*, MK84)	C	0	0	1,256 – 1,341	6,390
	MF8	Active sources (greater than 200 dB) not otherwise binned	H	0	0	348	1,740

Source Class Category	*Bin*	*Description*	*Unit* [1]	*Training*		*Testing*	
				Annual [2]	*5-year Total*	*Annual* [2]	*5-year Total*
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned	H	0	0	7,395–7,562	37,173
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned	H	870	4,348	5,690	28,450
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%	H	873 – 1,001	4,621	1,424	7,120
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%	H	367 – 397	1,894	1,388	6,940
	MF14	Oceanographic MF sonar	H	0	0	1,440	7,200
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10 – 100 kHz	HF1	Hull-mounted submarine sonars (*e.g.*, AN/BQQ-10)	H	1,928 – 1,932	9,646	397	1,979
	HF3	Other hull-mounted submarine sonars (classified)	H	0	0	31	154
	HF4	Mine detection, classification, and neutralization sonar (*e.g.*, AN/SQS-20)	H	5,411 – 6,371	29,935	30,772 – 30,828	117,916
	HF5	Active sources (greater than 200 dB) not otherwise binned	H	0	0	1,864 – 2,056	9,704
			C	0	0	40	200
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned	H	0	0	2,193	10,868
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned	H	0	0	1,224	6,120
	HF8	Hull-mounted surface ship sonars (*e.g.*, AN/SQS-61)	H	20	100	2,084	10,419
Very High-Frequency Sonars (VHF): Non-tactical sources that produce signals between 100 – 200 kHz	VHF1	VHF sources greater than 200 dB	H	0	0	12	60
Anti-Submarine Warfare (ASW): Tactical sources (*e.g.*, active sonobuoys and acoustic counter-measures systems) used during	ASW 1	MF systems operating above 200 dB	H	582 – 641	3,028	820	4,100
	ASW	MF Multistatic	C	1,476 –	7,540	4,756 –	25,480

Source Class Category	*Bin*	*Description*	*Unit* [1]	*Training*		*Testing*	
				Annual [2]	*5-year Total*	*Annual* [2]	*5-year Total*
ASW training and testing activities	2	Active Coherent sonobuoy (*e.g.*, AN/SSQ-125)		1,556		5,606	
	ASW 3	MF towed active acoustic countermeasure systems (*e.g.*, AN/SLQ-25)	H	4,485 – 5,445	24,345	2,941– 3,325	15,472
	ASW 4	MF expendable active acoustic device countermeasures (*e.g.*, MK 3)	C	425 – 431	2,137	3,493	17,057
	ASW 5	MF sonobuoys with high duty cycles	H	572 – 652	3,020	608 – 628	3,080
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes	TORP 1	Lightweight torpedo (*e.g.*, MK 46, MK 54, or Anti-Torpedo Torpedo)	C	57	285	806 – 980	4,336
	TORP 2	Heavyweight torpedo (*e.g.*, MK 48)	C	80	400	344 – 408	1,848
	TORP 3	Heavyweight torpedo (*e.g.*, MK 48)	C	0	0	100	440
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars used for ship navigation and safety	FLS2	HF sources with short pulse lengths, narrow beam widths, and focused beam patterns	H	0	0	1,224	6,120
Acoustic Modems (M): Systems used to transmit data through the water	M3	MF acoustic modems (greater than 190 dB)	H	0	0	634	3,169
Swimmer Detection Sonars (SD): Systems used to detect divers and sub- merged swimmers	SD1 – SD2	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security	H	0	0	176	880
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor	SAS1	MF SAS systems	H	0	0	960	4,800
	SAS2	HF SAS systems	H	0 – 8,400	25,200	3,512	17,560
	SAS3	VHF SAS systems	H	0	0	960	4,800
	SAS4	MF to HF broadband mine countermeasure sonar	H	0	0	960	4,800
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes	BB1	MF to HF mine countermeasure sonar	H	0	0	960	4,800
	BB2	HF to VHF mine countermeasure sonar	H	0	0	960	4,800
	BB4	LF to MF oceanographic source	H	0	0	876 – 3,252	6,756
	BB5	LF to MF oceanographic source	H	0	0	672	3,360

Source Class Category	*Bin*	*Description*	*Unit* [1]	*Training*		*Testing*	
				Annual [2]	*5-year Total*	*Annual* [2]	*5-year Total*
	BB6	HF oceanographic source	H	0	0	672	3,360
	BB7	LF oceanographic source	C	0	0	120	600

1: C = Count; H = Hours

2: Expected annual use may vary per bin because the number of events may vary from year to year, as described in Section 1.5 (Proposed Activity) of the Navy's rulemaking and LOA application.

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Table 9 shows the number of airguns shots proposed in AFTT Study Area for training and testing activities.

TABLE 9—TRAINING AND TESTING AIRGUN SOURCES QUANTITATIVELY ANALYZED IN THE AFTT STUDY AREA

Source class category	Bin	Unit [1]	Training		Testing	
			Annual	5-year total	Annual	5-year total
Airguns (AG): Small underwater airguns	AG	C	0	0	604	3,020

[1] C = count. One count (C) of AG is equivalent to 100 airgun firings.

Table 10 summarizes the impact pile driving and vibratory pile removal activities that would occur during a 24-hour period. Annually, for impact pile driving, the Navy will drive 119 piles, two times a year for a total of 238 piles. Over the five-year period of the rule, the Navy will drive a total of 1190 piles by impact pile driving. Annually, for vibratory pile driving, the Navy will drive 119 piles, two times a year for a total of 238 piles. Over the 5-year period of the rule, the Navy will drive a total of 1190 piles by vibratory pile driving.

TABLE 10—SUMMARY OF PILE DRIVING AND REMOVAL ACTIVITIES PER 24-HOUR PERIOD

Method	Piles per 24-hour period	Time per pile (minutes)	Total estimated time of noise per 24-hour period (minutes)
Pile Driving (Impact)	6	15	90
Pile Removal (Vibratory)	12	6	72

Table 11 shows the number of in-water explosives that could be used in any year under the Proposed Activity for training and testing activities. Under the Proposed Activity, bin use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Proposed Activity takes into account that annual variability.

TABLE 11—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBERS USED DURING TRAINING AND TESTING ACTIVITIES

Bin	Net explosive weight [1] (lb)	Example explosive source	Training		Testing	
			Annual [2]	5-year total	Annual [2]	5-year total
E1	0.1–0.25	Medium-caliber projectile	7,700	38,500	17,840–26,840	116,200
E2	>0.25–0.5	Medium-caliber projectile	210–214	1,062	0	0
E3	>0.5–2.5	Large-caliber projectile	4,592	22,960	3,054–3,422	16,206
E4	>2.5–5	Mine neutralization charge	127–133	653	746–800	3,784
E5	>5–10	5-inch projectile	1,436	7,180	1,325	6,625
E6	>10–20	Hellfire missile	602	3,010	28–48	200
E7	>20–60	Demo block/shaped charge	4	20	0	0
E8	>60–100	Light-weight torpedo	22	110	33	165
E9	>100–250	500 lb bomb	66	330	4	20
E10	>250–500	Harpoon missile	90	450	68–98	400
E11	>500–650	650 lb mine	1	5	10	50
E12	>650–1,000	2,000 lb bomb	18	90	0	0
E16 [3]	>7,250–14,500	Littoral Combat Ship full ship shock trial.	0	0	0–12	12

TABLE 11—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBERS USED DURING TRAINING AND TESTING ACTIVITIES—Continued

Bin	Net explosive weight [1] (lb)	Example explosive source	Training		Testing	
			Annual [2]	5-year total	Annual [2]	5-year total
E17 [3]	>14,500–58,000	Aircraft carrier full ship shock trial	0	0	0–4	4

[1] Net Explosive Weight refers to the equivalent amount of TNT the actual weight of a munition may be larger due to other components.
[2] Expected annual use may vary per bin because the number of events may vary from year to year, as described in Section 1.5 (Proposed Activity).
[3] Shock trials consist of four explosions each. In any given year there could be 0–3 small ship shock trials (E16) and 0–1 large ship shock trials (E17). Over a 5-year period, there could be three small ship shock trials (E16) and one large ship shock trial (E17).

Vessel Movement

Vessels used as part of the Proposed Activity include ships, submarines and boats ranging in size from small, 22 ft (7 m) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft (333 m). Large Navy ships greater than 60 ft (18 m) generally operate at speeds in the range of 10 to 15 knots for fuel conservation. Submarines generally operate at speeds in the range of 8 to 13 knots in transits and less than those speeds for certain tactical maneuvers. Small craft, less than 60 ft (18 m) in length, have much more variable speeds (dependent on the mission). For small craft types, sizes and speeds vary during training and testing. Speeds generally range from 10 to 14 knots. While these speeds for large and small crafts are representative of most events, some vessels need to temporarily operate outside of these parameters.

The number of Navy vessels used in the AFTT Study Area varies based on military training and testing requirements, deployment schedules, annual budgets, and other unpredictable factors. Most training and testing activities involve the use of vessels. These activities could be widely dispersed throughout the AFTT Study Area, but would be typically conducted near naval ports, piers, and range areas. Activities involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to two weeks. The number of activities that include the use of vessels for testing events is lower (around 10 percent) than the number of training activities.

Standard Operating Procedures

For training and testing to be effective, personnel must be able to safely use their sensors and weapon systems as they are intended to be used in a real-world situation and to their optimum capabilities. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources.

Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the proposed activities under the Proposed Activity, and has included them in the environmental analysis. Standard operating procedures that are recognized as providing a potential secondary benefit on marine mammals during training and testing activities are noted below and discussed in more detail within the AFTT Draft EIS/OEIS.

- Vessel Safety
- Weapons Firing Safety
- Target Deployment Safety
- Towed In-Water Device Safety
- Pile Driving Safety
- Coastal Zones

Standard operating procedures (which are implemented regardless of their secondary benefits) are different from mitigation measures (which are designed entirely for the purpose of avoiding or reducing potential impacts on the environment.) Refer to Section 1.5.5 Standing Operating Procedures of the Navy's rulemaking and LOA application for greater detail.

Duration and Location

Training and testing activities would be conducted in the AFTT Study Area throughout the year from 2018 through 2023 for the five-year period covered by the regulations.

The AFTT Study Area (see Figure 1.1–1 of the Navy's rulemaking and LOA application) includes areas of the western Atlantic Ocean along the east coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins at the mean high tide line along the U.S. coast and extends east to the 45-degree west longitude line, north to the 65 degree north latitude line, and south to approximately the 20-degree north latitude line. The AFTT Study Area also includes Navy pierside locations, bays, harbors, and inland waterways, and civilian ports where training and testing occurs. The AFTT Study Area generally follows the Commander Task Force 80 area of operations, covering approximately 2.6 million nmi^2 of ocean area, and includes designated Navy range complexes and associated operating areas (OPAREAs) and special use airspace. While the AFTT Study Area itself is very large, it is important to note that the vast majority of Navy training and testing occurs in designated range complexes and testing ranges.

A Navy range complex consists of geographic areas that encompasses a water component (above and below the surface) and airspace, and may encompass a land component where training and testing of military platforms, tactics, munitions, explosives, and electronic warfare systems occur. Range complexes include established operating areas and special use airspace, which may be further divided to provide better control of the area for safety reasons. Please refer to the regional maps provided in the Navy's rulemaking and LOA application (Figure 2.2–1 through Figure 2.2–3) for additional detail of the range complexes and testing ranges. The range complexes and testing ranges are described in the following sections.

Northeast Range Complex

The Northeast Range Complexes include the Boston Range Complex, Narragansett Bay Range Complex, and Atlantic City Range Complex (see Figure 2.2–1 in the Navy's rulemaking and LOA application). These range complexes span 761 miles (mi) along the coast from Maine to New Jersey. The Northeast Range Complexes include special use airspace with associated warning areas and surface and subsurface sea space of the Boston OPAREA, Narragansett Bay OPAREA, and Atlantic City OPAREA. The Northeast Range Complexes include over 25,000 nmi^2 of special use airspace. The altitude at which aircraft may fly varies from just above the surface to 60,000 ft, except for one specific warning area (W–107A) in the Atlantic City Range Complex, which is

18,000 ft to unlimited altitudes. Six warning areas are located within the Northeast Range Complexes. The Boston, Narragansett Bay, and Atlantic City OPAREAs Encompass over 45,000 nmi² of sea space and undersea space. The Boston, Narragansett Bay, and Atlantic City OPAREAs are offshore of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. The OPAREAs of the three complexes are outside 3 nmi but within 200 nmi from shore.

Naval Undersea Warfare Center Division, Newport Testing Range

The Naval Undersea Warfare Center Division, Newport Testing Range includes the waters of Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, and Long Island Sound (see Figure 2.2–1 in the Navy's rulemaking and LOA application). A portion of Naval Undersea Warfare Center Division, Newport Testing Range air space is under restricted area R–4105A, known as No Man's Land Island, and a minimal amount of testing occurs in this airspace. Three restricted areas are located within the Naval Undersea Warfare Center Division, Newport Testing Range:

- Coddington Cove Restricted Area, 0.5 nmi² adjacent to Naval Undersea Warfare Center Division, Newport;
- Narragansett Bay Restricted Area (6.1 nmi² area surrounding Gould Island) including the Hole Test Area and the North Test Range; and
- Rhode Island Sound Restricted Area, a rectangular box (27.2 nmi²) located in Rhode Island and Block Island Sounds.

Virginia Capes Range Complex

The Virginia Capes (VACAPES) Range Complex spans 270 mi. along the coast from Delaware to North Carolina from the shoreline to 155 nmi seaward (see Figure 2.2–1 in the Navy's rulemaking and LOA application). The VACAPES Range Complex includes special use airspace with associated warning and restricted areas, and surface and subsurface sea space of the VACAPES OPAREA. The VACAPES Range Complex also includes established mine warfare training areas located within the lower Chesapeake Bay and off the coast of Virginia. The VACAPES Range Complex includes over 28,000 nmi² of special use airspace. Flight altitudes range from surface to ceilings of 18,000 ft to unlimited altitudes. Five warning areas are located within the VACAPES Range Complex. Restricted airspace extends from the shoreline to approximately the 3 nmi state territorial sea limit within the VACAPES Range Complex, and is designated as R–6606. The VACAPES Range Complex shore boundary roughly follows the shoreline from Delaware to North Carolina; the seaward boundary extends 155 nmi into the Atlantic Ocean proximate to Norfolk, Virginia. The VACAPES OPAREA encompasses over 27,000 nmi² of sea space and undersea space. The VACAPES OPAREA is offshore of the states of Delaware, Maryland, Virginia, and North Carolina.

Navy Cherry Point Complex

The Navy Cherry Point Range Complex, off the coast of North Carolina and South Carolina, encompasses the sea space from the shoreline to 120 nmi seaward. The Navy Cherry Point Range Complex includes special use airspace with associated warning areas and surface and subsurface sea space of the Navy's Cherry Point OPAREA (see Figure 2.2–2 in the Navy's rulemaking and LOA application). The Navy Cherry Point Range Complex is adjacent to the U.S. Marine Corps Cherry Point and Camp Lejeune Range Complexes associated with Marine Corps Air Station Cherry Point and Marine Corps Base Camp Lejeune. The Navy Cherry Point Range Complex includes over 18,000 nmi² of special use airspace. The airspace varies from the surface to unlimited altitudes. A single warning area is located within the Navy Cherry Point Range Complex. The Navy Cherry Point Range Complex is roughly aligned with the shoreline and extends out 120 nmi into the Atlantic Ocean. The Navy Cherry Point OPAREA encompasses over 18,000 nmi² of sea space and undersea space.

Jacksonville Range Complex

The Jacksonville (JAX) Range Complex spans 520 mi along the coast from North Carolina to Florida from the shoreline to 250 nmi seaward. The JAX Range Complex includes special use airspace with associated warning areas and surface and subsurface sea space of the Charleston and JAX OPAREAs. The Undersea Warfare Training Range is located within the JAX Range Complex (see Figure 2.2–2 in the Navy's rulemaking and LOA application).

Naval Surface Warfare Center Carderock Division, South Florida Ocean Measurement Facility Testing Range

The Naval Surface Warfare Center Carderock Division operates the South Florida Ocean Measurement Facility Testing Range, an offshore testing area in support of various Navy and non-Navy programs. The South Florida Ocean Measurement Facility Testing Range is located adjacent to the Port Everglades entrance channel in Fort Lauderdale, Florida (see Figure 2.2–2 in the Navy's rulemaking and LOA application). The test area at the South Florida Ocean Measurement Facility Testing Range includes an extensive cable field located within a restricted anchorage area and two designated submarine operating areas. The South Florida Ocean Measurement Facility Testing Range does not have associated special use airspace. The airspace adjacent to the South Florida Ocean Measurement Facility Testing Range is managed by the Fort Lauderdale International Airport. Air operations at the South Florida Ocean Measurement Facility Testing Range are coordinated with Fort Lauderdale International Airport by the air units involved in the testing events. The South Florida Ocean Measurement Facility Testing Range is divided into four subareas:

- The Port Everglades Shallow Submarine Operating Area is a 120-nmi² area that encompasses nearshore waters from the shoreline to 900 ft deep and 8 nmi offshore.
- The Training Minefield is a 41-nmi² area used for special purpose surface ship and submarine testing where the test vessels are restricted from maneuvering and require additional protection. This Training Minefield encompasses waters from 60 to 600 ft deep and from 1 to 3 nmi offshore.
- The Port Everglades Deep Submarine Operating Area is a 335-nmi² area that encompasses the offshore range from 900 to 2,500 ft in depth and from 9 to 25 nmi offshore.
- The Port Everglades Restricted Anchorage Area is an 11-nmi² restricted anchorage area ranging in depths from 60 to 600 ft where the majority of the South Florida Ocean Measurement Facility Testing Range cables run from offshore sensors to the shore facility and where several permanent measurement arrays are used for vessel signature acquisition.

Key West Range Complex

The Key West Range Complex lies off the southwestern coast of mainland Florida and along the southern Florida Keys, extending seaward into the Gulf of Mexico 150 nmi and south into the Straits of Florida 60 nmi. The Key West Range Complex includes special use airspace with associated warning areas and surface and subsurface sea space of the Key West OPAREA (see Figure 2.2–3 in the Navy's rulemaking and LOA application). The Key West Range Complex includes over 20,000 nmi² of

special use airspace. Flight altitudes range from the surface to unlimited altitudes. Eight warning areas, Bonefish Air Traffic Control Assigned Airspace, and Tortugas Military Operating Area are located within the Key West Range Complex. The Key West OPAREA is over 8,000 nmi² of sea space and undersea space south of Key West, Florida.

Naval Surface Warfare Center, Panama City Division Testing Range

The Naval Surface Warfare Center, Panama City Division Testing Range is located off the panhandle of Florida and Alabama, extending from the shoreline to 120 nmi seaward, and includes St. Andrew Bay. Naval Surface Warfare Center, Panama City Division Testing Range also includes special use airspace and offshore surface and subsurface waters of offshore OPAREAs (see Figure 2.2–3 of the Navy's rulemaking and LOA application). Special use airspace associated with Naval Surface Warfare Center, Panama City Division Testing Range includes three warning areas. The Naval Surface Warfare Center, Panama City Division Testing Range includes the waters of St. Andrew Bay and the sea space within the Gulf of Mexico from the mean high tide line to 120 nmi offshore. The Panama City OPAREA covers just over 3,000 nmi² of sea space and lies off the coast of the Florida panhandle. The Pensacola OPAREA lies off the coast of Alabama and Florida west of the Panama City OPAREA and totals just under 5,000 nmi².

Gulf of Mexico Range Complex

Unlike most of the range complexes previously described, the Gulf of Mexico (GOMEX) Range Complex includes geographically separated areas throughout the Gulf of Mexico. The GOMEX Range Complex includes special use airspace with associated warning areas and restricted airspace and surface and subsurface sea space of the Panama City, Pensacola, New Orleans, and Corpus Christi OPAREAs (see Figure 2.2–3 of the Navy's rulemaking and LOA application). The GOMEX Range Complex includes approximately 20,000 nmi² of special use airspace. Flight altitudes range from the surface to unlimited. Six warning areas are located within the GOMEX Range Complex. Restricted airspace associated with the Pensacola OPAREA, designated R–2908, extends from the shoreline to approximately 3 nmi offshore. The GOMEX Range Complex encompasses approximately 17,000 nmi² of sea and undersea space and includes 285 nmi of coastline. The OPAREAs span from the eastern shores of Texas to the western panhandle of Florida. They are described as follows:

- Panama City OPAREA lies off the coast of the Florida panhandle and totals approximately 3,000 nmi²;
- Pensacola OPAREA lies off the coast of Florida west of the Panama City OPAREA and totals approximately 4,900 nmi²;
- New Orleans OPAREA lies off the coast of Louisiana and totals approximately 2,600 nmi²; and
- Corpus Christi OPAREA lies off the coast of Texas and totals approximately 6,900 nmi².

Inshore Locations

Although within the boundaries of the Range Complexes and testing ranges detailed above, various inshore locations including piers, bays, and civilian ports are identified in Figure 2.2–1 through Figure 2.2–3 of the Navy's rulemaking and LOA application.

Pierside locations include channels and transit routes in ports and facilities associated with the following Navy ports and naval shipyards:

- Portsmouth Naval Shipyard, Kittery, Maine;
- Naval Submarine Base New London, Groton, Connecticut;
- Naval Station Norfolk, Norfolk, Virginia;
- Joint Expeditionary Base Little Creek-Fort Story, Virginia Beach, Virginia;
- Norfolk Naval Shipyard, Portsmouth, Virginia;
- Naval Submarine Base Kings Bay, Kings Bay, Georgia;
- Naval Station Mayport, Jacksonville, Florida; and
- Port Canaveral, Cape Canaveral, Florida.

Commercial shipbuilding facilities in the following cities are also in the AFTT Study Area:

- Bath, Maine;
- Groton, Connecticut;
- Newport News, Virginia;
- Mobile, Alabama; and
- Pascagoula, Mississippi.

Bays, Harbors, and Inland Waterways

Inland waterways used for training and testing activities include:

- Narragansett Bay Range Complex/Naval Undersea Warfare Center Division, Newport Testing Range: Thames River, Narragansett Bay;
- VACAPES Complex: James River and tributaries, Broad Bay, York River, Lower Chesapeake Bay;
- JAX Range Complex: southeast Kings Bay, Cooper River, St. Johns River; and
- GOMEX Range Complex/Naval Surface Warfare Center, Panama City Division (including Naval Surface Warfare Center, Panama City Division): St. Andrew Bay Civilian Ports.

Civilian ports included for civilian port defense training events are listed in Section A.2.7.3 of Appendix A (Navy Activity Descriptions) of the Navy's AFTT DEIS/OEIS and include:

- Boston, Massachusetts;
- Earle, New Jersey;
- Delaware Bay, Delaware;
- Hampton Roads, Virginia;
- Morehead City, North Carolina;
- Wilmington, North Carolina;
- Savannah, Georgia;
- Kings Bay, Georgia;
- Mayport, Florida;
- Port Canaveral, Florida;
- Tampa, Florida;
- Beaumont, Texas; and
- Corpus Christi, Texas.

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species that have the potential to occur in the AFTT Study Area and their associated stocks are presented in Table 12 along with an abundance estimate, an associated coefficient of variation value, and best/minimum abundance estimates. Some marine mammal species, such as manatees, are not managed by NMFS, but by the U.S. Fish and Wildlife Service and therefore not discussed below. The Navy proposes to take individuals of 39 marine mammal species by Level A and B harassment incidental to training and testing activities from the use of sonar and other transducers, in-water detonations, airguns, and impact pile driving/vibratory extraction. In addition, the Navy is requesting nine mortalities of four marine mammal stocks during ship shock trials, and three takes by serious injury or mortality from vessel strikes over the five-year period. One marine mammal species, the North Atlantic right whale (*Eubalaena glacialis*), has critical habitat designated under the Endangered Species Act in the AFTT Study Area (described below).

Information on the status, distribution, abundance, and vocalizations of marine mammal species in the AFTT Study Area may be found in Chapter 4 Affected Species Status and Distribution of the Navy's rulemaking and LOA application. Additional information on the general biology and ecology of marine mammals are included in the AFTT DEIS/OEIS. In addition, NMFS annually publishes Stock Assessment Reports (SARs) for all marine mammals in U.S. Exclusive Economic Zone (EEZ) waters, including stocks that occur within the AFTT

Study Area—U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (Hayes et *al.,* 2017) (see *https://www.fisheries.noaa.gov/resource/document/us-atlantic-and-gulf-mexico-marine-mammal-stock-assessments-2016*).

The species carried forward for analysis are those likely to be found in the AFTT Study Area based on the most recent data available, and do not include stocks or species that may have once inhabited or transited the area but have not been sighted in recent years and therefore are extremely unlikely to occur in the AFTT Study Area (*e.g.,* species which were extirpated because of factors such as nineteenth and twentieth century commercial exploitation).

The species not carried forward for analysis are the bowhead whale, beluga whale, and narwhal as these would be considered extralimital species. Bowhead whales are likely to be found only in the Labrador Current open ocean area, but in 2012 and 2014, the same bowhead whale was observed in Cape Cod Bay, which represents the southernmost record of this species in the western North Atlantic. In June 2014, a beluga whale was observed in several bays and inlets of Rhode Island and Massachusetts (Swaintek, 2014). This sighting likely represents an extralimital beluga whale occurrence in the Northeast United States Continental Shelf Large Marine Ecosystem. There is no stock of narwhal that occurs in the U.S. EEZ in the Atlantic Ocean; however, populations from Hudson Strait and Davis Strait may extend into the AFTT Study Area at its northwest extreme. However, narwhals prefer cold Arctic waters those wintering in Hudson Strait occur in smaller numbers. For these reasons, the likelihood of any Navy activities encountering and having any effect on any of these three species is so slight as to be unlikely; therefore, these species do not require further analysis.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
Order Cetacea							
Suborder Mysticeti (baleen whales)							
Family Balaenidae (right whales)							
Bowhead whale	*Balaena mysticetus*.	Eastern Canada-West Greenland.	Endangered, strategic, depleted.	7,660 (4,500–11,100) [6].	Labrador Current	Newfoundland-Labrador Shelf, West Greenland Shelf, Northeast U.S. Continental Shelf.	NA.
North Atlantic right whale.	*Eubalaena glacialis*.	Western	Endangered, strategic, depleted.	440 (0)/440	Gulf Stream, Labrador Current, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Gulf of Mexico (extralimital).	NA.
Family Balaenopteridae (rorquals)							
Blue whale	*Balaenoptera musculus*.	Western North Atlantic (Gulf of St. Lawrence).	Endangered, strategic, depleted.	Unknown/440 [11] ...	Gulf Stream, North Atlantic Gyre, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Southeast U.S. Continental Shelf, Caribbean Sea, and Gulf of Mexico (strandings only).	NA.
Bryde's whale	*Balaenoptera brydei/edeni*.	Northern Gulf of Mexico.	Proposed Endangered, Strategic.	33 (1.07)/16	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico	NA.
Fin whale	*Balaenoptera physalus*.	Western North Atlantic.	Endangered, strategic, depleted.	1,618 (0.33)/1,234	Gulf Stream, North Atlantic Gyre, Labrador Current.	Caribbean Sea, Gulf of Mexico, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		West Greenland ..	Endangered, strategic, depleted.	4,468 (1,343–14,871) [9].	Labrador Current	West Greenland Shelf.	NA.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Gulf of St. Lawrence.	Endangered, strategic, depleted.	328 (306–350) [10]	.....	Newfoundland-Labrador Shelf, Scotian Shelf.	NA.
Humpback whale ..	*Megaptera novaeangliae.*	Gulf of Maine	Strategic	823 (0)/823	Gulf Stream, North Atlantic Gyre, Labrador Current.	Gulf of Mexico, Caribbean Sea, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Minke whale	*Balaenoptera acutorostrata.*	Canadian Eastern Coastal.	NA	2,591 (0.81)/1,425	Gulf Stream, North Atlantic Gyre, Labrador Current.	Caribbean Sea, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		West Greenland [7]	NA	16,609 (7,172–38,461)/NA [7].	Labrador Current	West Greenland Shelf.	NA.
Sei whale	*Balaenoptera borealis.*	Nova Scotia	Endangered, strategic, depleted.	357 (0.52)/236	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico, Caribbean Sea, Southeast Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Labrador Sea	Endangered, strategic, depleted.	Unknown [8]	Labrador Current	Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Family Physeteridae (sperm whale)							
Suborder Odontoceti (toothed whales)							
Sperm whale	*Physeter macrocephalus.*	North Atlantic	Endangered, strategic, depleted.	2,288 (0.28)/1,815	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Caribbean Sea.	NA.
		Northern Gulf of Mexico.	Endangered, strategic, depleted.	763 (0.38)/560	NA	Gulf of Mexico	NA.
		Puerto Rico and U.S. Virgin Islands.	Endangered, strategic, depleted.	Unknown	North Atlantic Gyre.	Caribbean Sea	NA.
Family Kogiidae (sperm whales)							
Pygmy and dwarf sperm whales.	*Kogia breviceps* and *Kogia sima.*	Western North Atlantic.	NA	3,785 (0.47)/2,598 [12].	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Caribbean Sea.	NA.
		Northern Gulf of Mexico.	NA	186 (1.04)/90 [12] ...	NA	Gulf of Mexico, Caribbean Sea.	NA.
Family Monodontidae (beluga whale and narwhal)							
Beluga whale	*Delphinapterus leucas.*	Eastern High Arctic/Baffin Bay [13].	NA	21,213 (10,985–32,619) [13].	Labrador Current	West Greenland Shelf.	NA.
		West Greenland [14]	NA	10,595 (4.904–24,650) [14].	NA	West Greenland Shelf.	NA.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
Narwhal	*Monodon monoceros*.	NA [15]	NA	NA [15]	NA	Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Family Ziphiidae (beaked whales)							
Blainville's beaked whale.	*Mesoplodon densirostris*.	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17].	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Northern Gulf of Mexico.	NA	149 (0.91)/77 [18]	NA	Gulf of Mexico, Caribbean Sea.	NA.
Cuvier's beaked whale.	*Ziphius cavirostris*	Western North Atlantic [16].	NA	6,532 (0.32)/5,021	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	74 (1.04)/36	NA	Gulf of Mexico, Caribbean Sea.	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Gervais' beaked whale.	*Mesoplodon europaeus*.	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17].	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	149 (0.91)/77 [18]	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico, Caribbean Sea.	NA.
Northern bottlenose whale.	*Hyperoodon ampullatus*.	Western North Atlantic.	NA	Unknown	Gulf Stream, North Atlantic Gyre, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Sowerby's beaked whale.	*Mesoplodon bidens*.	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17].	Gulf Stream, North Atlantic Gyre.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
True's beaked whale.	*Mesoplodon mirus*	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17].	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Family Delphinidae (dolphins)							
Atlantic spotted dolphin.	*Stenella frontalis* ..	Western North Atlantic [16].	NA	44,715 (0.43)/31,610.	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico.	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea.	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*.	Western North Atlantic.	NA	48,819 (0.61)/30,403.	Gulf Steam, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
Clymene dolphin ...	*Stenella clymene*	Western North Atlantic [16].	NA	Unknown	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	129 (1.0)/64	NA	Gulf of Mexico, Caribbean Sea.	NA.
Common bottlenose dolphin.	*Tursiops truncatus*	Western North Atlantic Offshore [19].	Strategic, depleted.	77,532 (0.40)/56,053.	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf.	NA.
		Western North Atlantic Northern Migratory Coastal [20].	NA	11,548 (0.36)/8,620.	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	Long Island Sound, Sandy Hook Bay, Lower Chesapeake Bay, James River, Elizabeth River.
		Western North Atlantic Southern Migratory Coastal [20].	Strategic, depleted.	9,173 (0.46)/6,326	NA	Southeast U.S. Continental Shelf.	Lower Chesapeake Bay, James River, Elizabeth River, Beaufort Inlet, Cape Fear River, Kings Bay, St. Johns River.
		Western North Atlantic South Carolina/Georgia Coastal [20].	Strategic, depleted.	4,377 (0.43)/3,097	NA	Southeast U.S. Continental Shelf.	Kings Bay, St. Johns River.
		Northern North Carolina Estuarine System [20].	Strategic	823 (0.06)/782	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	Beaufort Inlet, Cape Fear River.
		Southern North Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	Beaufort Inlet, Cape Fear River
		Northern South Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	NA.
		Charleston Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	NA.
Common bottlenose dolphin (continued).	*Tursiops truncatus*	Northern Georgia/Southern South Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	NA.
		Central Georgia Estuarine System [20].	Strategic	192 (0.04)/185	NA	Southeast U.S. Continental Shelf.	NA.
		Southern Georgia Estuarine System [20].	Strategic	194 (0.05)/185	NA	Southeast U.S. Continental Shelf.	Kings Bay, St. Johns River.
		Western North Atlantic Northern Florida Coastal [20].	Strategic, depleted.	1,219 (0.67)/730 ..	NA	Southeast U.S. Continental Shelf.	Kings Bay, St. Johns River.
		Jacksonville Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	Kings Bay, St. Johns River.
		Western North Atlantic Central Florida Coastal [20].	Strategic, depleted.	4,895 (0.71)/2,851	NA	Southeast U.S. Continental Shelf.	Port Canaveral.
		Indian River Lagoon Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	Port Canaveral.
		Biscayne Bay [16] ...	Strategic	Unknown	NA	Southeast U.S. Continental Shelf.	NA.
		Florida Bay [16]	NA	Unknown	NA	Gulf of Mexico	NA.
		Northern Gulf of Mexico Continental Shelf [20].	NA	51,192 (0.10)/46,926.	NA	Gulf of Mexico	NA.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Gulf of Mexico Eastern Coastal [20].	NA	12,388 (0.13)/11,110.	NA	Gulf of Mexico	NA.
		Gulf of Mexico Northern Coastal [20].	NA	7,185 (0.21)/6,044	NA	Gulf of Mexico	St. Andrew Bay, Pascagoula River.
		Gulf of Mexico Western Coastal [20].	NA	20,161 (0.17)/17,491.	NA	Gulf of Mexico	Corpus Christi Bay, Galveston Bay.
		Northern Gulf of Mexico Oceanic [20].	NA	5,806 (0.39)/4,230	NA	Gulf of Mexico	NA.
		Northern Gulf of Mexico Bay, Sound, and Estuaries [21].	Strategic	Unknown	NA	Gulf of Mexico	St. Andrew Bay, Pascagoula River, Sabine Lake, Corpus Christi Bay, and Galveston Bay.
		Barataria Bay Estuarine System [20].	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Mississippi Sound, Lake Borgne, Bay Boudreau [20].	Strategic	901 (0.63)/551	NA	Gulf of Mexico	NA.
		St. Joseph Bay [20]	Strategic	152 (0.08)/Unknown.	NA	Gulf of Mexico	NA.
		Choctawhatchee Bay [20].	Strategic	179 (0.04)/Unknown.	NA	Gulf of Mexico	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
False killer whale	*Pseudorca crassidens*.	Western North Atlantic [22].	Strategic	442 (1.06)/212	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea.	NA.
Fraser's dolphin	*Lagenodelphis hosei*.	Western North Atlantic [23].	NA	Unknown	Gulf Stream	Northeast U.S. Continental Shelf, Southeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea.	NA.
Killer Whale	*Orcinus orca*	Western North Atlantic [22].	NA	Unknown	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf, Scotian Shelf, Newfoundland—Labrador Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	28 (1.02)/14	NA	Gulf of Mexico, Caribbean Sea.	NA.
Long-finned pilot whale.	*Globicephala melas*.	Western North Atlantic.	Strategic	5,636 (0.63)/3,464	Gulf Stream	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Melon-headed Whale.	*Peponocephala electra*.	Western North Atlantic [23].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	2,235 (0.75)/1,274	NA	Gulf of Mexico, Caribbean Sea.	NA.
Pantropical spotted-dolphin.	*Stenella attenuate*	Western North Atlantic [16].	NA	3,333 (0.91)/1,733	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [22].	NA	50,880 (0.27)/40,699.	NA	Gulf of Mexico, Caribbean Sea.	NA.
Pygmy Killer Whales.	*Feresa attenuata*	Western North Atlantic [16].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf.	NA.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Northern Gulf of Mexico [16].	NA	152 (1.02)/75	NA	Gulf of Mexico, Caribbean Sea.	NA.
Risso's dolphin	*Grampus griseus*	Western North Atlantic.	NA	18,250 (0.46)/12,619.	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf, Scotian Shelf, Newfoundland—Labrador Shelf.	NA.
		Northern Gulf of Mexico.	NA	2,442 (0.57)/1,563	NA	Gulf of Mexico, Caribbean Sea.	NA.
Rough-toothed dolphin.	*Steno bredanensis*.	Western North Atlantic [16].	NA	271 (1.00)/134	Gulf Stream, North Atlantic Gyre.	Caribbean Sea Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico.	NA	624 (0.99)/311	NA	Gulf of Mexico, Caribbean Sea.	NA.
Short-finned pilot whale.	*Globicephala macrorhynchus*.	Western North Atlantic.	Strategic	21,515 (0.37)/15,913.	NA	Northeast Continental Shelf, Southeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [22].	NA	2,415 (0.66)/1,456	NA	Gulf of Mexico, Caribbean Sea.	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Spinner dolphin	*Stenella longirostris*.	Western North Atlantic [16].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	11,441 (0.83)/6,221.	NA	Gulf of Mexico, Caribbean Sea.	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Striped dolphin	*Stenella coeruleoalba*.	Western North Atlantic [16].	NA	54,807 (0.30)/42,804.	Gulf Stream	Northeast U.S. Continental Shelf, Scotian Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	1,849 (0.77)/1,041	NA	Gulf of Mexico, Caribbean Sea.	NA.
Short-beaked common dolphin.	*Delphinus delphis*	Western North Atlantic.	NA	70,184 (0.28)/55,690.	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
White-beaked dolphin.	*Lagenorhynchus albirostris*.	Western North Atlantic [23].	NA	2,003 (0.94)/1,023	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Family Phocoenidae (porpoises)							
Harbor porpoise	*Phocoena*	Gulf of Maine/Bay of Fundy.	NA	79,883 (0.32)/61,415.	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebec River.

TABLE 12—MARINE MAMMALS WITH THE POTENTIAL TO OCCUR WITHIN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT study area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Gulf of St. Lawrence [24].	NA	Unknown [24]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Newfoundland [25]	NA	Unknown [25]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Greenland [26]	NA	Unknown [26]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Order Carnivora							
Suborder Pinnipedia							
Family Phocidae (true seals)							
Gray seal	*Halichoerus grypus*.	Western North Atlantic.	NA	Unknown	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebeck River.
Harbor seal	*Phoca vitulina*	Western North Atlantic.	NA	75,834 (0.15)/ 66,884.	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Chesapeake Bay, Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebeck River.
Harp seal	*Pagophilus groenlandicus*.	Western North Atlantic.	NA	Unknown	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Hooded seal	*Cystophora cristata*.	Western North Atlantic.	NA	Unknown	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, West Greenland Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebec River.

Notes: CV: Coefficient of variation; ESA: Endangered Species Act; MMPA: Marine Mammal Protection Act; NA: Not applicable.

[1] Taxonomy follows (Committee on Taxonomy, 2016).

[2] Stock designations for the U.S. EEZ and abundance estimates are from Atlantic and Gulf of Mexico Stock Assessment Reports prepared by NMFS (*Hayes et al.,* 2017), unless specifically noted.

[3] Populations or stocks defined by the MMPA as ''strategic'' for one of the following reasons: (1) The level of direct human-caused mortality exceeds the potential biological removal level; (2) based on the best available scientific information, numbers are declining and species are likely to be listed as threatened species under the ESA within the foreseeable future; (3) species are listed as threatened or endangered under the ESA; (4) species are designated as depleted under the MMPA.

[4] Stock abundance, CV, and minimum population are numbers provided by the Stock Assessment Reports (*Hayes et al.,* 2017). The stock abundance is an estimate of the number of animals within the stock. The CV is a statistical metric used as an indicator of the uncertainty in the abundance estimate. The minimum population estimate is either a direct count (*e.g.,* pinnipeds on land) or the lower 20th percentile of a statistical abundance estimate.

[5] Occurrence in the AFTT Study Area includes open ocean areas—Labrador Current, North Atlantic Gyre, Gulf Stream, and coastal/shelf waters of seven large marine ecosystems—West Greenland Shelf, Newfoundland-Labrador Shelf, Scotian Shelf, and Northeast U.S. Continental Shelf, Southeast U.S. Continental Shelf, Caribbean Sea, Gulf of Mexico, and inland waters of Kennebec River, Piscataqua River, Thames River, Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Sandy Hook Bay, Lower Chesapeake Bay, James River, Elizabeth River, Beaufort Inlet, Cape Fear River, Kings Bay, St. Johns River, Port Canaveral, St. Andrew Bay, Pascagoula River, Sabine Lake, Corpus Christi Bay, and Galveston Bay.

[6] The bowhead whale population off the west coast of Greenland is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent highest density interval were presented in (Frasier *et al.,* 2015).

[7] The West Greenland stock of minke whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Heide-Jørgensen *et al.,* 2010).

[8] The Labrador Sea stock of sei whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Information was obtained in (Prieto *et al.,* 2014).

[9] The West Greenland stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Heide-Jørgensen *et al.,* 2010).

[10] The Gulf of St. Lawrence stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Ramp *et al.,* 2014).

[11] Photo identification catalogue count of 440 recognizable blue whale individuals from the Gulf of St. Lawrence is considered a minimum population estimate for the western North Atlantic stock (Waring *et al.,* 2010).

[12] Estimates include both the pygmy and dwarf sperm whales in the western North Atlantic (Waring *et al.,* 2014) and the northern Gulf of Mexico (Waring *et al.,* 2013).

[13] Beluga whales in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report. Abundance and 95 percent confidence interval for the Eastern High Arctic/Baffin Bay stock were presented in (Innes e*t al.,* 2002).

[14] Beluga whales in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report. Abundance and 95 percent confidence interval for the West Greenland stock were presented in (Heide-Jørgensen *et al.,* 2009).

[15] NA = Not applicable. Narwhals in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report.

[16] Estimates for these western North Atlantic stocks are from Waring *et al.* (2014) and the northern Gulf of Mexico stock are from (Waring *et al.,* 2013) as applicable.

[17] Estimate includes undifferentiated Mesoplodon species.

[18] Estimate includes Gervais' and Blainville's beaked whales.

[19] Estimate may include sightings of the coastal form.

[20] Estimates for these Gulf of Mexico stocks are from Waring et al. (2016).

[21] NMFS is in the process of writing individual stock assessment reports for each of the 32 bay, sound, and estuary stocks.

[22] Estimates for these stocks are from Waring *et al.,* (2015).

[23] Estimates for these western North Atlantic stocks are from (Waring *et al.,* 2007).

[24] Harbor porpoise in the Gulf of St. Lawrence are not managed by NMFS and have no associated Stock Assessment Report.

[25] Harbor porpoise in Newfoundland are not managed by NMFS and have no associated Stock Assessment Report.

[26] Harbor porpoise in Greenland are not managed by NMFS and have no associated Stock Assessment Report.

Important Marine Mammal Habitat

ESA Critical Habitat for North Atlantic Right Whale

The only ESA-listed marine mammal with designated critical habitat within the AFTT Study Area is the North Atlantic right whale (NARW). On February 26, 2016, NMFS issued a final rule (81 FR 4837) to replace the critical habitat for NARW with two new areas. The areas now designated as critical habitat contain approximately 29,763 nmi^2 of marine habitat in the Gulf of Maine and Georges Bank region (Unit 1), essential for NARW foraging and off the Southeast U.S. coast (Unit 2), including the coast of North Carolina, South Carolina, Georgia, and Florida, which are key areas essential for calving. These two ESA-designated critical habitats were established to replace three smaller previously ESA-designated critical habitats (Cape Cod Bay/Massachusetts Bay/Stellwagen Bank, Great South Channel, and the coastal waters of Georgia and Florida in the southeastern United States) that had been designated by NMFS in 1994 (59 FR 28805; June 3, 1994). Two additional areas in Canadian waters, Grand Manan Basin and Roseway Basin, were identified and designated as critical habitat under Canada's endangered species law (Section 58 (5) of the Species at Risk Act (SARA), S. C. 2002, c. 29) and identified in Final Recovery Strategy for the North Atlantic right whale, posted June 2009 on the SARA Public Registry.

Unit 1 encompasses the Gulf of Maine and Georges Bank region including the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins, as well as state waters, except for inshore areas, bays, harbors, and inlets, from Maine through Massachusetts in addition to Federal waters, all of which are key areas. Unit 1 includes the large embayments of Cape Cod Bay and Massachusetts Bay but does not include inshore areas, bays, harbors and inlets. It also does not include waters landward of the 72 COLREGS lines (33 CFR part 80). A large portion of the critical habitat of Unit 1 lies within the coastal waters of the Boston OPAREA (see Figure 4.1–1 of the Navy's rulemaking and LOA application).

Unit 2 consists of all marine waters from Cape Fear, North Carolina, southward to approximately 27 nmi below Cape Canaveral, Florida, within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the specific points described below. The physical features correlated with the distribution of NARW in the southern critical habitat area provide an optimum environment for calving in the waters of Brunswick County, North Carolina; Horry, Georgetown, Charleston, Colleton, Beaufort, and Jasper Counties, South Carolina; Chatham, Bryan, Liberty, McIntosh, Glynn, and Camden Counties, Georgia; and Nassau, Duval, St. John's, Flagler, Volusia, and Brevard Counties, Florida. For example, the bathymetry of the inner and nearshore middle shelf area minimizes the effect of strong winds and offshore waves, limiting the formation of large waves and rough water. The average temperature of critical habitat waters is cooler during the time right whales are present due to a lack of influence by the Gulf Stream and cool freshwater runoff from coastal areas. The water temperatures may provide an optimal balance between offshore waters that are too warm for nursing mothers to tolerate, yet not too cool for calves that may only have minimal fatty insulation. Reproductive females and calves are expected to be concentrated in the critical habitat from December through April. A majority of the critical habitat of Unit 2 lies within the coastal waters of the Jacksonville OPAREA and the Charleston OPAREA (see Figure 4.1–1 of the Navy's rulemaking and LOA application).

Important Habitat for Sperm Whales

Sperm whales aggregate at the mouth of the Mississippi River and along the continental slope in or near cyclonic cold-core eddies (counterclockwise water movements in the northern hemisphere with a cold center) or

anticyclone eddies (clockwise water movements in the northern hemisphere) (Davis *et al.,* 2007). Habitat models for sperm whale occurrence indicate a high probability of suitable habitat along the shelf break off the Mississippi delta, Desoto Canyon, and western Florida (Best e*t al.,* 2012; Weller *et al.,* 2000). Due to the nutrient-rich freshwater plume from the Mississippi Delta the continental slope waters south of the Mississippi River Delta and the Mississippi Canyon play an important ecological role for sperm whales (Davis *et al.,* 2002; Weller *et al.,* 2000). Sightings during extensive surveys in this area consisted of mixed-sex groups of females, immature males, and mother-calf pairs as well as groups of bachelor males (Jochens *et al.,* 2008; Weller *et al.,* 2000). Female sperm whales have displayed a high level of site fidelity and year round utilization off the Mississippi River Delta compared to males (Jochens *et al.,* 2008) suggesting this area may also support year-round feeding, breeding, and nursery areas (Baumgartner *et al.,* 2001; NMFS, 2010), although the seasonality of breeding in Gulf of Mexico sperm whales is not known (Jochens e*t al.,* 2008).

Biologically Important Areas

Biologically Important Areas (BIAs) include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur (LeBrecque *et al.,* 2015a and 2015b). Unlike Critical Habitat, these areas are not formally designated pursuant to any statute or law, but are a compilation of the best available science intended to inform impact and mitigation analyses.

On the East Coast, 19 of the 24 identified BIAs fall within or overlap with the AFTT Study area—10 feeding (2 for minke whale, 1 for sei whale, 3 for fin whale, 3 for NARW, and 1 for humpback), 1 migration (NARW), 2 reproduction (NARW), 6 small and resident population (1 for harbor porpoise and 5 for bottlenose dolphin). Figures 11.2–1 through11.2–2 of the Navy's rulemaking and LOA application illustrate how these BIAs overlap with Navy OPAREAs on the East Coast. In the Gulf of Mexico, 4 of the 12 identified BIAs for small and resident populations overlap the AFTT study area (1 for Bryde's whale and 3 for Bottlenose dolphin). Figures 11.2–3 of the Navy's rulemaking and LOA application illustrate how these BIAs overlap with Navy OPAREAs in the Gulf of Mexico.

Large Whales Feeding BIAs—East Coast Within the AFTT Study Area

Two minke whale feeding BIAs are located in the northeast Atlantic from March through November in waters less than 200 m in the southern and southwestern section of the Gulf of Maine including Georges Bank, the Great South Channel, Cape Cod Bay and Massachusetts Bay, Stellwagen Bank, Cape Anne, and Jeffreys Ledge (LaBrecque *et al.* (2015a, 2015b)) LaBrecque *et al.* (2015b) delineated a feeding area for sei whales in the northeast Atlantic between the 25-meter contour off coastal Maine and Massachusetts to the 200-meter contour in central Gulf of Maine, including the northern shelf break area of Georges Bank. The feeding area also includes the southern shelf break area of Georges Bank from 100 to 2,000 m and the Great South Channel. Feeding activity is concentrated from May through November with a peak in July and August. LaBrecque *et al.* (2015b) identified three feeding areas for fin whales in the North Atlantic within the AFTT Study Area: (1) June to October in the northern Gulf of Maine; (2) year-round in the southern Gulf of Maine, and (3) March to October east of Montauk Point. LaBrecque *et al.* (2015b) delineated a humpback whale feeding area in the Gulf of Maine, Stellwagen Bank, and Great South Channel.

NARW BIAs—East Coast Within the AFTT Study Area

LaBrecque *et al.* (2015b) identified three seasonal NARW feeding areas BIAs located in or near the AFTT Study Area (1) February to April on Cape Cod Bay and Massachusetts Bay (2) April to June in the Great South Channel and on the northern edge of Georges Bank, and (3) June to July and October to December on Jeffreys Ledge in the western Gulf of Maine. A mating BIA was identified in the central Gulf of Maine (from November through January), a calving BIA in the southeast Atlantic (from mid-November to late April) and the migratory corridor area BIA along the U.S. East Coast between the NARW southern calving grounds and northern feeding areas (see Figure 11.2–1 and 11.2–2 of the Navy's rulemaking and LOA application for how these BIAs overlap with Navy OPAREAs).

Harbor Porpoise BIA—East Coast Within the AFTT Study Area

LaBrecque *et al.* (2015b) identified a small and resident population BIA for harbor porpoise in the Gulf of Maine (see Figure 11.2–1 of the Navy's rulemaking and LOA application). From July to September, harbor porpoises are concentrated in waters less than 150 m deep in the northern Gulf of Maine and southern Bay of Fundy. During fall (October to December) and spring (April to June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south (LaBrecque *et al.,* 2015b).

Bottlenose Dolphin BIAs—East Coast Within the AFTT Study Area

LaBrecque *et al.* (2015b) identified nine small and resident bottlenose dolphin population areas within estuarine areas along the east coast of the U.S. (see Figure 11.2–2 of the Navy's rulemaking and LOA application). These areas include estuarine and nearshore areas extending from Pamlico Sound, North Carolina down to Florida Bay, Florida (LaBrecque *et al.,* 2015b). The Northern North Carolina Estuarine System, Southern North Carolina Estuarine System, and Charleston Estuarine System populations partially overlap with nearshore portions of the Navy Cherry Point Range Complex and Jacksonville Estuarine System Populations partially overlaps with nearshore portions of the Jacksonville Range Complex. The Southern Georgia Estuarine System Population area also overlaps with the Jacksonville Range Complex, specifically within Naval Submarine Base Kings Bay, Kings Bay, Georgia and includes estuarine and intercoastal waterways from Altamaha Sound, to the Cumberland River (LaBrecque *et al.,* 2015b). The remaining four BIAs are outside but adjacent to the AFTT Study Area boundaries.

Bottlenose Dolphin BIAs—Gulf of Mexico Within the AFTT Study Area

LaBrecque *et al.* (2015) also described 11 year-round BIAs for small and resident estuarine stocks of bottlenose dolphin that primarily inhabit inshore waters of bays, sounds, and estuaries (BSE) in the Gulf of Mexico (see Figure 11.2–3 in the Navy's rulemaking and LOA application). Of the 11 BIAs identified for the BSE bottlenose dolphins in the Gulf of Mexico, three overlap with the Gulf of Mexico Range Complex (Aranas Pass Area, Texas; Mississippi Sound Area, Mississippi; and St. Joseph Bay Area, Florida), while eight are located adjacent to the AFTT Study Area boundaries.

Bryde's Whale BIA—Gulf of Mexico Within the AFTT Study Area

The Gulf of Mexico Bryde's whale is a very small population that is genetically distinct from other Bryde's whales and not genetically diverse

within the Gulf of Mexico (Rosel and Wilcox, 2014). Further, the species is typically observed only within a narrowly circumscribed area within the eastern Gulf of Mexico. Therefore, this area is described as a year-round BIA by LaBrecque *et al.* (2015). Although survey effort has covered all oceanic waters of the U.S. Gulf of Mexico, whales were observed only between approximately the 100- and 300-m isobaths in the eastern Gulf of Mexico from the head of the De Soto Canyon (south of Pensacola, Florida) to northwest of Tampa Bay, Florida (Maze-Foley and Mullin, 2006; Waring *et al.,* 2016; Rosel and Wilcox, 2014; Rosel *et al.,* 2016). Rosel *et al.* (2016) expanded this description by stating that, due to the depth of some sightings, the area is more appropriately defined to the 400-m isobath and westward to Mobile Bay, Alabama, in order to provide some buffer around the deeper sightings and to include all sightings in the northeastern Gulf of Mexico.

National Marine Sanctuaries

Under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (also known as the National Marine Sanctuaries Act (NMSA)), NOAA can establish as national marine sanctuaries (NMS) areas of the marine environment with special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities. Sanctuary regulations prohibit destroying, causing the loss of, or injuring any sanctuary resource managed under the law or regulations for that sanctuary (15 CFR part 922). NMS are managed on a site-specific basis, and each sanctuary has site-specific regulations. Most, but not all sanctuaries have site-specific regulatory exemptions from the prohibitions for certain military activities. Additionally, section 304(d) of the NMSA requires Federal agencies to consult with the NOAA Office of National Marine Sanctuaries whenever their Proposed Activity are likely to destroy, cause the loss of, or injure a sanctuary resource.

Three NMS are in the vicinity of or overlap with the AFTT Study Area including the Gerry E. Studds Stellwagen Bank National Marine Sanctuary (Stellwagen Bank NMS), Gray's Reef National Marine Sanctuary (Gray's Reef NMS), and Florida Keys National Marine Sanctuary (Florida Keys NMS). Stellwagen Bank NMS sits at the mouth of Massachusetts Bay, just three miles south of Cape Ann, three miles north of Cape Cod and 25 mi due east of Boston and provides feeding and nursery grounds for marine mammals including NARW, humpback, sei, and fin whales. The Stellwagen Bank NMS is within critical habitat for the NARW for foraging (Unit 1). Gray's Reef NMS is 19 mi east of Sapelo Island Georgia, in the South Atlantic Bight (the offshore area between Cape Hatteras, North Carolina and Cape Canaveral, Florida) and is within the designated critical habitat for NARW calving in the southeast (Unit 2). Florida Keys NMS protects 2,900 nmi^2 of waters surrounding the Florida Keys, from south of Miami westward to encompass the Dry Tortugas, excluding Dry Tortugas National Park and supports a resident group of bottlenose dolphin (Florida Bay Population BIA). Two additional sanctuaries, Flower Gardens NMS in the Gulf of Mexico and Monitor NMS off of North Carolina, were determined by the Navy as unnecessary to consult on based on the lack of impacts to sanctuary resources for section 304(d) under NMSA and therefore not discussed further.

Unusual Mortality Events (UME)

A UME is defined under Section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1991 to the present, there have been 34 formally recognized UMEs affecting marine mammals along the Atlantic Coast and the Gulf of Mexico involving species under NMFS's jurisdiction. The NARW, humpback whale, and minke whale UMEs on the Atlantic Coast are still active and involve ongoing investigations and the impacts to Barataria Bay bottlenose dolphins from the expired UME associated with the Deepwater Horizon (DWH) oil spill in the Gulf of Mexico are thought to be persistent and continue to inform population analyses. The other UMEs expired several years ago and little is known about how the effects of those events might be appropriately applied to an impact assessment several years later. The three UMEs that could inform the current analysis are discussed below.

NARW UME

Since June 7, 2017, elevated mortalities of NARW have occurred. A total of 16 confirmed dead stranded NARW (12 in Canada; 4 in the United States), and five live whale entanglements in Canada have been documented to date predominantly in the Gulf of St. Lawrence region of Canada and around the Cape Cod area of Massachusetts. An additional whale stranded in the United States in April 2017 prior to the start of the UME bringing the annual 2017 total to 17 confirmed dead stranded whales (12 in Canada; 5 in the United States) as of December 5, 2017. Historically (2006–2016), the annual average for dead strandings in Canada and the United States combined is 3.8 whales per year. This event was declared a UME and is under investigation. Full necropsy examinations have been conducted on 11 of the 17 whales and final results from the examinations are pending. Necropsy results from six of the Canadian whales suggest mortalities of four whales were compatible with blunt trauma likely caused by vessel collision and one mortality confirmed from chronic entanglement in fishing gear. The sixth whale was too decomposed to determine the cause of mortality, but some observations in this animal suggested blunt trauma. A seventh necropsy has been performed, but the results are not currently available (Daoust *et al.,* 2017). Daoust *et al.* (2017) also concluded there were no oil and gas seismic surveys authorized in the months prior to or during the period over which these mortalities occurred, as well as no blasting or major marine development projects. All of the NARW that stranded in the United States that are part of the UME have been significantly decomposed at the time of stranding, and investigations have been limited. Sonar has not been investigated for the mortalities in the United States.

As part of the UME investigation process, an independent team of scientists (Investigative Team) was assembled to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample future whales that strand and to determine the next steps for the investigation. For more information on this UME, please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2018-north-atlantic-right-whale-unusual-mortality-event.*

Humpback Whale UME Along the Atlantic Coast

Since January 2016, elevated mortalities of humpback whales along the Atlantic coast from Maine through North Carolina have occurred. As of December 1, 2017 a total of 58 humpback strandings have occurred (26 and 32 whales in 2016 and 2017, respectively). As of April 2017, partial or full necropsy examinations were conducted on 20 cases, or approximately half of the 42 strandings (at that time). Of the 20 whales examined, 10 had evidence of blunt force trauma or pre-mortem propeller wounds indicative of vessel strike,

which is over six times above the 16-year average of 1.5 whales showing signs of vessel strike in this region. Vessel strikes were documented for stranded humpback whales in Virginia (3), New York (3), Delaware (2), Massachusetts (1) and New Hampshire (1). NOAA, in coordination with our stranding network partners, continues to investigate the recent mortalities, environmental conditions, and population monitoring to better understand the recent humpback whale mortalities. At this time, vessel parameters (including size) are not known for each vessel-whale collision that lead to the death of the whales. Therefore, NOAA considers all sizes of vessels to be risks for whale species in highly trafficked areas. This investigation is ongoing. Please refer to *http://www.nmfs.noaa.gov/pr/health/mmume/2017humpbackatlanticume.html* for more information on this UME.

Minke Whale UME Along the Atlantic Coast

Since January 2017, elevated mortalities of minke whale along the Atlantic coast from Maine through South Carolina have occurred. As of February 16, 2018, a total of 30 strandings have occurred (28 and 2 whales in 2017 and 2018, respectively). As of February 16, 2018 full or partial necropsy examinations were conducted on over 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions, primarily fisheries interactions, or infectious disease. These findings are not consistent across all of the whales examined, so more research is needed. This investigation is ongoing. Please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2018-minke-whale-unusual-mortality-event-along-atlantic-coast* for more information on this UME.

Cetacean UME in the Northern Gulf of Mexico and Persistent Impacts on Barataria Bay Bottlenose Dolphins

The cetacean UME in the northern Gulf of Mexico UME occurred from March 2010 through July 2014. The event included all cetaceans stranded during this time in Alabama, Mississippi, and Louisiana and all cetaceans other than bottlenose dolphins stranded in the Florida Panhandle (Franklin County through Escambia County), with a total of 1,141 cetaceans stranded or reported dead offshore. For reference, the same area experienced a normal average of 75 strandings per year from 2002–09 (Litz *et al.,* 2014). The majority of stranded animals were bottlenose dolphins, though at least ten additional species were reported as well. Since not all cetaceans that die wash ashore where they may be found, the number reported stranded is likely a fraction of the total number of cetaceans that died during the UME. There was also an increase in strandings of stillborn and newborn dolphins (Colegrove *et al.,* 2016).

Increased dolphin strandings occurred in northern Louisiana and Mississippi before the DWH oil spill (March–mid–April 2010). Some previous Gulf of Mexico cetacean UMEs had included environmental influences (*e.g.,* low salinity due to heavy rainfall and associated runoff of land-based pesticides, low temperatures) as possible contributing factors (Litz *et al.,* 2014). Low air and water temperatures occurred in the spring of 2010 throughout the Gulf of Mexico prior to and during the start of the UME, and a portion of the pre-spill atypical strandings occurred in Lake Pontchartrain, Louisiana, concurrent with lower than average salinity (Mullin *et al.,* 2015). Therefore, a large part of the increased dolphin strandings during this time may have been due to a combination of cold temperatures and low salinity (Litz *et al.,* 2014).

The UME investigation and the DWH Natural Resource Damage Assessment (described below) determined that the DWH oil spill is the most likely explanation of the persistent, elevated stranding numbers in the northern Gulf of Mexico after the spill that began on April 20, 2010. The evidence to date supports that exposure to hydrocarbons released during the DWH oil spill was the most likely explanation of adrenal and lung disease in dolphins, which contributed to increased deaths of dolphins living within the oil spill footprint and increased fetal loss. The longest and most prolonged stranding cluster of the UME was in Barataria Bay, Louisiana in 2010–11, followed by Mississippi and Alabama in 2011, consistent with timing and spatial distribution of oil, while the number of deaths was not elevated for areas which were not as heavily oiled.

In order to assess the health of free-ranging (not stranded) dolphin capture-release health assessments were conducted in Barataria Bay, during which physical examinations, including weighing and morphometric measurements, were conducted, routine biological samples (*e.g.,* blood, tissue) were obtained, and animals were examined with ultrasound. Veterinarians then reviewed the findings and determined an overall prognosis for each animal (*e.g.,* favorable outcome expected, outcome uncertain, unfavorable outcome expected). Almost half of the examined animals were given a guarded or worse prognosis, and 17 percent were not expected to survive (Schwacke *et al.,* 2014a). Comparison of Barataria Bay dolphins to a reference population found significantly increased adrenal disease, lung disease, and poor health. In addition to the health assessments, histological evaluations of samples from dead stranded animals from within and outside the UME area found that UME animals were more likely to have lung and adrenal lesions and to have primary bacterial pneumonia, which caused or contributed significantly to death (Schwacke *et al.,* 2014a, 2014b; Venn-Watson *et al.,* 2015b).

The prevalence of brucellosis and morbillivirus infections was low and biotoxin levels were low or below the detection limit, meaning that these were not likely primary causes of the UME (Venn-Watson *et al.,* 2015b; Fauquier *et al.,* 2017). Subsequent study found that persistent organic pollutants (*e.g.,* polychlorinated biphenyls), which are associated with endocrine disruption and immune suppression when present in high levels, are likely not a primary contributor to the poor health conditions and increased mortality observed in these Gulf of Mexico populations (Balmer *et al.,* 2015). The chronic adrenal gland and lung diseases identified in stranded UME dolphins are consistent with exposure to petroleum compounds (Venn-Watson *et al.,* 2015b). Colegrove *et al.* (2016) found that the increase in perinatal strandings resulted from late-term pregnancy failures and development of *in utero* infections likely caused by chronic illnesses in mothers who were exposed to oil.

While the number of dolphin mortalities in the area decreased after the peak from March 2010–July 2014, it does not follow that the effects of the oil spill on these populations have ended. Researchers still saw evidence of chronic lung disease and adrenal impairment four years after the spill (in July 2014) and saw evidence of failed pregnancies in 2015 (Smith *et al.,* 2017). These follow-up studies found a yearly mortality rate for Barataria Bay dolphins of roughly 13 percent (as compared to annual mortality rates of 5 percent or less that have been previously reported for other dolphin populations), and found that only 20 percent of pregnant dolphins produced viable calves (compared with 83 percent in a reference population) (Lane *et al.,* 2015; McDonald *et al.,* 2017). Research into the long-term health effects of the spill

on marine mammal populations is ongoing. For more information on the UME, please visit *www.nmfs.noaa.gov/pr/health/mmume/cetacean_gulfofmexico.htm.*

Marine Mammal Hearing

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

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz, with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 kHz to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

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 above and associated frequency ranges, please see NMFS (2016) for a review of available information.

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 of Marine Mammals'' 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 of Marine Mammals'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The Navy has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the AFTT Study Area. The Navy analyzed potential impacts to marine mammals from acoustics and explosives sources as well as vessel strikes.

Other potential impacts to marine mammals from training and testing activities in the AFTT Study Area were analyzed in the AFTT DEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal take in the form of harassment, serious injury, or mortality. Therefore, the Navy has not requested authorization for take of marine mammals that might occur incidental to other components of their proposed activities and we agree that take is unlikely to occur from those components. In this proposed rule, NMFS analyzes the potential effects on marine mammals from the activity components that may cause the take of marine mammals: Exposure to non-impulsive (sonar and other active acoustic sources) and impulsive (explosives, ship shock trials, impact pile driving, and airguns) stressors, and vessel strikes.

For the purpose of MMPA incidental take authorizations, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B harassment (behavioral harassment and temporary threshold shift (TTS)), Level A harassment (permanent threshold shift (PTS) or non-auditory injury), serious injury or mortality, including an identification of the number and types of take that could occur by harassment, serious injury, or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity would adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the AFTT Study Area, so this determination is inapplicable to the AFTT rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Effects Section, NMFS' provides a general description of the ways marine mammals may be affected by these activities in the form of mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. Ship shock and vessel strikes, which have the potential to result in incidental take from serious injury and/or mortality, will be discussed in more detail in the ''Estimated Take of Marine Mammals'' section. The Estimated Take of Marine Mammals section also discusses how the potential effects on marine mammals from non-impulsive and impulsive sources relate to the MMPA definitions of Level A and Level B Harassment, and quantifies those effects that rise to the level of a take along with

the potential effects from vessel strikes. The Negligible Impact Analysis Section assesses whether the proposed authorized take will have a negligible impact on the affected species and stocks.

Potential Effects of Underwater Sound

Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the Navy's activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We also describe more severe effects (*i.e.,* certain non-auditory physical or physiological effects). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015).

Acoustic Sources

Direct Physiological Effects

Based on the literature, there are two basic ways that non-impulsive sources might directly result in direct physiological effects. Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') is the both the better-understood of these two effects, and the only one that is actually expected to occur. Acoustically mediated bubble growth and other pressure-related physiological impacts are addressed briefly below, but are not expected to result from the Navy's activities. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding Section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity within their auditory range (*i.e.,* sounds must be louder for an animal to detect them) following exposure to a sufficiently intense sound or a less intense sound for a sufficient duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience a temporary threshold shift (TTS) and/or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is recovery back to baseline/pre-exposure levels), can occur within a specific frequency range (*i.e.,* an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). PTS is permanent (*i.e.,* there is incomplete recovery back to baseline/pre-exposure levels), but also can occur in a specific frequency range and amount as mentioned above for TTS. In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. Generally, the amount of TS, and the time needed to recover from the effect, increase as amplitude and duration of sound exposure increases. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same SEL) produce equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). However, some more recent studies concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels (Mooney *et al.,* 2009a and 2009b; Kastak *et al.,* 2007). These studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential

impacts. Generally, with sound exposures of equal energy, those that were quieter (lower SPL) with longer duration were found to induce TTS onset at lower levels than those of louder (higher SPL) and shorter duration. Less TS will occur from intermittent sounds than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997; Mooney *et al.,* 2009a, 2009b; Finneran *et al.,* 2010). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer (lower SPL) sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or repeated exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold can cause PTS, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.,* 1987).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. The NMFS 2016 Acoustic Technical Guidance, which was used in the assessment of effects for this action, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing, as noted above. For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (summarized in Finneran, 2015). TTS studies involving exposure to other Navy activities (*e.g.,* SURTASS LFA) or other low-frequency sonar (below 1 kHz) have never been conducted due to logistical difficulties of conducting experiments with low frequency sound sources. However, there are TTS measurements for exposures to other LF sources, such as seismic airguns. Finneran *et al.* (2015) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-frequency hearing ability of dolphins. Finneran et al. (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in the study). The authors note that the failure to induce more significant auditory effects was likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans. For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, and California sea lions (summarized in Finneran, 2015).

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious 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 a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to high levels of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than simple existence of a TTS. However, it is important to note that TTS could occur due to longer exposures to sound at lower levels so that a behavioral response may not be elicited.

Depending on the degree and frequency range, the effects of PTS on an animal could also range in severity, although it is considered generally more serious than TTS because it is a permanent condition. Of note, 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 some cost to the animal.

Acoustically Mediated Bubble Growth and Other Pressure-Related Injury

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration (in combination with the source levels) of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by

high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with *ex vivo* supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB referenced to (re) 1 μPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 μPa at 1 m, a whale would need to be within 10 m (33 ft) of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Houser *et al.,* 2001; Saunders *et al.,* 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings. Both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.,* 2006; Rommel *et al.,* 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). Work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Rommel *et al.,* 2006). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be relatively vulnerable to MF/HF sonar exposures.

In 2009, Hooker *et al.* tested two mathematical models to predict blood and tissue tension N2 (P_{N2}) using field data from three beaked whale species: Northern bottlenose whales, Cuvier's beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N2} levels and thereby decompression sickness risk between species.

In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.,* 2006, 2008) from Cuvier's beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N2}. Also, results showed that dive profiles had a larger influence on end-dive P_{N2} than body mass differences between species. Despite diel changes (*i.e.,* variation that occurs regularly every day or most days) in dive behavior, P_{N2} levels showed no consistent trend. Model output suggested that all three species live with tissue P_{N2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of Cuvier's beaked whale was different from both Blainville's beaked whale, and northern bottlenose whale, and resulted in higher predicted tissue and blood N2 levels (Hooker *et al.,* 2009) and suggested that the prevalence of Cuvier's beaked whales stranding after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas or by possible species differences in behavior and/or physiology related to MF active sonar (Hooker *et al.,* 2009).

Bernaldo de Quiros *et al.* (2012) showed that, among stranded whales, deep diving species of whales had higher abundances of gas bubbles compared to shallow diving species. Kvadsheim *et al.* (2012) estimated blood and tissue P_{N2} levels in species representing shallow, intermediate, deep diving cetaceans following behavioral responses to sonar and their comparisons found that deep diving species had higher end-dive blood and tissue N_2 levels, indicating a higher risk of developing gas bubble emboli compared with shallow diving species. Fahlmann *et al.* (2014) evaluated dive data recorded from sperm, killer, long-finned pilot, Blainville's beaked and Cuvier's beaked whales before and during exposure to low, as defined by the authors, (1–2 kHz) and mid (2–7 kHz) frequency active sonar in an attempt to determine if either differences in dive behavior or physiological responses to sonar are plausible risk factors for bubble formation. The authors suggested that CO_2 may initiate bubble formation and growth, while elevated levels of N_2 may be important for continued bubble growth. The authors also suggest that if CO_2 plays an important role in bubble formation, a cetacean escaping a sound source may experience increased metabolic rate, CO_2 production, and alteration in cardiac output, which could increase risk of gas bubble emboli. However, as discussed in Kvadsheim *et al.* (2012), the actual observed behavioral responses to sonar from the species in their study (sperm, killer, long-finned pilot, Blainville's beaked, and Cuvier's beaked whales) did not imply any significantly increased risk of decompression sickness due to high levels of N_2. Therefore, further information is needed to understand the relationship between exposure to stimuli, behavioral response (discussed in more detail below), elevated N_2 levels, and gas bubble emboli in marine mammals. The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MF active sonars because they sound similar to their main

predator, the killer whale (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Baird *et al.,* 2008; Hooker *et al.,* 2009). Further investigation is needed to assess the potential validity of these hypotheses.

To summarize, there is little data to support the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Such effects, if they occur at all, would be expected to be limited to situations where marine mammals were exposed to high powered sounds at very close range over a prolonged period of time, which is not expected to occur based on the speed of the vessels operating sonar in combination with the speed and behavior of marine mammals in the vicinity of sonar.

Acoustic Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

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

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009; Matthews *et al.,* 2016) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

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

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.,* surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals. Holt *et al.* (2009) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005).

Parks *et al.* (2007) provided evidence of behavioral changes in the acoustic behaviors of the endangered North Atlantic right whale, and the South Atlantic southern right whale, and suggested that these were correlated to increased underwater noise levels. The study indicated that right whales might shift the frequency band of their calls to compensate for increased in-band background noise. The significance of

their result is the indication of potential species-wide behavioral change in response to gradual, chronic increases in underwater ambient noise. Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with survey than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

Risch *et al.* (2012) documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km (124 mi) from the source. The recorded OAWRS produced a series of frequency modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 µPa (Risch, *et al.,* 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.,* 2012). Thus, the novelty of the sound to humpback whales in the AFTT Study Area provided a compelling contextual probability for the observed effects (Risch *et al.,* 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.,* 2012).

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

The functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater all overlap the frequencies of the sonar sources used in the Navy's LFAS/MFAS/HFAS training and testing exercises. Additionally, almost all species' vocal repertoires span across the frequencies of these sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. Although hull-mounted sonar accounts for a large portion of the area ensonified by Navy activities (because of the source strength and number of hours it is conducted), the pulse length and low duty cycle of the MFAS/HFAS signal makes it less likely that masking would occur as a result.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most species that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996). For example in birds, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006).

Stress Response

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

According to Moberg (2000), in the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest, 1991), altered metabolism (Elasser *et al.,* 2000),

reduced immune competence (Blecha, 2000), and behavioral disturbance (Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle, 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000).

There is limited information on the physiological responses of marine mammals to anthropogenic sound exposure, as most observations have been limited to short-term behavioral responses, which included cessation of feeding, resting, or social interactions. Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; Wright *et al.,* 2008). Various efforts have been undertaken to investigate the impact from vessels (both whale-watching and general vessel traffic noise), and demonstrated impacts do occur (Bain, 2002; Erbe, 2002; Noren *et al.,* 2009; Williams *et al.,* 2006, 2009, 2014a, 2014b; Read *et al.,* 2014; Rolland *et al.,* 2012; Pirotta *et al.,* 2015). This body of research for the most part has investigated impacts associated with the presence of chronic stressors, which differ significantly from the proposed Navy training and testing activities in the AFTT Study Area. For example, in an analysis of energy costs to killer whales, Williams *et al.* (2009) suggested that whale-watching in Canada's Johnstone Strait resulted in lost feeding opportunities due to vessel disturbance, which could carry higher costs than other measures of behavioral change might suggest. Ayres *et al.* (2012) recently reported on research in the Salish Sea (Washington state) involving the measurement of southern resident killer whale fecal hormones to assess two potential threats to the species recovery: Lack of prey (salmon) and impacts to behavior from vessel traffic. Ayres *et al.* (2012) suggested that the lack of prey overshadowed any population-level physiological impacts on southern resident killer whales from vessel traffic. 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. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality (NRC, 2005). The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this very topic (ONR, 2009). Ultimately, the PCAD working group issued a report (Cochrem, 2014) that summarized information compiled from 239 papers or book chapters relating to stress in marine mammals and concluded that stress responses can last from minutes to hours and, while we typically focus on adverse stress responses, stress response is part of a natural process to help animals adjust to changes in their environment and can also be either neutral or beneficial.

Despite the lack of robust information on stress responses for marine mammals exposed to anthropogenic sounds, studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans *(e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiological stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Behavioral Response/Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007, DeRuiter *et al.,* 2013). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate

factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone. For example, Goldbogen *et al.* (2013) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that some individuals engaged in deep (≤50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when RLs were high (~160 dB re 1µPa) for exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower RLs of sonar and pseudorandom noise.

Studies by DeRuiter *et al.* (2012) 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. Another study by DeRuiter *et al.* (2013) examined behavioral responses of Cuvier's beaked whales to MF sonar and found that whales responded strongly at low received levels (RL of 89–127 dB re 1µPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4–9.5 km away. Importantly, this study also showed that whales exposed to a similar range of RLs (78–106 dB re 1µPa) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context may moderate reactions.

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the new method for predicting Level B harassment proposed in this document does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a 5-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable response: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2012 and 2013; Ellison *et al.,* 2012) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Southall *et al.* (2016) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predicable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Predictions about of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors.

Flight Response

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). In addition to the limited data on flight response for marine mammals, there are examples of this response in terrestrial species. For instance, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid, 2001), hauled-out ringed seals *Phoca hispida* (Born *et al.,* 1999), Pacific brant (*Branta bernicl nigricans*), and Canada geese (B. Canadensis) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Response to Predator

Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a

possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

Alteration of Diving or Movement

Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them. Lastly, as noted previously, DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales showing the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away while showing no such reaction to the same signal when the signal was 118 km away even though the RLs were similar.

Due to past incidents of beaked whale strandings associated with sonar operations, feedback paths are provided between avoidance and diving and indirect tissue effects. This feedback accounts for the hypothesis that variations in diving behavior and/or avoidance responses can possibly result in nitrogen tissue supersaturation and nitrogen off-gassing, possibly to the point of deleterious vascular bubble formation (Jepson *et al.,* 2003). Although hypothetical, discussions surrounding this potential process are controversial.

Foraging

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. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.,* 2007). Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006a; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that airgun surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received SPLs were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Blue whales exposed to simulated mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, Melcón *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.,* 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 µPa (Melcón *et al.,* 2012). Results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011; Southall *et al.,* 2012b). A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.,* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed simulated MFA sonar. Responses varied depending on

behavioral context, with some deep feeding whales being more significantly affected (*i.e.,* generalized avoidance; cessation of feeding; increased swimming speeds; or directed travel away from the source) compared to surface feeding individuals that typically showed no change in behavior. Some non-feeding whales also seemed to be affected by exposure. The authors indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Breathing

Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Social Relationships

Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (*e.g.,* caused avoidance, masking, etc.). Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent, and becoming difficult to approach (Watkins *et al.,* 1985). In contrast, sperm whales in the Mediterranean that were exposed to submarine sonar continued calling (J. Gordon pers. comm. cited in Richardson *et al.,* 1995). Long-finned pilot whales exposed to three types of disturbance—playbacks of killer whale sounds, naval sonar exposure, and tagging all resulted in increased group sizes (Visser *et al.,* 2016). In response to sonar, pilot whales also spent more time at the surface with other members of the group (Visser *et al.,* 2016). However, social disruptions must be considered in context of the relationships that are affected. While some disruptions may not have deleterious effects, others, such as long-term or repeated disruptions of mother/calf pairs or interruption of mating behaviors, have the potential to affect the growth and survival or reproductive effort/success of individuals.

Vocalizations (Also See Masking Section)

Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007; Roland *et al.,* 2012). Killer whales off the northwestern coast of the U.S. have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014b). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale communication was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during an airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the AFTT Study Area. This displacement persisted for a time period well beyond the 10-day duration of airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 micropascal squared per second (µPa2-s) caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the seismic vessel (estimated received level 143 dB re 1 µPa peak-to-peak). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey.

Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute cSEL of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). Captive bottlenose dolphins sometimes vocalized after an exposure to impulse sound from a seismic watergun (Finneran *et al.,* 2010a). These studies demonstrate that even low levels of noise received far from the noise source can induce behavioral responses.

Avoidance

Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. However, longer term displacement is possible and can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007). Gray whales have been reported deflecting from customary migratory paths in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active airgun array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000a).

In 1998, the Navy conducted a Low Frequency Sonar Scientific Research Program (LFS SRP) specifically to study behavioral responses of several species of marine mammals to exposure to LF sound, including one phase that focused on the behavior of gray whales to low frequency sound signals. The objective of this phase of the LFS SRP was to determine whether migrating gray whales respond more strongly to received levels (RL), sound gradient, or distance from the source, and to compare whale avoidance responses to an LF source in the center of the migration corridor versus in the offshore portion of the migration corridor. A single source was used to broadcast LFA sonar sounds at RLs of 170–178 dB re 1μPa. The Navy reported that the whales showed some avoidance responses when the source was moored one mile (1.8 km) offshore, and located within in the migration path, but the whales returned to their migration path when they were a few kilometers beyond the source. When the source was moored two miles (3.7 km) offshore, responses were much less even when the source level was increased to achieve the same RLs in the middle of the migration corridor as whales received when the source was located within the migration corridor (Clark *et al.,* 1999). In addition, the researchers noted that the offshore whales did not seem to avoid the louder offshore source.

Also during the LFS SRP, researchers sighted numerous odontocete and pinniped species in the vicinity of the sound exposure tests with LFA sonar. The MF and HF hearing specialists present in the AFTT Study Area showed no immediately obvious responses or changes in sighting rates as a function of source conditions. Consequently, the researchers concluded that none of these species had any obvious behavioral reaction to LFA sonar signals at received levels similar to those that produced only minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists). Thus, for odontocetes, the chances of injury and/or significant behavioral responses to LFA sonar for AFTT would be low given the MF/HF specialists' observed lack of response to LFA sounds during the LFS SRP and due to the MF/HF frequencies to which these animals are adapted to hear (Clark and Southall, 2009).

Maybaum (1993) conducted sound playback experiments to assess the effects of MFAS on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: A 1.0 second upsweep 209 dB @1–2 kHz every 10 seconds for 10 minutes; Source B: With a 1.0 second upsweep 197 dB @6–7 kHz every 10 seconds for 10 minutes). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, where killer whales cooperatively herd fish schools into a tight ball towards the surface and feed on the fish which have been stunned by tailslaps and subsurface feeding (Simila, 1997), ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the killer whales were consistent with the results of other studies.

Southall *et al.* (2007) reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables. Such

data were reviewed and sometimes used for qualitative illustration, but no quantitative criteria were recommended for behavioral responses. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. LFAS/MFAS/HFAS are considered non-pulse sounds. Southall *et al.* (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the following paragraphs below).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB re: 1 μPa range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB re: 1 μPa, while in other cases these responses were not seen in the 120 to 150 dB re: 1 μPa range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~ 90 to 120 dB re: 1 μPa), at least for initial exposures. All recorded exposures above 140 dB re: 1 μPa induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There are no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises.

The studies that address the responses of pinnipeds in water to non-impulsive sounds include data gathered both in the field and the laboratory and related to several different sound sources including: AHDs, ATOC, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB re: 1 μPa generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

In 2007, the first in a series of behavioral response studies (BRS) on deep diving odontocetes conducted by NMFS, Navy, and other scientists showed one Blainville's beaked whale responding to an MFAS playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to MF signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn. Tyack *et al.* (2011) also indicates that Blainville's beaked whales appear to be sensitive to noise at levels well below expected TTS (~160 dB re1μPa). This sensitivity was manifested by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MFAS, which suggests that beaked whales may not respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in this frequency range of the MF active sonar transmission. The response to such stimuli appears to involve the beaked whale increasing the distance between it and the sound source. Overall the results from the 2007–2008 study conducted showed a change in diving behavior of the Blainville's beaked whale to playback of MFAS and predator sounds (Boyd *et al.,* 2008; Southall *et al.* 2009; Tyack *et al.,* 2011).

Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated MFAS. Received levels of sonar on the tag increased to a maximum of 138 dB re 1μPa, which occurred during the first exposure dive. Some sonar received levels could not be measured due to flow noise and surface noise on the tag.

Reaction to mid-frequency sounds included premature cessation of clicking and termination of a foraging dive, and a slower ascent rate to the surface. Results from a similar behavioral response study in southern California waters have been presented for the 2010–2011 field season (Southall *et al.* 2011; DeRuiter *et al.,* 2013b). DeRuiter *et al.* (2013b) presented results from two Cuvier's beaked whales that were tagged and exposed to simulated MFAS during the 2010 and 2011 field seasons of the southern California behavioral response study. The 2011 whale was also incidentally exposed to MFAS from a distant naval exercise. Received levels from the MFAS signals from the controlled and incidental exposures were calculated as 84–144 and 78–106 dB re 1 μPa root mean square (rms), respectively. Both whales showed responses to the controlled exposures, ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source. However, the authors did not

detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. Specifically, this result suggests that caution is needed when using marine mammal response data collected from smaller, nearer sound sources to predict at what received levels animals may respond to larger sound sources that are significantly farther away—as the distance of the source appears to be an important contextual variable and animals may be less responsive to sources at notably greater distances. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Similarly, beaked whales exposed to sonar during British training exercises stopped foraging (DSTL, 2007), and preliminary results of controlled playback of sonar may indicate feeding/foraging disruption of killer whales and sperm whales (Miller *et al.,* 2011).

In the 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction, which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area (Boyd *et al.,* 2008; Southall *et al.,* 2009; Tyack *et al.,* 2011). The authors noted, however, that the magnified reaction to the predator sounds could represent a cumulative effect of exposure to the two sound types since killer whale playback began approximately two hours after MF source playback. Pilot whales and killer whales off Norway also exhibited horizontal avoidance of a transducer with outputs in the mid-frequency range (signals in the 1–2 kHz and 6–7 kHz ranges) (Miller *et al.,* 2011). Additionally, separation of a calf from its group during exposure to MFAS playback was observed on one occasion (Miller *et al.,* 2011; 2012). Miller *et al.* (2012) noted that this single observed mother-calf separation was unusual for several reasons, including the fact that the experiment was conducted in an unusually narrow fjord roughly one km wide and that the sonar exposure was started unusually close to the pod including the calf. Both of these factors could have contributed to calf separation. In contrast, preliminary analyses suggest that none of the pilot whales or false killer whales in the Bahamas showed an avoidance response to controlled exposure playbacks (Southall *et al.,* 2009).

In the 2010 BRS study, researchers again used controlled exposure experiments (CEE) to carefully measure behavioral responses of individual animals to sound exposures of MF active sonar and pseudo-random noise. For each sound type, some exposures were conducted when animals were in a surface feeding (approximately 164 ft (50 m) or less) and/or socializing behavioral state and others while animals were in a deep feeding (greater than 164 ft (50 m)) and/or traveling mode. The researchers conducted the largest number of CEEs on blue whales (n = 19) and of these, 11 CEEs involved exposure to the MF active sonar sound type. For the majority of CEE transmissions of either sound type, they noted few obvious behavioral responses detected either by the visual observers or on initial inspection of the tag data. The researchers observed that throughout the CEE transmissions, up to the highest received sound level (absolute RMS value approximately 160 dB re: 1μPa with signal-to-noise ratio values over 60 dB), two blue whales continued surface feeding behavior and remained at a range of around 3,820 ft (1,000 m) from the sound source (Southall *et al.,* 2011). In contrast, another blue whale (later in the day and greater than 11.5 mi (18.5 km; 10 nmi) from the first CEE location) exposed to the same stimulus (MFA) while engaged in a deep feeding/travel state exhibited a different response. In that case, the blue whale responded almost immediately following the start of sound transmissions when received sounds were just above ambient background levels (Southall *et al.,* 2011). The authors note that this kind of temporary avoidance behavior was not evident in any of the nine CEEs involving blue whales engaged in surface feeding or social behaviors, but was observed in three of the ten CEEs for blue whales in deep feeding/travel behavioral modes (one involving MFA sonar; two involving pseudo-random noise) (Southall *et al.,* 2011). The results of this study, as well as the results of the DeRuiter *et al.* (2013) study of Cuvier's beaked whales discussed above, further illustrate the importance of behavioral context in understanding and predicting behavioral responses.

Through analysis of the behavioral response studies, a preliminary overarching effect of greater sensitivity to all anthropogenic exposures was seen in beaked whales compared to the other odontocetes studied (Southall *et al.,* 2009). Therefore, recent studies have focused specifically on beaked whale responses to active sonar transmissions or controlled exposure playback of simulated sonar on various military ranges (Defence Science and Technology Laboratory, 2007; Claridge and Durban, 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Miller *et al.,* 2012; Southall *et al.,* 2011, 2012a, 2012b, 2013, 2014; Tyack *et al.,* 2011). In the Bahamas, Blainville's beaked whales located on the instrumented range will move off-range during sonar use and return only after the sonar transmissions have stopped, sometimes taking several days to do so (Claridge and Durban 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Moretti *et al.* (2014) used recordings from seafloor-mounted hydrophones at the Atlantic Undersea Test and Evaluation Center (AUTEC) to analyze the probability of Blainsville's beaked whale dives before, during, and after Navy sonar exercises.

Southall *et al.* (2016) indicates that results from Tyack *et al.* (2011); Miller *et al.* (2015), Stimpert *et al.* (2014), and DeRuiter *et al.* (2013) beaked whale studies all demonstrate clear, strong, and pronounced but varied behavioral changes including sustained avoidance with associated energetic swimming and cessation of feeding behavior at quite low received levels (~100 to 135 dB re 1Pa) for exposures to simulated or active MF military sonars (1 to 8 kHz) with sound sources approximately 2 to 5 km away.

Baleen whales have shown a variety of responses to impulse sound sources, including avoidance, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Southall, 2007). While most bowhead whales did not show active avoidance until within 8 km of seismic vessels (Richardson *et al.,* 1995), some whales avoided vessels by more than 20 km at received levels as low as 120 dB re 1 μPa rms. Additionally, Malme *et al.* (1988) observed clear changes in diving and respiration patterns in bowheads at ranges up to 73 km from seismic vessels, with received levels as low as 125 dB re 1 μPa.

Gray whales migrating along the U.S. west coast showed avoidance responses to seismic vessels by 10 percent of animals at 164 dB re 1 μPa, and by 90 percent of animals at 190 dB re 1 μPa, with similar results for whales in the Bering Sea (Malme 1986, 1988). In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates while resting or diving in western gray whales off the coast of Russia (Yazvenko *et al.,* 2007; Gailey *et al.,* 2007).

Humpback whales showed avoidance behavior at ranges of five to eight km from a seismic array during observational studies and controlled exposure experiments in western Australia (McCauley, 1998; Todd *et al.,* 1996). Todd found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland, but did see a trend of increased rates of net entanglement and a shift to a higher incidence of net entanglement closer to the noise source.

Orientation

A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

Continued Pre-disturbance Behavior and Habituation

Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities. In other circumstances, individual animals will respond to sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.,* 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), and animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated over time). Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds. Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback whales have generally habituated to the continuous and broad-band noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance. However, there is cause for concern where the habituation occurs in a potentially more harmful situation. For example, animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.,* 1993; Wiley *et al.,* 1995).

Aicken *et al.* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system used by the British Navy (the United States Navy considers this to be a mid-frequency source as it operates at frequencies greater than 1,000 Hz). During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales, Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Explosive Sources

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud

noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

Further Potential Effects of Behavioral Disturbance on Marine Mammal Fitness

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Mullner *et al.,* 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results in the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006).

Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Morete *et al.,* (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling). When vessels approached, the amount of time cows and calves spent resting and milling, respectively, declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand engaged in resting behavior just five percent of the time when vessels were within 300 m, compared with 83 percent of the time when vessels were not present. However, Heenehan *et al.* (2016) report that results of a study of the response of Hawaiian spinner dolphins to human disturbance suggest that the key factor is not the sheer presence or magnitude of human activities, but rather the directed interactions and dolphin-focused activities that elicit responses from dolphins at rest. This information again illustrates the importance of context in regard to whether an animal will respond to a stimulus. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.,* multiple surface vessels), or when they co-occur with times that an animal perceives increased risk *(e.g.,* when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. An example of this concept with terrestrial species involved bighorn sheep and Dall's sheep, which dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991). Vigilance has also been documented in pinnipeds at haul out sites where resting may be disturbed when seals become alerted and/or flush into the water due to a variety of disturbances, which may be anthropogenic (noise and/or visual stimuli) or due to other natural causes such as other pinnipeds (Richardson *et al.,* 1995; Southall *et al.,* 2007; VanBlaricom, 2010; and Lozano and Hente, 2014).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the physical condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1985). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,*

1988), caribou (*Rangifer tarandus caribou*) disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), and caribou disturbed by low-elevation military jet fights (Luick *et al.,* 1996, Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy). Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period in open-air, open-water enclosures in San Diego Bay did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels. An example of this concept with terrestrial species involved a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2 × 103kiloJoules/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Sharks Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer term habitat displacement strategy. For one population tourism only occurred in a part of the home range, however, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in short period). Last, in a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because an at-sea exercises last for multiple days does not necessarily mean that individual animals will be exposed to those exercises for multiple days or exposed in a manner that would result in a sustained behavioral response.

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. In this framework, behavioral and physiological changes can either have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or they can have no effect to vital rates (New *et al.,* 2014). In addition to outlining this general framework and compiling the relevant literature that supports it, authors have chosen four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, Ziphidae beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments for the majority of species, they are a critical first step towards being able to quantify the likelihood of a population level effect.

Stranding and Mortality

The definition for a stranding under title IV of the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat

relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of mass stranding events around the world between consisting of two or more individuals of Cuvier's beaked whales records between the International Whaling Commission (2005) show that a quarter (9 of 41) were associated with concurrent naval patrol, explosion, maneuvers, or MFAS. However, one stranding event was contemporaneous with and reasonably associated spatially with the use of seismic airguns. This event occurred in the Gulf of California, coincident with seismic reflection profiling by the R/V Maurice Ewing operated by Columbia University's Lamont-Doherty Earth Observatory and involved two Cuvier's beaked whales (Hildebrand, 2004). The vessel had been firing an array of 20 airguns with a total volume of 8,500 in3 (Hildebrand, 2004; Taylor *et al.,* 2004).

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar.

Strandings Associated With Impulsive Sound

Silver Strand

During a Navy training event on March 4, 2011 at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1-m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately five minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011 near Oceanside, California (3 days later and approximately 68 km north of the detonation, which might also have been related to this event. Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a U.S. Navy training or testing event involving impulsive energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy has reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with underwater explosives training and other training events are presented in the Proposed Mitigation section.

Kyle of Durness, Scotland

On July 22, 2011 a mass stranding event involving long-finned pilot whales occurred at Kyle of Durness, Scotland. An investigation by Brownlow *et al.* (2015) considered unexploded ordnance detonation activities at a Ministry of Defense bombing range, conducted by the Royal Navy prior to and during the strandings, as a plausible contributing factor in the mass stranding event. While Brownlow *et al.* (2015) concluded that the serial detonations of underwater ordnance were an influential factor in the mass stranding event (along with presence of a potentially compromised animal and navigational error in a topographically complex region) they also suggest that mitigation measures—which included observations from a zodiac only and by personnel not experienced in marine mammal observation, among other deficiencies—were likely insufficient to assess if cetaceans were in the vicinity of the detonations. The authors also cite information from the Ministry of Defense indicating ''an extraordinarily high level of activity'' (*i.e.,* frequency and intensity of underwater explosions) on the range in the days leading up to the stranding.

Strandings Associated With Active Sonar

Over the past 21 years, there have been five stranding events coincident with military MF active sonar use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). NMFS refers the reader to DoN (2013) for a report on these strandings associated with Navy sonar activities; Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event. Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its

final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical mid-frequency active sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy will abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or stranding whales are detected in certain circumstances.

Greece (1996)

Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel Alliance was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1μPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found. Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in historical records), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

Bahamas (2000)

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), seven animals died on the beach (five Cuvier's beaked whales, one Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or

constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Portugal (2000)

From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006, Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nmi (65 km) and at least 10 nmi (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about four hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.,* 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, 6 of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005).

Hanalei Bay (2004)

On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hrs. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf

to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the U.S. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.* (2007) suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately nine hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, NMFS consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.,* there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley *et al.,* 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota (but was similar to the events at Palmyra), which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples.

Spain (2006)

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The first three animals were located near the town of Mojacar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nmi (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as

a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (*e.g.,* acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006; Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: Gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as two kilometers) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between 100 and 400 m in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for Ziphius), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.,* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2007). Baird *et al.* (2008), in a beaked whale tagging study

off Hawaii, showed that deep dives are equally common during day or night, but ''bounce dives'' are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that ''bounce dives'' are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses could increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses could also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (See Behaviorally Mediated Bubble Growth Section), Southall *et al.,* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Strandings on the Atlantic Coast and the Gulf of Mexico

Stranding events, specifically UMEs that occurred on the Atlantic Coast and the Gulf of Mexico (inclusive of the AFTT Study Area) were previously discussed in the Description of Marine Mammals section.

Potential Effects of Vessel Strike

Vessel collisions with marine mammals, also referred to as vessel strikes or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the NARW, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. In an effort to reduce the number and severity of strikes of the endangered NARW, NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 knots (kn) near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by 80 to 90 percent. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death or serious injury (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79 percent) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between

8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward 100 percent above 15 kn.

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentage of Navy traffic relative to overall large shipping traffic are very small (on the order of two percent) and therefore represent a correspondingly smaller threat of potential ship strikes when compared to commercial shipping.

Over a period of 18 years from 1995 to 2012 there have been a total of 19 Navy vessel strikes in the AFTT Study Area. Eight of the strikes resulted in a confirmed death; but in 11 of the 19 strikes, the fate of the animal was unknown. It is possible that some of the 11 reported strikes resulted in recoverable injury or were not marine mammals at all, but another large marine species (*e.g.,* basking shark). However, it is prudent to consider that all of the strikes could have resulted in the death of a marine mammal. The maximum number of strikes in any given year was three strikes, which occurred in 2001 and 2004. The highest average number of strikes over any five year period was two strikes per year from 2001 to 2005. The average number of strikes for the entire 18-year period is 1.055 strikes per year. From 2009–2016 there has been a total of three whale strikes reported in the AFTT Study Area.

Between 2007 and 2009, the Navy developed and distributed additional training, mitigation, and reporting tools to Navy operators to improve marine mammal protection and to ensure compliance with permit requirements. In 2007, the Navy implemented Marine Species Awareness Training designed to improve effectiveness of visual observation for marine resources including marine mammals. In subsequent years, the Navy issued refined policy guidance on ship strikes in order to collect the most accurate and detailed data possible in response to a possible incident.

Marine Mammal Habitat

The Navy's proposed training and testing activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals, acoustic habitat (sound in the water column), water quality, and important habitat for marine mammals. Each of these components was considered in the AFTT DEIS/OEIS and was determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the AFTT DEIS/OEIS, NMFS has determined that the proposed training and training activities would not have adverse or long-term impacts on marine mammal habitat.

Effects to Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of airgun 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 acoustic sources 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. Changes in behavior of fish have been observed as a result of sound produced by explosives, with effect intensified in areas of hard substrate (Wright, 1982). Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. The abundances of various fish and invertebrates near the detonation point for explosives could be altered for a few hours before animals from surrounding areas repopulate the area; however, these populations would likely be replenished as waters near the detonation point are mixed with adjacent waters. Repeated exposure of individual fish to sounds from underwater explosions is not likely and most acoustic effects are expected to be short-term and localized. Long-term consequences for fish populations would not be expected. Several studies have demonstrated that airgun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017).

Some studies have shown no or slight reaction to airgun sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary. Investigators reported significant, short-term declines in commercial fishing catch rate of gadid fishes during and for up to five days after survey operations, but the catch rate subsequently returned to normal (Engas *et al.,* 1996; Engas and Lokkeborg, 2002); other studies have reported similar findings (Hassel *et al.,* 2004). However, even temporary effects to fish distribution patterns can impact their ability to carry out important life-history functions (Paxton *et al.,* 2017).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality and, in some studies, fish auditory systems have been damaged by airgun noise (McCauley *et al.,* 2003; Popper *et al.,* 2005; Song *et al.,* 2008). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen et al. (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. No mortality occurred to fish in any of these studies.

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 (an impulsive noise source, as are explosives and airguns) (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013). For seismic surveys, the sound source is constantly moving, and most fish would likely avoid the sound source prior to receiving sound of sufficient intensity to cause physiological or anatomical damage.

It is uncertain whether some permanent hearing loss over a part of a fish's hearing range would have long-term consequences for that individual. It is possible for fish to be injured or killed by an explosion. Physical effects from pressure waves generated by underwater sounds (*e.g.,* underwater explosions) could potentially affect fish within proximity of training or testing activities. The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ and tissue damage and internal bleeding (Keevin & Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin & Hempen, 1997; Wright, 1982). At the same distance from the source, larger fish are generally less susceptible to death or injury, elongated forms that are round in cross-section are less at risk than deep-bodied forms, and fish oriented sideways to the blast suffer the greatest impact (Edds-Walton & Finneran, 2006; O'Keeffe, 1984; O'Keeffe & Young, 1984; Wiley *et al.,* 1981; Yelverton *et al.,* 1975). Species with swim bladders have higher mortality than those without them (Continental Shelf Associates Inc., 2004; Goertner *et al.,* 1994).

Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Available data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect airgun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Cephalopods have a specialized sensory organ inside the head called a statocyst that may help an animal determine its position in space (orientation) and maintain balance (Budelmann, 1992). Packard et al. (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney et al. (2010) demonstrated that squid statocysts act as an accelerometer through which particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014).

Impacts to benthic communities from impulsive sound generated by active acoustic sound sources are not well documented. There are no published data that indicate whether threshold shift injuries or effects of auditory masking occur in benthic invertebrates, and there are little data to suggest whether sounds from seismic surveys would have any substantial impact on invertebrate behavior (Hawkins *et al.,* 2014), though some studies have indicated showed no short-term or long-term effects of airgun exposure (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007; 2008; Boudreau *et al.,* 2009). Exposure to airgun signals was found to significantly increase mortality in scallops, in addition to causing significant changes in behavioral patterns during exposure (Day *et al.,* 2017). However, the authors state that the observed levels of mortality were not beyond naturally occurring rates.

There is little information concerning potential impacts of noise on zooplankton populations. However, one recent study (McCauley *et al.,* 2017) investigated zooplankton abundance, diversity, and mortality before and after exposure to airgun noise, finding that the exposure resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after airgun exposure compared with controls for all taxa. The majority of taxa present were copepods and cladocerans; for these taxa, the range within which effects on abundance were detected was up to approximately 1.2 km. In order to have significant impacts on *r*-selected species such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned (McCauley *et al.,* 2017). Therefore, the large scale of effect observed here is of concern—particularly where repeated noise exposure is expected—and further study is warranted.

Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to airgun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in a given area would be temporary avoidance of the area. Surveys using towed airgun arrays move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of most surveys and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

Acoustic Habitat

Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays), or for Navy training and testing purposes (as in the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and loudness and these characteristics greatly influence the potential habitat-

mediated effects to marine mammals (please also see the previous discussion on ''Masking''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2009; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

The term ''listening area'' refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of communication space concerns the area over which a specific animal signal, used to communicate with conspecifics in biologically-important contexts (*e.g.,* foraging, mating), can be heard, in noisier relative to quieter conditions (Clark *et al.,* 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.,* 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.,* Francis and Barber, 2013; Slabbekoorn *et al.,* 2010) as well as survivorship consequences in several species (*e.g.,* Simpson *et al.,* 2014; Nedelec *et al.,* 2015).

Sound produced from training and testing activities in the AFTT Study Area is temporary and transitory. The sounds produced during training and testing activities can be widely dispersed or concentrated in small areas for varying periods. Any anthropogenic noise attributed to training and testing activities in the AFTT Study Area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

The AFTT DEIS/OEIS analyzed the potential effects on water quality from military expended materials. Training and testing activities may introduce water quality constituents into the water column. Based on the analysis of the AFTT DEIS/OEIS, military expended materials (*e.g.,* undetonated explosive materials) would be released in quantities and at rates that would not result in a violation of any water quality standard or criteria. High-order explosions consume most of the explosive material, creating typical combustion products. For example, in the case of Royal Demolition Explosive, 98 percent of the products are common seawater constituents and the remainder is rapidly diluted below threshold effect level. Explosion by-products associated with high order detonations present no secondary stressors to marine mammals through sediment or water. However, low order detonations and unexploded ordnance present elevated likelihood of impacts on marine mammals.

Indirect effects of explosives and unexploded ordnance to marine mammals via sediment is possible in the immediate vicinity of the ordnance. Degradation products of Royal Demolition Explosive are not toxic to marine organisms at realistic exposure levels (Rosen & Lotufo, 2010). Relatively low solubility of most explosives and their degradation products means that concentrations of these contaminants in the marine environment are relatively low and readily diluted. Furthermore, while explosives and their degradation products were detectable in marine sediment approximately 6–12 in (0.15–0.3 m) away from degrading ordnance, the concentrations of these compounds were not statistically distinguishable from background beyond 3–6 ft (1–2 m) from the degrading ordnance. Taken together, it is possible that marine mammals could be exposed to degrading explosives, but it would be within a very small radius of the explosive (1–6 ft (0.3–2 m)).

Equipment used by the Navy within the AFTT Study Area, including ships and other marine vessels, aircraft, and other equipment, are also potential sources of by-products. All equipment is properly maintained in accordance with applicable Navy or legal requirements. All such operating equipment meets Federal water quality standards, where applicable.

Important Marine Mammal Habitat

The only ESA-listed marine mammal with designated critical habitat within the AFTT Study Area is the NARW. This critical habitat was discussed in the Description of Marine Mammals section. BIAs were also discussed in the Description of Marine Mammals section.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize which are based on the amount of take that NMFS anticipates could, or are likely to occur depending on the type of take and the methods used to estimate it, as described in detail below. NMFS coordinated closely with the Navy in the development of their incidental take application, and with one exception, preliminarily agrees that the methods the Navy has put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers proposed for authorization, are appropriate and based on the best available science. Where we did not concur with the Navy's analysis and proposed take numbers (*i.e.,* large whale mortality from ship strike), NMFS has explicitly described our rationale and proposed what we consider an appropriate number of takes.

Takes are predominantly in the form of harassment, but a small number of mortalities are also proposed. For this military readiness activity, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic and explosive sources (*i.e.,* sonar, airguns, piledriving, explosives) is likely to result in behavioral disruption or TTS for marine mammals. There is also the potential for Level A harassment, in the form of auditory injury and/or tissue damage (latter for explosives only) to result from exposure to the sound sources utilized in training and testing activities. Lastly, a limited number of serious injuries or mortalities could occur for four species of mid-frequency cetaceans during ship shock trials and three serious injuries or

mortalities total (over the 5-yr period) of mysticetes and sperm whales through vessel collisions. Although we analyze the impacts of these potential serious injuries or mortalities that are proposed for authorization, the proposed mitigation and monitoring measures are expected to minimize the likelihood that ship strike or these high level explosive exposures (and the associated serious injury or mortality) occur.

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

Acoustic Thresholds

Using the best available science NMFS, in coordination with the Navy, has established acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would reasonably expected to be experience a disruption in behavior, or to incur TTS (equated to Level B harassment) or PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage from exposure to pressure waves from explosive detonation.

Hearing Impairment (TTS/PTS and Tissues Damage and Mortality)

Non-Impulsive and Impulsive

NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B Harassment category. The Navy's proposed activity includes the use of non-impulsive (sonar, vibratory pile driving) and impulsive (explosives, airguns, impact pile driving) and sources.

These thresholds (Tables 13–14) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*.

TABLE 13—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF TTS AND PTS FOR NON-IMPULSIVE SOUND SOURCES BY FUNCTIONAL HEARING GROUP

Functional hearing group	Non-impulsive	
	TTS Threshold SEL (weighted)	PTS Threshold SEL (unweighted)
Low-Frequency Cetaceans	179	199
Mid-Frequency Cetaceans	178	198
High-Frequency Cetaceans	153	173
Phocid Pinnipeds (Underwater)	181	201

Note: SEL thresholds in dB re 1 μPa^2s.

Based on the best available science, the Navy (in coordination with NMFS) used the acoustic and pressure thresholds indicated in Table 14 to predict the onset of TTS, PTS, tissue damage, and mortality for explosives (impulsive) and other impulsive sound sources.

TABLE 14—ONSET OF TTS, PTS, TISSUE DAMAGE, AND MORTALITY THRESHOLDS FOR MARINE MAMMALS FOR EXPLOSIVES AND OTHER IMPULSIVE SOURCES

Functional hearing group	Species	Weighted onset TTS	Weighted onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Low-frequency cetaceans.	All mysticetes	168 dB SEL or 213 dB Peak SPL.	183 dB SEL or 219 dB Peak SPL.	237 dB SPL (unweighted).	Equation 1 ..	Equation 2.
Mid-frequency cetaceans.	Most delphinids, medium and large toothed whales.	170 dB SEL or 224 dB Peak SPL.	185 dB SEL or 230 dB Peak SPL.	237 dB SPL (unweighted).		
High-frequency cetaceans.	Porpoises and Kogia spp	140 dB SEL or 196 dB Peak SPL.	155 dB SEL or 202 dB Peak SPL.	237 dB SPL (unweighted).		
Phocidae	Harbor, Gray, Bearded, Harp, Hooded, and Ringed seals.	170 dB SEL or 212 dB Peak SPL.	185 dB SEL or 218 dB Peak SPL.	237 dB SPL (unweighted).		

Notes:
Equation 1: $47.5M^{1/3}\ (1 + [D_{Rm}/10.1])^{1/6}$ Pa-sec.
Equation 2: $103M^{1/3}\ (1 + [D_{Rm}/10.1])^{1/6}$ Pa-sec.
M = mass of the animals in kg.
D_{Rm} = depth of the receiver (animal) in meters.
SPL = sound pressure level.

Impulsive—Airguns and Impact Pile Driving

Impact pile driving produces impulsive noise; therefore, the criteria used to assess the onset of TTS and PTS are identical to those used for airguns, as well as explosives (see Table 14 above) (see Hearing Loss from Airguns in Section 6.4.3.1, Methods for Analyzing Impacts from Airguns in the Navy's rulemaking and LOA application). Refer to the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles technical report* (U.S. Department of the Navy, 2017d) for detailed information on how the criteria and thresholds were derived.

Non-Impulsive—Sonar and Vibratory Pile Driving/Removal

Vibratory pile removal (that will be used during the Elevated Causeway System) creates continuous non-impulsive noise at low source levels for a short duration. Therefore, the criteria used to assess the onset of TTS and PTS due to exposure to sonars (non-impulsive, see Table 13 above) are also used to assess auditory impacts to marine mammals from vibratory pile driving (see Hearing Loss from Sonar and Other Transducers in Section 6.4.2.1, Methods for Analyzing Impacts from Sonars and Other Transducers in the Navy's rulemaking and LOA application). Refer to the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles technical report* (U.S. Department of the Navy, 2017d) for detailed information on how the criteria and thresholds were derived. Non-auditory injury (*i.e.,* other than PTS) and mortality from sonar and other transducers is so unlikely as to be discountable under normal conditions and is therefore not considered further in this analysis.

Behavioral Harassment

Marine mammal responses (some of which are considered disturbances that rise to the level of a take) to sound are highly variable and context specific (affected by differences in acoustic conditions, differences between species and populations; differences in gender, age, reproductive status, or social behavior; or other prior experience of the individuals), which means that there is support for alternative approaches for estimating behavioral harassment. Although the statutory definition of Level B harassment for military readiness activities requires that the natural behavior patterns of a marine mammal be significantly altered or abandoned, the current state of science for determining those thresholds is somewhat unsettled. In its analysis of impacts associated with sonar acoustic sources (which was coordinated with NMFS), the Navy proposes an updated conservative approach that likely overestimates the number of takes by Level B harassment due to behavioral disturbance and response to some degree. Many of the behavioral responses estimated using the Navy's quantitative analysis are most likely to be moderate severity (see Southall *et al.,* 2007 for behavioral response severity scale). Moderate severity responses would be considered significant if they were sustained for a duration long enough that it caused an animal to be outside of normal daily variations in feeding, reproduction, resting, migration/movement, or social cohesion. Within the Navy's quantitative analysis, many behavioral reactions are predicted from exposure to sound that may exceed an animal's behavioral threshold for only a single exposure to several minutes and it is likely that some of the resulting estimated behavioral harassment takes would not constitute ''significantly altering or abandoning natural behavioral patterns''. The Navy and NMFS have used the best available science to address the challenging differentiation between significant and non-significant behavioral reactions, but have erred on the cautious side where uncertainty exists (*e.g.,* counting these lower duration reactions as take), which likely results in some degree of overestimation of behavioral harassment take. Therefore this analysis includes the maximum number of behavioral disturbances and responses that are reasonably possible to occur.

Airguns and Pile Driving

Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. To estimate behavioral effects from airguns, the existing NMFS Level B harassment threshold of 160 dB re 1 µPa (rms) is used. The root mean square calculation for airguns is based on the duration defined by 90 percent of the cumulative energy in the impulse.

The existing NMFS Level B harassment thresholds were also applied to estimate behavioral effects from impact and vibratory pile driving (Table 15).

TABLE 15—PILE DRIVING LEVEL B THRESHOLDS USED IN THIS ANALYSIS TO PREDICT BEHAVIORAL RESPONSES FROM MARINE MAMMALS

Pile driving criteria (SPL, dB re 1 µPa) Level B disturbance threshold	
Underwater vibratory	Underwater impact
120 dB rms	160 dB rms.

Notes: Root mean square calculation for impact pile driving is based on the duration defined by 90 percent of the cumulative energy in the impulse. Root mean square for vibratory pile driving is calculated based on a representative time series long enough to capture the variation in levels, usually on the order of a few seconds.

dB: decibel; dB re 1 µPa: decibel referenced to 1 micropascal; rms: root mean square.

Sonar

As noted, the Navy coordinated with NMFS to propose behavioral harassment thresholds specific to their military readiness activities utilizing active sonar. The way the criteria were derived is discussed in detail in *the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles Technical Report* (U.S. Department of the Navy, 2017d).

In the Navy acoustic impact analyses during Phase II, the likelihood of behavioral effects to sonar and other transducers was based on a probabilistic function (termed a behavioral response function—BRF), that related the likelihood (*i.e.,* probability) of a behavioral response to the received SPL. The BRF was used to estimate the percentage of an exposed population that is likely to exhibit altered behaviors or behavioral disturbance at a given received SPL. This BRF relied on the assumption that sound poses a negligible risk to marine mammals if they are exposed to SPL below a certain

''basement'' value. Above the basement exposure SPL, the probability of a response increased with increasing SPL. Two BRFs were used in Navy acoustic impact analyses: BRF1 for mysticetes and BRF2 for other species. BRFs were not used for harbor porpoises and beaked whales during Phase II analyses. Instead, step functions at SPLs of 120 dB re 1 µPa and 140 dB re 1 µPa were used for harbor porpoises and beaked whales, respectively, as thresholds to predict behavioral disturbance.

Developing the new behavioral criteria for Phase III involved multiple steps: All available behavioral response studies conducted both in the field and on captive animals were examined in order to understand the breadth of behavioral responses of marine mammals to sonar and other transducers. Marine mammal species were placed into behavioral criteria groups based on their known or suspected behavioral sensitivities to sound. In most cases these divisions were driven by taxonomic classifications (*e.g.,* mysticetes, pinnipeds). The data from the behavioral studies were analyzed by looking for significant responses, or lack thereof, for each experimental session. The Navy used cutoffs distances beyond which the potential of significant behavioral responses (and therefore Level B harassment) is considered to be unlikely (see Table 16 below). For animals within the cutoff distance, a behavioral response function based on a received SPL as presented in Section 3.1.0 of the Navy's rulemaking and LOA application was used to predict the probability of a potential significant behavioral response. For training and testing events that contain multiple platforms or tactical sonar sources that exceed 215 dB re 1 µPa @ 1 m, this cutoff distance is substantially increased (*i.e.,* doubled) from values derived from the literature. The use of multiple platforms and intense sound sources are factors that probably increase responsiveness in marine mammals overall. There are currently few behavioral observations under these circumstances; therefore, the Navy conservatively predicted significant behavioral responses at further ranges for these more intense activities.

TABLE 16—CUTOFF DISTANCES FOR MODERATE SOURCE LEVEL, SINGLE PLATFORM TRAINING AND TESTING EVENTS AND FOR ALL OTHER EVENTS WITH MULTIPLE PLATFORMS OR SONAR WITH SOURCE LEVELS AT OR EXCEEDING 215 dB RE 1 µPA @1 M

Criteria group	Moderate SL/ single platform cutoff distance (km)	High SL/multi-platform cutoff distance (km)
Odontocetes	10	20
Pinnipeds	5	10
Mysticetes and Manatees	10	20
Beaked Whales	25	50
Harbor Porpoise	20	40

Notes: dB re 1 µPa @1 m: decibels referenced to 1 micropascal at 1 meter; km: kilometer; SL: source level.

The information currently available regarding harbor porpoises suggests a very low threshold level of response for both captive and wild animals. Threshold levels at which both captive (Kastelein *et al.,* 2000; Kastelein *et al.,* 2005) and wild harbor porpoises (Johnston, 2002) responded to sound (*e.g.,* acoustic harassment devices, acoustic deterrent devices, or other non-impulsive sound sources) are very low, approximately 120 dB re 1 µPa. Therefore, a SPL of 120 dB re 1 µPa was used in the analysis as a threshold for predicting behavioral responses in harbor porpoises.

The range to received sound levels in 6-dB steps from five representative sonar bins and the percentage of animals that may exhibit a potentially significant behavioral response under each behavioral response function (or step function in the case of the harbor porpoise) are shown in Table 17 through Table 21. Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group and therefore are not included in the estimated take. Table 17 illustrates the potentially significant behavioral response for LFAS.

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Table 17. Ranges to a Potentially Significant Behavioral Response for Sonar Bin LF5 over a Representative Range of Environments within the AFTT Study Area.

Received Level (dB re 1 µPa)	*Mean Range (m) with minimum to maximum values in parentheses*	*Probability of Behavioral Response*				
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*	*Harbor Porpoises*
196	0 (0—0)	100%	100%	100%	100%	100%
190	0 (0—0)	100%	98%	99%	100%	100%
184	0 (0—0)	99%	88%	98%	100%	100%
178	1 (0—1)	97%	59%	92%	100%	100%
172	2 (1—2)	91%	30%	76%	99%	100%
166	4 (1—6)	78%	20%	48%	97%	100%
160	10 (1—13)	58%	18%	27%	93%	100%
154	21 (1—25)	40%	17%	18%	83%	100%
148	46 (1—60)	29%	16%	16%	66%	100%
142	104 (1—140)	25%	13%	15%	45%	100%
136	242 (120—430)	23%	9%	15%	28%	100%
130	573 (320—1,275)	20%	5%	15%	18%	100%
124	1,268 (550—2,775)	17%	2%	14%	14%	100%
118	2,733 (800—6,525)	12%	1%	13%	12%	0%
112	5,820 (1,025—18,275)	6%	0%	9%	11%	0%
106	13,341 (1,275—54,525)	3%	0%	5%	11%	0%
100	31,026 (2,025—100,000*)	1%	0%	2%	8%	0%

* Indicates maximum range of acoustic model, a distance of approximately 100 kilometers from the sound source.

Notes: Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 17 for behavioral cut-off distances).

dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

Table 18. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF1 over a Representative Range of Environments within the AFTT Study Area.

Received Level (dB re 1 µPa)	*Mean Range (m) with minimum to maximum values in parentheses*	*Probability of Behavioral Response*				
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*	*Harbor Porpoises*
196	109 (100—150)	100%	100%	100%	100%	100%
190	257 (220—370)	100%	98%	99%	100%	100%
184	573 (400—1,000)	99%	88%	98%	100%	100%
178	1,235 (725—3,525)	97%	59%	92%	100%	100%
172	3,007 (875—9,775)	91%	30%	76%	99%	100%
166	6,511 (925—19,525)	78%	20%	48%	97%	100%
160	11,644 (975—36,275)	58%	18%	27%	93%	100%
154	18,012 (975—60,775)	40%	17%	18%	83%	100%
148	26,037 (1,000—77,525)	29%	16%	16%	66%	100%
142	33,377 (1,000—100,000*)	25%	13%	15%	45%	100%
136	41,099 (1,025—100,000*)	23%	9%	15%	28%	100%
130	46,618 (3,275—100,000*)	20%	5%	15%	18%	100%
124	50,173 (3,525—100,000*)	17%	2%	14%	14%	100%
118	52,982 (3,775—100,000*)	12%	1%	13%	12%	0%
112	56,337 (4,275—100,000*)	6%	0%	9%	11%	0%
106	60,505 (4,275—100,000*)	3%	0%	5%	11%	0%
100	62,833 (4,525—100,000*)	1%	0%	2%	8%	0%

* Indicates maximum range of acoustic model, a distance of approximately 100 kilometers from the sound source.

Notes: Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 17 for behavioral cut-off distances). dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

Table 19. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF4 over a Representative Range of Environments within the AFTT Study Area.

Received Level (dB re 1 µPa)	*Mean Range (m) with minimum to maximum values in parentheses*	*Probability of Behavioral Response*				
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*	*Harbor Porpoises*
196	8 (1—10)	100%	100%	100%	100%	100%
190	17 (1—21)	100%	98%	99%	100%	100%
184	35 (1—40)	99%	88%	98%	100%	100%
178	71 (1—95)	97%	59%	92%	100%	100%
172	156 (110—410)	91%	30%	76%	99%	100%
166	431 (280—1,275)	78%	20%	48%	97%	100%
160	948 (490—3,525)	58%	18%	27%	93%	100%
154	1,937 (750—10,025)	40%	17%	18%	83%	100%
148	3,725 (1,025—20,525)	29%	16%	16%	66%	100%
142	7,084 (1,525—38,525)	25%	13%	15%	45%	100%
136	11,325 (1,775—56,275)	23%	9%	15%	28%	100%
130	16,884 (1,775—74,275)	20%	5%	15%	18%	100%
124	24,033 (2,275—80,775)	17%	2%	14%	14%	100%
118	31,950 (2,275—100,000*)	12%	1%	13%	12%	0%
112	37,663 (2,525—100,000*)	6%	0%	9%	11%	0%
106	41,436 (2,775—100,000*)	3%	0%	5%	11%	0%
100	44,352 (2,775—100,000*)	1%	0%	2%	8%	0%

* Indicates maximum range of acoustic model, a distance of approximately 100 kilometers from the sound source.

Notes: Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 17 for behavioral cut-off distances). dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

Table 20. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF5 over a Representative Range of Environments within the AFTT Study Area.

Received Level (dB re 1 µPa)	*Mean Range (m) with minimum to maximum values in parentheses*	*Probability of Behavioral Response*				
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*	*Harbor Porpoises*
196	0 (0—0)	100%	100%	100%	100%	100%
190	2 (1—3)	100%	98%	99%	100%	100%
184	4 (1—9)	99%	88%	98%	100%	100%
178	14 (1—18)	97%	59%	92%	100%	100%
172	29 (1—35)	91%	30%	76%	99%	100%
166	61 (1—80)	78%	20%	48%	97%	100%
160	141 (1—400)	58%	18%	27%	93%	100%
154	346 (1—1,000)	40%	17%	18%	83%	100%
148	762 (420—2,525)	29%	16%	16%	66%	100%
142	1,561 (675—5,525)	25%	13%	15%	45%	100%
136	2,947 (1,025—10,775)	23%	9%	15%	28%	100%
130	5,035 (1,025—17,275)	20%	5%	15%	18%	100%
124	7,409 (1,275—22,525)	17%	2%	14%	14%	100%
118	10,340 (1,525—29,525)	12%	1%	13%	12%	0%
112	13,229 (1,525—38,025)	6%	0%	9%	11%	0%
106	16,487 (1,525—46,025)	3%	0%	5%	11%	0%
100	20,510 (1,775—60,525)	1%	0%	2%	8%	0%

Note: Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 17 for behavioral cut-off distances). dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meter

Table 21 illustrates the potentially significant behavioral response for HFAS.

Table 21. Ranges to a Potentially Significant Behavioral Response for Sonar Bin HF4 over a Representative Range of Environments within the AFTT Study Area.

Received Level (dB re 1 µPa)	*Mean Range (m) with minimum to maximum values in parentheses*	*Probability of Behavioral Response*				
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*	*Harbor Porpoises*
196	3 (1—6)	100%	100%	100%	100%	100%
190	8 (1—14)	100%	98%	99%	100%	100%
184	18 (1—35)	99%	88%	98%	100%	100%
178	37 (1—100)	97%	59%	92%	100%	100%
172	78 (1—300)	91%	30%	76%	99%	100%
166	167 (1—725)	78%	20%	48%	97%	100%
160	322 (25—1,525)	58%	18%	27%	93%	100%
154	555 (45—3,775)	40%	17%	18%	83%	100%
148	867 (70—6,775)	29%	16%	16%	66%	100%
142	1,233 (150—12,775)	25%	13%	15%	45%	100%
136	1,695 (260—20,025)	23%	9%	15%	28%	100%
130	2,210 (470—29,275)	20%	5%	15%	18%	100%
124	2,792 (650—40,775)	17%	2%	14%	14%	100%
118	3,421 (950—49,775)	12%	1%	13%	12%	0%
112	4,109 (1,025—49,775)	6%	0%	9%	11%	0%
106	4,798 (1,275—49,775)	3%	0%	5%	11%	0%
100	5,540 (1,275—49,775)	1%	0%	2%	8%	0%

Notes: dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

Explosives

Phase III explosive criteria for behavioral thresholds for marine mammals is the hearing groups TTS threshold minus 5 dB (see Table 22 and Table 14 for the TTS thresholds for explosives) for events that contain multiple impulses from explosives underwater. This was the same approach as taken in Phase II for explosive analysis.

TABLE 22—PHASE III BEHAVIORAL THRESHOLDS FOR EXPLOSIVES FOR MARINE MAMMALS

Medium	Functional hearing group	SEL (weighted)
Underwater	LF	163
Underwater	MF	165
Underwater	HF	135
Underwater	PW	165

Note: Weighted SEL thresholds in dB re 1 µPa2s underwater.

Navy's Acoustic Effects Model

Sonar and Other Transducers and Explosives

The Navy's Acoustic Effects Model calculates sound energy propagation from sonar and other transducers and explosives during naval activities and the sound received by animat dosimeters. Animat dosimeters are virtual representations of marine mammals distributed in the area around the modeled naval activity that each records its individual sound ''dose.'' The model bases the distribution of animats over the AFTT Study Area on the density values in the Navy Marine Species Density Database and distributes animats in the water column proportional to the known time that species spend at varying depths.

The model accounts for environmental variability of sound propagation in both distance and depth when computing the received sound level on the animats. The model conducts a statistical analysis based on multiple model runs to compute the estimated effects on animals. The number of animats that exceed the thresholds for effects is tallied to provide an estimate of the number of marine mammals that could be affected.

Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered (*i.e.,* no power down or shut down modeled) and without any avoidance of the activity by the animal. The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures.

The model estimates the impacts caused by individual training and testing exercises. During any individual modeled event, impacts to individual animats are considered over 24-hour periods. The animats do not represent actual animals, but rather they represent a distribution of animals based on density and abundance data, which allows for a statistical analysis of the number of instances that marine mammals may be exposed to sound levels resulting in an effect. Therefore, the model estimates the number of instances in which an effect threshold was exceeded over the course of a year, but does not estimate the number of individual marine mammals that may be impacted over a year *(i.e.,* some marine mammals could be impacted several times, while others would not

experience any impact). A detailed explanation of the Navy's Acoustic Effects Model is provided in the technical report *Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles* (U.S. Department of the Navy, 2017a).

Airguns and Pile Driving

The Navy's quantitative analysis estimates the sound and energy received by marine mammals distributed in the area around planned Navy activities involving airguns. See the technical report titled *Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles* (U.S. Department of the Navy, 2017a) for additional details. Underwater noise effects from pile driving and vibratory pile extraction were modeled using actual measures of impact pile driving and vibratory removal during construction of an Elevated Causeway System (Illingworth and Rodkin, 2015, 2016). A conservative estimate of spreading loss of sound in shallow coastal waters (*i.e.,* transmission loss = 16.5*Log10 [radius]) was applied based on spreading loss observed in actual measurements. Inputs used in the model are provided in Section 1.4.1.3 (Pile Driving) of the Navy's rulemaking and LOA application, including source levels; the number of strikes required to drive a pile and the duration of vibratory removal per pile; the number of piles driven or removed per day; and the number of days of pile driving and removal.

Range to Effects

The following section provides range to effects for sonar and other active acoustic sources as well as explosives to specific criteria determined using the Navy Acoustic Effects Model. Marine mammals exposed within these ranges for the shown duration are predicted to experience the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals.

Sonar

The range to received sound levels in 6-dB steps from five representative sonar bins and the percentage of the total number of animals that may exhibit a significant behavioral response (and therefore Level B harassment) under each behavioral response function (or step function in the case of the harbor porpoise) are shown in Table 17 through Table 21 above, respectively. See Section 6.4.2.1 (Methods for Analyzing Impacts from Sonars and Other Transducers) of the Navy's rulemaking and LOA application for additional details on the derivation and use of the behavioral response functions, thresholds, and the cutoff distances.

The ranges to the PTS for five representative sonar systems for an exposure of 30 seconds is shown in Table 23 relative to the marine mammal's functional hearing group. This period (30 seconds) was chosen based on examining the maximum amount of time a marine mammal would realistically be exposed to levels that could cause the onset of PTS based on platform (*e.g.,* ship) speed and a nominal animal swim speed of approximately 1.5 meters per second. The ranges provided in the table include the average range to PTS, as well as the range from the minimum to the maximum distance at which PTS is possible for each hearing group.

TABLE 23—RANGE TO PERMANENT THRESHOLD SHIFT FOR FIVE REPRESENTATIVE SONAR SYSTEMS

Functional hearing group	Approximate PTS (30 seconds) ranges (meters) [1]				
	Sonar bin LF5 (low frequency sources <180 dB source level)	Sonar bin MF1 (*e.g.*, SQS–53 ASW hull mounted sonar)	Sonar bin MF4 (*e.g.*, AQS–22 ASW dipping sonar)	Sonar bin MF5 (*e.g.*, SSQ–62 ASW sono-buoy)	Sonar bin HF4 (*e.g.*, SQS–20 mine hunting sonar)
Low-frequency Cetaceans	0 (0–0)	66 (65–80)	15 (15–18)	0 (0–0)	0 (0–0)
Mid-frequency Cetaceans	0 (0–0)	16 (16–16)	3 (3–3)	0 (0–0)	1 (0–2)
High-frequency Cetaceans	0 (0–0)	192 (170–270)	31 (30–40)	9 (8–13)	34 (20–85)
Phocid Seals	0 (0–0)	46 (45–55)	11 (11–13)	0 (0–0)	0 (0–0)

[1] PTS ranges extend from the sonar or other active acoustic sound source to the indicated distance. The average range to PTS is provided as well as the range from the estimated minimum to the maximum range to PTS in parenthesis.

Notes: ASW: anti-submarine warfare; HF: High frequency; LF: Low frequency; MF: Mid-frequency; PTS: Permanent threshold shift; NA: Not applicable because there is no overlap between species and sound source.

The tables below illustrate the range to TTS for 1, 30, 60, and 120 seconds from five representative sonar systems (see Table 24 through Table 28).

TABLE 24—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN LF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin LF5 (low frequency sources <180 dB source level)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetaceans	4 (0–5)	4 (0–5)	4 (0–5)	4 (0–5)
Mid-frequency Cetaceans	222 (200–310)	222 (200–310)	331 (280–525)	424 (340–800)
High-frequency Cetaceans	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)

TABLE 24—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN LF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA—Continued

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin LF5 (low frequency sources <180 dB source level)			
	1 second	30 seconds	60 seconds	120 seconds
Phocid Seals	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parenthesis.

Notes: Ranges for 1-sec and 30-sec periods are identical for Bin MF1 because this system nominally pings every 50 seconds, therefore these periods encompass only a single ping. PTS: Permanent threshold shift; TTS: Temporary threshold shift.

TABLE 25—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN MF1 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin MF1 (*e.g.*, SQS–53 ASW hull mounted sonar)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetaceans	1,111 (650–2,775)	1,111 (650–2,775)	1,655 (800–3,775)	2,160 (900–6,525)
Mid-frequency Cetaceans	222 (200–310)	222 (200–310)	331 (280–525)	424 (340–800)
High-frequency Cetaceans	3,001 (1275–8,275)	3,001 (1275–8,275)	4,803 (1525–13,525)	6,016 (1525–16,775)
Phocid Seals	784 (575–1,275)	784 (575–1,275)	1,211 (850–3,025)	1,505 (1025–3,775)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parenthesis.

Notes: Ranges for 1-sec and 30-sec periods are identical for Bin MF1 because this system nominally pings every 50 seconds, therefore these periods encompass only a single ping. ASW: Anti-submarine warfare; MF: Mid-frequency; PTS: Permanent threshold shift; TTS: Temporary threshold shift.

TABLE 26—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN MF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin MF4 (*e.g.*, AQS–22 ASW dipping sonar)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetaceans	89 (85–120)	175 (160–280)	262 (220–575)	429 (330–875)
Mid-frequency Cetaceans	22 (22–25)	36 (35–45)	51 (45–60)	72 (70–95)
High-frequency Cetaceans	270 (220–575)	546 (410–1,025)	729 (525–1,525)	1,107 (600–2,275)
Phocid Seals	67 (65–90)	119 (110–180)	171 (150–260)	296 (240–700)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parenthesis.

Notes: ASW: Anti-submarine warfare; MF: Mid-frequency; PTS: Permanent threshold shift; TTS: Temporary threshold shift.

TABLE 27—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN MF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin MF5 (*e.g.*, SSQ–62 ASW sonobuoy)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetaceans	11 (0–14)	11 (0–14)	16 (0–20)	23 (0–25)
Mid-frequency Cetaceans	5 (0–10)	5 (0–10)	12 (0–15)	17 (0–22)
High-frequency Cetaceans	122 (110–320)	122 (110–320)	187 (150–525)	286 (210–750)

TABLE 27—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN MF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA—Continued

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin MF5 (*e.g.*, SSQ–62 ASW sonobuoy)			
	1 second	30 seconds	60 seconds	120 seconds
Phocid Seals	9 (8–13)	9 (8–13)	15 (14–18)	22 (21–25)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parenthesis.

Notes: ASW: Anti-submarine warfare; MF: Mid-frequency; PTS: Permanent threshold shift; TTS: Temporary threshold shift.

TABLE 28—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN HF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE STUDY AREA

Functional hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin HF4 (*e.g.*, SQS–20 mine hunting sonar)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetaceans	1 (0–3)	3 (0–5)	5 (0–7)	7 (0–12)
Mid-frequency Cetaceans	10 (7–17)	19 (11–35)	27 (17–60)	39 (22–100)
High-frequency Cetaceans	242 (100–975)	395 (170–1,775)	524 (230–2,775)	655 (300–4,275)
Phocid Seals	2 (0–5)	5 (0–8)	8 (5–13)	12 (8–20)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parenthesis.

Notes: HF: High frequency; PTS: Permanent threshold shift; TTS: Temporary threshold shift.

Explosives

The following section provides the range (distance) over which specific physiological or behavioral effects are expected to occur based on the explosive criteria (see Chapter 6.5.2.1.1 of the Navy's rulemaking and LOA application and *Criteria and Thresholds Used to Estimate Impacts to Marine Mammals from Explosives*) and the explosive propagation calculations from the Navy Acoustic Effects Model (see Chapter 6.5.2.1.3, Navy Acoustic Effects Model of the Navy's rulemaking and LOA application). The range to effects are shown for a range of explosive bins, from E1 (up to 0.25 lb net explosive weight) to E17 (up to 58,000 lb net explosive weight) (Tables 29 through 34). Ranges are determined by modeling the distance that noise from an explosion will need to propagate to reach exposure level thresholds specific to a hearing group that will cause behavioral response, TTS, PTS, and non-auditory injury. Ranges are provided for a representative source depth and cluster size for each bin. For events with multiple explosions, sound from successive explosions can be expected to accumulate and increase the range to the onset of an impact based on SEL thresholds. Ranges to non-injury and mortality are shown in Table 33 and 34, respectively. Range to effects is important information in not only predicting impacts from explosives, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals. For additional information on how ranges to impacts from explosions were estimated, see the technical report *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Navy, 2017b).

Table 29. shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for high-frequency cetaceans based on the developed thresholds.

TABLE 29—SEL-BASED RANGES TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR HIGH-FREQUENCY CETACEANS

Range to effects for explosives: high frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	446 (180–975)	1,512 (525–3,775)	2,591 (800–6,775)
		20	1,289 (440–3,025)	4,527 (1,275–10,775)	6,650 (1,525–16,525)
E2	0.1	1	503 (200–1,025)	1,865 (600–3,775)	3,559 (1,025–6,775)
		2	623 (250–1,275)	2,606 (750–5,275)	4,743 (1,275–8,525)
E3	18.25	1	865 (525–2,525)	3,707 (1,025–6,775)	5,879 (1,775–10,025)
		50	4,484 (1,275–7,775)	10,610 (2,275–19,775)	13,817 (2,275–27,025)
E4	15	1	1,576 (1,025–2,275)	6,588 (4,525–8,775)	9,744 (7,275–13,025)

TABLE 29—SEL-BASED RANGES TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR HIGH-FREQUENCY CETACEANS—Continued

Range to effects for explosives: high frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
		5	3,314 (2,275–4,525)	10,312 (7,525–14,775)	14,200 (9,775–20,025)
	19.8	2	1,262 (975–2,025)	4,708 (1,775–7,525)	6,618 (2,025–11,525)
	198	2	1,355 (875–2,775)	4,900 (2,525–8,275)	6,686 (3,025–11,275)
E5	0.1	25	3,342 (925–8,025)	8,880 (1,275–20,525)	11,832 (1,525–25,025)
E6	0.1	1	1,204 (550–3,275)	4,507 (1,275–10,775)	6,755 (1,525–16,525)
	30	1	2,442 (1,525–5,025)	7,631 (4,525–10,775)	10,503 (4,775–15,025)
E7	15	1	3,317 (2,525–4,525)	10,122 (7,775–13,275)	13,872 (9,775–17,775)
E8	0.1	1	1,883 (675–4,525)	6,404 (1,525–14,525)	9,001 (1,525–19,775)
	45.75	1	2,442 (1,025–5,525)	7,079 (2,025–12,275)	9,462 (2,275–17,025)
	305	1	3,008 (2,025–4,025)	9,008 (6,025–10,775)	12,032 (8,525–14,525)
E9	0.1	1	2,210 (800–4,775)	6,088 (1,525–13,275)	8,299 (1,525–19,025)
E10	0.1	1	2,960 (875–7,275)	8,424 (1,525–19,275)	11,380 (1,525–24,275)
E11	18.5	1	4,827 (1,525–8,775)	11,231 (2,525–20,025)	14,667 (2,525–26,775)
	45.75	1	3,893 (1,525–7,525)	9,320 (2,275–17,025)	12,118 (2,525–21,525)
E12	0.1	1	3,046 (1,275–6,775)	7,722 (1,525–18,775)	10,218 (2,025–22,525)
E16	61	1	5,190 (2,275–9,775)	7,851 (3,525–19,525)	9,643 (3,775–25,775)
E17	61	1	6,173 (2,525–12,025)	11,071 (3,775–29,275)	13,574 (4,025–37,775)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Table 30 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for mid-frequency cetaceans based on the developed thresholds.

TABLE 30—SEL-BASED RANGES TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR MID-FREQUENCY CETACEANS

Range to effects for explosives: mid-frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	26 (25–50)	139 (95–370)	218 (120–550)
		20	113 (80–290)	539 (210–1,025)	754 (270–1,525)
E2	0.1	1	35 (30–45)	184 (100–300)	276 (130–490)
		2	51 (40–70)	251 (120–430)	365 (160–700)
E3	18.25	1	40 (35–45)	236 (190–800)	388 (280–1,275)
		50	304 (230–1,025)	1,615 (750–3,275)	2,424 (925–5,025)
E4	15	1	74 (60–100)	522 (440–750)	813 (650–1,025)
		5	192 (140–260)	1,055 (875–1,525)	1,631 (1,275–2,525)
	19.8	2	69 (65–70)	380 (330–470)	665 (550–750)
	198	2	48 (0–55)	307 (260–380)	504 (430–700)
E5	0.1	25	391 (170–850)	1,292 (470–3,275)	1,820 (575–5,025)
E6	0.1	1	116 (90–290)	536 (310–1,025)	742 (380–1,525)
	30	1	110 (85–310)	862 (600–2,275)	1,281 (975–3,275)
E7	15	1	201 (190–220)	1,067 (1,025–1,275)	1,601 (1,275–2,025)
E8	0.1	1	204 (150–500)	802 (400–1,525)	1,064 (470–2,275)
	45.75	1	133 (120–200)	828 (525–2,025)	1,273 (775–2,775)
	305	1	58 (0–110)	656 (550–750)	1,019 (900–1,025)
E9	0.1	1	241 (200–370)	946 (450–1,525)	1,279 (500–2,275)
E10	0.1	1	339 (230–750)	1,125 (490–2,525)	1,558 (550–4,775)
E11	18.5	1	361 (230–750)	1,744 (800–3,775)	2,597 (925–5,025)
	45.75	1	289 (230–825)	1,544 (800–3,275)	2,298 (925–5,025)
E12	0.1	1	382 (270–550)	1,312 (525–2,775)	1,767 (600–4,275)
E16	61	1	885 (650–1,775)	3,056 (1,275–5,025)	3,689 (1,525–6,525)
E17	61	1	1,398 (925–2,275)	3,738 (1,525–6,775)	4,835 (1,775–9,275)

[1]Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Table 31 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for low-frequency cetaceans based on the developed thresholds.

TABLE 31—SEL-BASED RANGES TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR LOW-FREQUENCY CETACEANS

Range to effects for explosives: low-frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	54 (45–80)	259 (130–390)	137 (90–210)
		20	211 (110–320)	787 (340–1,525)	487 (210–775)
E2	0.1	1	64 (55–75)	264 (150–400)	154 (100–220)
		2	87 (70–110)	339 (190–500)	203 (120–300)
E3	18.25	1	211 (190–390)	1,182 (600–2,525)	588 (410–1,275)
		50	1,450 (675–3,275)	8,920 (1,525–24,275)	4,671 (1,025–10,775)
E4	15	1	424 (380–550)	3,308 (2,275–4,775)	1,426 (1,025–2,275)
		5	1,091 (950–1,525)	6,261 (3,775–9,525)	3,661 (2,525–5,275)
	19.8	2	375 (350–400)	1,770 (1,275–3,025)	1,003 (725–1,275)
	198	2	308 (280–380)	2,275 (1,275–3,525)	1,092 (850–2,275)
E5	0.1	25	701 (300–1,525)	4,827 (750–29,275)	1,962 (575–22,525)
E6	0.1	1	280 (150–450)	1,018 (460–7,275)	601 (300–1,525)
	30	1	824 (525–1,275)	4,431 (2,025–7,775)	2,334 (1,275–4,275)
E7	15	1	1,928 (1,775–2,275)	8,803 (6,025–14,275)	4,942 (3,525–6,525)
E8	0.1	1	486 (220–1,000)	3,059 (575–20,525)	1,087 (440–7,775)
	45.75	1	1,233 (675–3,025)	7,447 (1,275–19,025)	3,633 (1,000–9,025)
	305	1	937 (875–975)	6,540 (3,025–12,025)	3,888 (2,025–6,525)
E9	0.1	1	655 (310–1,275)	2,900 (650–31,025)	1,364 (500–8,525)
E10	0.1	1	786 (340–7,275)	7,546 (725–49,025)	3,289 (550–26,525)
E11	18.5	1	3,705 (925–8,775)	16,488 (2,275–40,275)	9,489 (1,775–22,775)
	45.75	1	3,133 (925–8,275)	16,365 (1,775–50,275)	8,701 (1,275–23,775)
E12	0.1	1	985 (400–6,025)	7,096 (800–72,775)	2,658 (625–46,525)
E16	61	1	10,155 (2,025–21,525)	35,790 (18,025–69,775)	25,946 (14,025–58,775)
E17	61	1	17,464 (8,275–39,525)	47,402 (21,025–93,275)	34,095 (16,275–86,275)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Table 32. shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for phocids based on the developed thresholds.

TABLE 32—SEL-BASED RANGES TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR PHOCIDS

Range to effects for explosives: phocids [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	50 (45–85)	242 (120–470)	360 (160–650)
		20	197 (110–380)	792 (300–1,275)	1,066 (410–2,275)
E2	0.1	1	65 (55–85)	267 (140–430)	378 (190–675)
		2	85 (65–100)	345 (180–575)	476 (230–875)
E3	18.25	1	121 (110–220)	689 (500–1,525)	1,074 (725–2,525)
		50	859 (600–2,025)	4,880 (1,525–10,525)	7,064 (1,775–16,275)
E4	15	1	213 (190–260)	1,246 (1,025–1,775)	2,006 (1,525–3,025)
		5	505 (450–600)	2,933 (2,275–4,275)	4,529 (3,275–6,775)
	19.8	2	214 (210–220)	1,083 (900–2,025)	1,559 (1,025–2,525)
	198	2	156 (150–180)	1,141 (825–2,275)	2,076 (1,275–3,525)
E5	0.1	25	615 (250–1,025)	2,209 (850–9,775)	3,488 (1,025–15,275)
E6	0.1	1	210 (160–380)	796 (480–1,275)	1,040 (600–3,275)
	30	1	359 (280–625)	1,821 (1,275–2,775)	2,786 (1,775–4,275)
E7	15	1	557 (525–650)	3,435 (2,775–4,525)	5,095 (3,775–6,775)
E8	0.1	1	346 (230–600)	1,136 (625–4,025)	1,708 (850–6,025)
	45.75	1	469 (380–1,025)	2,555 (1,275–6,025)	3,804 (1,525–9,775)
	305	1	322 (310–330)	3,222 (1,775–4,525)	4,186 (2,275–5,775)
E9	0.1	1	441 (330–575)	1,466 (825–5,775)	2,142 (950–9,775)
E10	0.1	1	539 (350–900)	1,914 (875–8,525)	3,137 (1,025–15,025)
E11	18.5	1	1,026 (700–2,025)	5,796 (1,525–12,775)	8,525 (1,775–19,775)
	45.75	1	993 (675–2,275)	4,835 (1,525–13,525)	7,337 (1,775–18,775)
E12	0.1	1	651 (420–900)	2,249 (950–11,025)	3,349 (1,275–16,025)
E16	61	1	2,935 (1,775–5,025)	6,451 (2,275–16,275)	10,619 (3,275–24,025)
E17	61	1	3,583 (1,775–7,525)	12,031 (3,275–29,275)	18,396 (7,275–41,025)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Table 33 below shows the average and ranges due to varying propagation conditions to non-auditory injury as a function of explosive bin (*i.e.,* net explosive weight). Ranges to gastrointestinal tract injury typically exceed ranges to slight lung injury; therefore, the maximum range to effect is not mass-dependent. Animals within these water volumes would be expected to receive minor injuries at the outer ranges, increasing to more substantial injuries, and finally mortality as an animal approaches the detonation point.

TABLE 33—RANGES [1] TO 50% NON-AUDITORY INJURY RISK FOR ALL MARINE MAMMAL HEARING GROUPS

Bin	Range (m)
E1	22 (22–35)
E2	25 (25–30)
E3	46 (35–75)
E4	63 (0–130)
E5	75 (55–130)
E6	97 (65–390)
E7	232 (200–270)
E8	170 (0–490)
E9	215 (100–430)
E10	251 (110–700)
E11	604 (400–2,525)
E12	436 (130–1,025)
E16	1,844 (925–3,025)
E17	3,649 (1,000–14,025)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses. Modeled ranges based on peak pressure for a single explosion generally exceed the modeled ranges based on impulse (related to animal mass and depth).

Ranges to mortality, based on animal mass, are shown in Table 34 below.

TABLE 34—RANGES [1] TO 50% MORTALITY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

Bin	Representative animal mass (kg)					
	10	250	1,000	5,000	25,000	72,000
E1	4 (3–5)	1 (0–3)	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
E2	5 (5–7)	3 (0–5)	0 (0–2)	0 (0–0)	0 (0–0)	0 (0–0)
E3	11 (9–15)	6 (3–11)	3 (2–4)	0 (0–2)	0 (0–0)	0 (0–0)
E4	20 (0–45)	11 (0–30)	5 (0–13)	3 (0–6)	1 (0–2)	0 (0–2)
E5	18 (14–50)	10 (5–35)	5 (3–11)	3 (2–6)	0 (0–3)	0 (0–2)
E6	26 (17–75)	14 (0–55)	7 (0–20)	4 (3–10)	2 (0–4)	1 (0–3)
E7	100 (75–130)	49 (25–95)	21 (17–30)	13 (11–15)	7 (6–7)	5 (4–6)
E8	69 (0–140)	36 (0–100)	16 (0–30)	12 (0–17)	6 (0–8)	5 (0–7)
E9	58 (40–200)	26 (17–55)	14 (11–18)	9 (8–11)	5 (4–5)	4 (3–5)
E10	107 (40–320)	39 (19–220)	18 (14–35)	12 (10–21)	6 (6–9)	5 (4–6)
E11	299 (230–675)	163 (90–490)	74 (55–150)	45 (35–85)	24 (21–40)	19 (15–30)
E12	194 (60–460)	82 (25–340)	22 (18–30)	15 (12–17)	8 (7–9)	6 (5–7)
E16	1,083 (925–1,525)	782 (500–1,025)	423 (350–550)	275 (230–300)	144 (130–150)	105 (90–120)
E17	1,731 (925–2,525)	1,222 (700–2,275)	857 (575–1,025)	586 (470–825)	318 (290–340)	244 (210–280)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Airguns

Table 35 and Table 36 present the approximate ranges in meters to PTS, TTS, and potential behavioral reactions for airguns for 10 and 100 pulses, respectively. Ranges are specific to the AFTT Study Area and also to each marine mammal hearing group, dependent upon their criteria and the specific locations where animals from the hearing groups and the airgun activities could overlap. Small air guns (12–60 $in.^3$) would be fired pierside at the Naval Undersea Warfare Center Division, Newport Testing Range, and at off-shore locations typically in the Northeast, Virginia Capes, and Gulf of Mexico Range Complexes. Single, small air guns lack the peak pressures that could cause non-auditory injury (see Finneran *et al.,* (2015)).

TABLE 35—RANGE TO EFFECTS FROM AIRGUNS FOR 10 PULSES

Hearing group	Range to effects for airguns [1] for 10 pulses (m)				
	PTS (SEL)	PTS (Peak SPL)	TTS (SEL)	TTS (Peak SPL)	Behavioral [2]
High-Frequency Cetacean	0 (0–0)	15 (15–15)	0 (0–0)	25 (25–25)	700 (250–1,025)
Low-Frequency Cetacean	13 (12–13)	2 (2–2)	72 (70–80)	4 (4–4)	685 (170–1,025)
Mid-Frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	680 (160–2,275)
Phocids	0 (0–0)	2 (2–2)	3 (3–3)	4 (4–4)	708 (220–1,025)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. PTS and TTS values depict the range produced by SEL and Peak SPL (as noted) hearing threshold criteria levels.

[2] Behavioral values depict the ranges produced by RMS hearing threshold criteria levels.

TABLE 36—RANGE TO EFFECTS FROM AIRGUNS FOR 100 PULSES

Hearing group	Range to effects for airguns [1] for 100 pulses (m)				
	PTS (SEL)	PTS (Peak SPL)	TTS (SEL)	TTS (Peak SPL)	Behavioral [2]
High-Frequency Cetacean	4 (4–4)	40 (40–40)	48 (45–50)	66 (65–70)	2,546 (1,025–5,525)
Low-Frequency Cetacean	122 (120–130)	3 (3–3)	871 (600–1,275)	13 (12–13)	2,546 (1,025–5,525)
Mid-Frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	2,546 (1,025–5,525)
Phocids	3 (2–3)	3 (3–3)	25 (25–25)	14 (14–15)	2,546 (1,025–5,525)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. PTS and TTS values depict the range produced by SEL and Peak SPL (as noted) hearing threshold criteria levels.
[2] Behavioral values depict the ranges produced by RMS hearing threshold criteria levels.

Pile Driving

Table 37 and Table 38 present the approximate ranges in meters to PTS, TTS, and potential behavioral reactions for impact pile driving and vibratory pile removal, respectively. Non-auditory injury is not predicted for pile driving activities.

TABLE 37—AVERAGE RANGES TO EFFECTS FROM IMPACT PILE DRIVING

Hearing group	PTS (m)	TTS (m)	Behavioral (m)
Low-frequency Cetaceans	65	529	870
Mid-frequency Cetaceans	2	16	870
High-frequency Cetaceans	65	529	870
Phocids	19	151	870

Notes: PTS: permanent threshold shift; TTS: temporary threshold shift.

TABLE 38—AVERAGE RANGES TO EFFECTS FROM VIBRATORY PILE EXTRACTION

Hearing group	PTS (m)	TTS (m)	Behavioral (m)
Low-frequency Cetaceans	0	3	376
Mid-frequency Cetaceans	0	4	376
High-frequency Cetaceans	7	116	376
Phocids	0	2	376

Notes: PTS: permanent threshold shift; TTS: temporary threshold shift.

Serious Injury or Mortality From Ship Strikes

There have been three recorded Navy vessel strikes of marine mammals in the AFTT Study Area to from 2009 through 2017 (nine years). There are incidents in which a vessel struck animal has remained unidentified to species and the Navy cannot quantifiably predict that the possible takes from vessel strike will be of any particular species. Therefore, the Navy requested mortal takes of three large whales over the course of the five-year rule, and no more than two of any species of humpback whale, fin whale, sei whale, minke whale, blue whale, or sperm whale (either GOM or North Atlantic). NMFS concurs that the request for mortal takes of three large whales (of any species listed in previous sentence) over the five-year period of the rule is reasonable based on the available strike data and the Navy's analysis (see their updated ship strike analysis on NMFS website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*), but does not agree that two mortal takes of any one species is likely. When the probability of hitting more than one individual of the same species within the five-year period is considered in combination with the available data indicating the proportional historical strikes of different species and the probability of hitting the same species twice, the likelihood of hitting the same species of whale twice in five years is very low (under to well under 10 percent). Therefore, we find that it is unlikely that the same species would be struck twice during the five-year regulatory period and are proposing to authorize up to three mortal takes of no more than one from any of the species of large whales over the five-year period, which means an annual average of 0.2 whales from each species (*i.e.,* 1 take over 5 years divided by 5 to get the annual number).

Marine Mammal Density

A quantitative analysis of impacts on a species or stock requires data on number of animals that may be affected by anthropogenic activities and distribution in the potentially impacted area. The most appropriate metric for this type of analysis is density, which is the number of animals present per unit area. Marine species density estimation requires a significant amount of effort to both collect and analyze data to produce a reasonable estimate. Unlike surveys for terrestrial wildlife, many marine species spend much of their time submerged, and are not easily observed. In order to collect enough sighting data to make reasonable density estimates, multiple observations are required, often in areas that are not easily accessible (*e.g.,* far offshore). Ideally, marine mammal species sighting data would be collected for the specific area and time period (*e.g.,* season) of interest and density estimates derived accordingly. However, in many places,

poor weather conditions and high sea states prohibit the completion of comprehensive visual surveys.

For most cetacean species, abundance is estimated using line-transect surveys or mark-recapture studies (*e.g.,* Barlow, 2010, Barlow and Forney, 2007, Calambokidis *et al.,* 2008). The result provides one single density estimate value for each species across broad geographic areas. This is the general approach applied in estimating cetacean abundance in the NMFS SARS. Although the single value provides a good average estimate of abundance (total number of individuals) for a specified area, it does not provide information on the species distribution or concentrations within that area, and it does not estimate density for other timeframes or seasons that were not surveyed. More recently, habitat modeling has been used to estimate cetacean densities (Barlow *et al.,* 2009; Becker *et al.,* 2010, 2012a, b, c; Ferguson *et al.,* 2006a; Forney *et al.,* 2012; Redfern *et al.,* 2006). These models estimate cetacean density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth, etc.) and thus allow predictions of cetacean densities on finer spatial scales than traditional line-transect or mark recapture analyses. Within the geographic area that was modeled, densities can be predicted wherever these habitat variables can be measured or estimated.

To characterize the marine species density for large areas such as the AFTT Study Area, the Navy compiled data from several sources. The Navy developed a protocol to select the best available data sources based on species, area, and time (season). The resulting Geographic Information System database called the Navy Marine Species Density Database includes seasonal density values for every marine mammal species present within the AFTT Study Area. This database is described in the technical report titled *U.S. Navy Marine Species Density Database Phase III for the Atlantic Fleet Training and Testing Area* (U.S. Department of the Navy, 2017), hereafter referred to as the density technical report.

A variety of density data and density models are needed in order to develop a density database that encompasses the entirety of the AFTT Study Area. Because this data is collected using different methods with varying amounts of accuracy and uncertainty, the Navy has developed a model hierarchy to ensure the most accurate data is used when available. The density technical report describes these models in detail and provides detailed explanations of the models applied to each species density estimate. The below list describes possible models in order of preference.

1. Spatial density models (see Roberts *et al.* (2016)) predict spatial variability of animal presence based on habitat variables (*e.g.,* sea surface temperature, seafloor depth, etc.). This model is developed for areas, species, and, when available, specific timeframes (months or seasons) with sufficient survey data; therefore, this model cannot be used for species with low numbers of sightings. In the AFTT Study Area, this model is available for certain species along the east coast to the offshore extent of available survey data and in the Gulf of Mexico.

2. Design-based density models predict animal density based on survey data. Like spatial density models, they are applied to areas with survey data. Design-based density models may be stratified, in which a density is predicted for each sub-region of a survey area, allowing for better prediction of species distribution across the density model area. In the AFTT Study Area, stratified density models are used for certain species on both the east coast and the Gulf of Mexico. In addition, a few species' stratified density models are applied to areas east of regions with available survey data and cover a substantial portion of the Atlantic Ocean portion of the AFTT Study Area.

3. Extrapolative models are used in areas where there is insufficient or no survey data. These models use a limited set of environmental variables to predict possible species densities based on environmental observations during actual marine mammal surveys (see Mannocci *et al.* (2017)). In the AFTT Study Area, extrapolative models are typically used east of regions with available survey data and cover a substantial portion of the Atlantic Ocean of the AFTT Study Area. Because some unsurveyed areas have oceanographic conditions that are very different from surveyed areas (*e.g.,* the Labrador Sea and North Atlantic gyre) and some species models rely on a very limited data set, the predictions of some species' extrapolative density models and some regions of certain species' extrapolative density models are considered highly speculative. Extrapolative models are not used in the Gulf of Mexico.

4. Existing Relative Environmental Suitability models include a high degree of uncertainty, but are applied when no other model is available.

When interpreting the results of the quantitative analysis, as described in the density technical report (U.S. Department of the Navy, 2017), ''it is important to consider that even the best estimate of marine species density is really a model representation of the values of concentration where these animals might occur. Each model is limited to the variables and assumptions considered by the original data source provider. No mathematical model representation of any biological population is perfect and with regards to marine species biodiversity, any single model method will not completely explain the actual distribution and abundance of marine mammal species. It is expected that there would be anomalies in the results that need to be evaluated, with independent information for each case, to support if we might accept or reject a model or portions of the model.''

Take Requests

The AFTT DEIS/OEIS considered all training and testing activities proposed to occur in the AFTT Study Area that have the potential to result in the MMPA defined take of marine mammals. The Navy determined that the three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate and agrees that the following stressors have the potential to result in takes of marine mammals from the Proposed Activity.

- Acoustics (sonar and other transducers; airguns; pile driving/extraction).
- Explosives (explosive shock wave and sound; explosive fragments).
- Physical Disturbance and Strike (vessel strike).

Acoustic and explosive sources have the potential to result in incidental takes of marine mammals by harassment, serious injury, or mortality. Vessel strikes have the potential to result in incidental take from serious injury or mortality.

The quantitative analysis process used for the AFTT DEIS/OEIS and the Navy's take request in the rulemaking and LOA application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled *Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles* (U.S. Department of the Navy, 2017a). The Navy Acoustic Effects Model estimates acoustic and explosive effects without taking mitigation into

account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. To account for mitigation for marine species in the take estimates, the Navy conducts a post-modeling analysis using applicable literature to conservatively quantify the manner in which mitigation is expected to reduce model-estimated PTS to TTS for exposures to sonar and other transducers, and reduce model-estimated mortality to injury for exposures to explosives. The Navy coordinated with NMFS in the development of this quantitative method to address the effects of mitigation on acoustic exposures and takes, and concurs with the Navy that it is appropriate to incorporate into the take estimates based on the best available science. For additional information on the quantitative analysis process and mitigation measures, refer to Section 6 (Take Estimates for Marine Mammals) and Section 11 (Mitigation Measures) of the Navy's rulemaking and LOA application.

Summary of Proposed Authorized Take From Training and Testing Activities

Based on the methods outlined in the previous sections, Navy's model analysis, the Navy's summarizes the take request for acoustic and explosive sources for training and testing activities annually (based on the maximum number of activities per 12-month period), and the summation over a five-year period, as well as the Navy's take request for individual small and large ship shock trials, and the take that could occur over a five-year period for all ship shock activities. NMFS has reviewed the Navy's data and analysis and preliminary determined that it is complete and accurate and that the takes by harassment proposed for authorization are reasonably expected to occur and that the takes by mortality could occur as in the case of vessel strikes.

Take Reasonably Expected To Occur From Training Activities

Table 39 summarizes the Navy's take request and the amount and type of take that is reasonably likely to occur (Level A and Level B harassment) by species associated with all training activities. Note that Level B take includes both behavioral disruption and TTS. Navy figures 6.4–10 through 6.5–69 in Section 6 of the Navy's rulemaking and LOA application illustrate the comparative amounts of TTS and behavioral disruption for each species, noting that if a ''taken'' animal was exposed to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 39—SPECIES AND STOCK-SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FOR ALL TRAINING ACTIVITIES

Species	Stock	Annual		5-Year total	
		Level B	Level A	Level B	Level A
Suborder Mysticeti (baleen whales)					
Family Balaenidae (right whales)					
North Atlantic right whale*	Western North Atlantic	246	0	1,176	0
Family Balaenopteridae (roquals)					
Blue whale*	Western North Atlantic (Gulf of St. Lawrence).	26	0	121	0
Bryde's whale	Northern Gulf of Mexico	0	0	0	0
	NSD†	206	0	961	0
Minke whale	Canadian East Coast	2,425	0	11,262	0
Fin whale*	Western North Atlantic	1,498	3	7,295	13
Humpback whale	Gulf of Maine	232	1	1,116	3
Sei whale*	Nova Scotia	292	0	1,400	0
Suborder Odontoceti (toothed whales)					
Family Physeteridae (sperm whale)					
Sperm whale*	Gulf of Mexico Oceanic	24	0	118	0
	North Atlantic	14,084	0	68,839	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Gulf of Mexico Oceanic	14	0	71	0
	Western North Atlantic	8,527	10	39,914	48
Pygmy sperm whale	Northern Gulf of Mexico	14	0	71	0
	Western North Atlantic	8,527	10	39,914	48
Family Ziphiidae (beaked whales)					
Blainville's beaked whale	Northern Gulf of Mexico	35	0	173	0
	Western North Atlantic	12,532	0	61,111	0
Cuvier's beaked whale	Northern Gulf of Mexico	34	0	172	0
	Western North Atlantic	46,401	0	226,286	0
Gervais' beaked whale	Northern Gulf of Mexico	35	0	173	0
	Western North Atlantic	12,532	0	61,111	0
Northern bottlenose whale	Western North Atlantic	1,074	0	5,360	0
Sowersby's beaked whale	Western North Atlantic	12,532	0	61,111	0
True's beaked whale	Western North Atlantic	12,532	0	61,111	0

TABLE 39—SPECIES AND STOCK-SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	Annual		5-Year total	
		Level B	Level A	Level B	Level A
Family Delphinidae (dolphins)					
Atlantic spotted dolphin	Northern Gulf of Mexico	951	0	4,710	0
	Western North Atlantic	117,458	9	570,940	45
Atlantic white-sided dolphin	Western North Atlantic	14,493	1	71,050	3
Bottlenose dolphin	Choctawhatchee Bay	7	0	33	0
	Gulf of Mexico Eastern Coastal	42	0	125	0
	Gulf of Mexico Northern Coastal	218	0	1,088	0
	Gulf of Mexico Western Coastal	4,148	0	12,568	0
	Indian River Lagoon Estuarine System.	283	0	1,414	0
	Jacksonville Estuarine System	84	0	421	0
	Mississippi Sound, Lake Borgne, Bay Boudreau.	0	0	0	0
	Northern Gulf of Mexico Continental Shelf.	1,560	2	7,798	9
	Northern Gulf of Mexico Oceanic	194	0	969	0
	Northern North Carolina Estuarine System.	3,221	0	11,798	0
	Southern North Carolina Estuarine System.	0	0	0	0
	Western North Atlantic Northern Florida Coastal.	906	0	4,323	0
	Western North Atlantic Central Florida Coastal.	5,341	0	25,594	0
	Western North Atlantic Northern Migratory Coastal.	25,188	4	125,183	19
	Western North Atlantic Offshore	308,206	39	1,473,308	193
	Western North Atlantic South Carolina/Georgia Coastal.	4,328	0	20,559	0
	Western North Atlantic Southern Migratory Coastal.	12,493	2	58,061	10
Clymene dolphin	Northern Gulf of Mexico	99	0	495	0
	Western North Atlantic	69,773	3	330,027	13
False killer whale	Northern Gulf of Mexico	41	0	207	0
	Western North Atlantic	8,270	0	39,051	0
Fraser's dolphin	Northern Gulf of Mexico	59	0	296	0
	Western North Atlantic	3,930	0	18,633	0
Killer whale	Northern Gulf of Mexico	1	0	4	0
	Western North Atlantic	78	0	372	0
Long-finned pilot whale	Western North Atlantic	17,040	0	83,050	0
Melon-headed whale	Northern Gulf of Mexico	70	0	352	0
	Western North Atlantic	37,156	1	175,369	3
Pantropical spotted dolphin	Northern Gulf of Mexico	565	0	2,827	0
	Western North Atlantic	145,125	2	686,775	10
Pygmy killer whale	Northern Gulf of Mexico	16	0	82	0
	Western North Atlantic	6,482	0	30,639	0
Risso's dolphin	Northern Gulf of Mexico	39	0	197	0
	Western North Atlantic	21,033	0	100,018	0
Rough-toothed dolphin	Northern Gulf of Mexico	97	0	434	0
	Western North Atlantic	19,568	0	92,313	0
Short-beaked common dolphin	Western North Atlantic	218,145	12	1,046,192	61
Short-finned pilot whale	Northern Gulf of Mexico	36	0	179	0
	Western North Atlantic	31,357	0	150,213	0
Spinner dolphin	Northern Gulf of Mexico	227	0	1,136	0
	Western North Atlantic	73,691	1	347,347	6
Striped dolphin	Northern Gulf of Mexico	67	0	336	0
	Western North Atlantic	91,038	3	451,001	13
White-beaked dolphin	Western North Atlantic	39	0	192	0
Family Phocoenidae (porpoises)					
Harbor porpoise	Gulf of Maine/Bay of Fundy	29,789	161	147,289	802
Suborder Pinnipedia					
Family Phocidae (true seals)					
Gray seal	Western North Atlantic	1,443	0	7,172	0

TABLE 39—SPECIES AND STOCK-SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	Annual		5-Year total	
		Level B	Level A	Level B	Level A
Harbor seal	Western North Atlantic	2,341	0	11,631	0
Harp seal	Western North Atlantic	8,444	1	42,188	4
Hooded seal	Western North Atlantic	128	0	631	0

* ESA-listed species (all stocks) within the AFTT Study Area.
† NSD: No stock designated.

Take Reasonably Expected To Occur From Testing Activities

Table 40 summarizes the Navy's take request and the amount and type of take that is reasonably likely to occur (Level A and Level B harassment) by species associated with all testing activities.

TABLE 40—SPECIES-SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FROM ALL TESTING ACTIVITIES (EXCLUDING SHIP SHOCK TRIALS)

Species	Stock	Annual		5-Year total	
		Level B	Level A	Level B	Level A
Suborder Mysticeti (baleen whales)					
Family Balaenidae (right whales)					
North Atlantic right whale*	Western North Atlantic	339	0	1,667	0
Family Balaenopteridae (roquals)					
Blue whale*	Western North Atlantic (Gulf of St. Lawrence).	20	0	97	0
Bryde's whale	Northern Gulf of Mexico	52	0	254	0
	NSD†	124	0	612	0
Minke whale	Canadian East Coast	1,616	1	7,971	7
Fin whale*	Western North Atlantic	3,868	3	18,781	16
Humpback whale	Gulf of Maine	493	0	2,412	0
Sei whale*	Nova Scotia	502	0	2,431	0
Suborder Odontoceti (toothed whales)					
Family Physeteridae (sperm whale)					
Sperm whale*	Gulf of Mexico Oceanic	1,106	0	5,237	0
	North Atlantic	11,296	0	51,752	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Gulf of Mexico Oceanic	728	6	3,424	27
	Western North Atlantic	4,383	14	21,159	65
Pygmy sperm whale	Northern Gulf of Mexico	728	6	3,424	27
	Western North Atlantic	4,383	14	21,159	65
Family Ziphiidae (beaked whales)					
Blainville's beaked whale	Northern Gulf of Mexico	1,392	0	6,710	0
	Western North Atlantic	10,565	0	49,646	0
Cuvier's beaked whale	Northern Gulf of Mexico	1,460	0	6,987	0
	Western North Atlantic	38,780	0	182,228	0
Gervais' beaked whale	Northern Gulf of Mexico	1,392	0	6,710	0
	Western North Atlantic	10,565	0	49,646	0
Northern bottlenose whale	Western North Atlantic	971	0	4,485	0
Sowersby's beaked whale	Western North Atlantic	10,593	0	49,764	0
True's beaked whale	Western North Atlantic	10,593	0	49,764	0
Family Delphinidae (dolphins)					
Atlantic spotted dolphin	Northern Gulf of Mexico	71,883	2	333,793	12
	Western North Atlantic	109,582	11	504,537	50
Atlantic white-sided dolphin	Western North Atlantic	31,780	1	150,063	6
Bottlenose dolphin	Choctawhatchee Bay	966	0	4,421	0

TABLE 40—SPECIES-SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FROM ALL TESTING ACTIVITIES (EXCLUDING SHIP SHOCK TRIALS)—Continued

Species	Stock	Annual		5-Year total	
		Level B	Level A	Level B	Level A
	Gulf of Mexico Eastern Coastal	0	0	0	0
	Gulf of Mexico Northern Coastal	16,258	1	76,439	5
	Gulf of Mexico Western Coastal	3,677	0	18,036	0
	Indian River Lagoon Estuarine System.	3	0	14	0
	Jacksonville Estuarine System	3	0	13	0
	Mississippi Sound, Lake Borgne, Bay Boudreau.	1	0	3	0
	Northern Gulf of Mexico Continental Shelf.	125,941	8	594,921	39
	Northern Gulf of Mexico Oceanic	14,448	1	67,243	5
	Northern North Carolina Estuarine System.	107	0	533	0
	Southern North Carolina Estuarine System.	0	0	0	0
	Western North Atlantic Northern Florida Coastal.	328	0	1,613	0
	Western North Atlantic Central Florida Coastal.	2,273	0	10,950	0
	Western North Atlantic Northern Migratory Coastal.	11,854	3	56,321	14
	Western North Atlantic Offshore	119,880	24	566,572	115
	Western North Atlantic South Carolina/Georgia Coastal.	1,632	0	8,017	0
	Western North Atlantic Southern Migratory Coastal.	4,221	0	20,828	0
Clymene dolphin	Northern Gulf of Mexico	4,164	0	19,919	0
	Western North Atlantic	35,985	2	170,033	7
False killer whale	Northern Gulf of Mexico	1,931	0	9,116	0
	Western North Atlantic	3,766	0	17,716	0
Fraser's dolphin	Northern Gulf of Mexico	1,120	0	5,314	0
	Western North Atlantic	1,293	0	6,069	0
Killer whale	Northern Gulf of Mexico	32	0	150	0
	Western North Atlantic	42	0	188	0
Long-finned pilot whale	Western North Atlantic	20,502	2	94,694	6
Melon-headed whale	Northern Gulf of Mexico	3,058	0	14,544	0
	Western North Atlantic	16,688	1	78,545	4
Pantropical spotted dolphin	Northern Gulf of Mexico	25,929	1	121,468	4
	Western North Atlantic	77,450	4	355,889	17
Pygmy killer whale	Northern Gulf of Mexico	719	0	3,415	0
	Western North Atlantic	2,848	0	13,427	0
Risso's dolphin	Northern Gulf of Mexico	1,649	0	7,817	0
	Western North Atlantic	20,071	1	94,009	6
Rough-toothed dolphin	Northern Gulf of Mexico	3,927	0	18,493	0
	Western North Atlantic	8,766	0	41,492	0
Short-beaked common dolphin	Western North Atlantic	353,012	16	1,675,885	71
Short-finned pilot whale	Northern Gulf of Mexico	1,823	0	8,613	0
	Western North Atlantic	17,002	1	80,576	6
Spinner dolphin	Northern Gulf of Mexico	7,815	0	36,567	0
	Western North Atlantic	33,350	2	157,241	7
Striped dolphin	Northern Gulf of Mexico	2,447	0	11,700	0
	Western North Atlantic	102,047	5	465,392	21
White-beaked dolphin	Western North Atlantic	44	0	213	0
Family Phocoenidae (porpoises)					
Harbor porpoise	Gulf of Maine/Bay of Fundy	135,221	230	627,215	1,093
Suborder Pinnipedia					
Family Phocidae (true seals)					
Gray seal	Western North Atlantic	899	2	4,375	9
Harbor seal	Western North Atlantic	1,496	5	7,095	16
Harp seal	Western North Atlantic	7,791	0	38,273	11
Hooded seal	Western North Atlantic	782	0	3,805	0

* ESA-listed species (all stocks) within the AFTT Study Area.
† NSD: No stock designated.

Take Reasonably Expected To Occur From Ship Shock

Table 41 summarizes the Navy's take request and the maximum amount and type of take that could potentially occur (Level B and Level A harassment, or serious injury/mortality) by species for ship shock trials under testing activities per small and large ship shock events and the summation over a five-year period. The table below displays maximum ship shock impacts to marine mammals by species (in bold text), as well as maximum impacts on individual stocks. The maximum is derived by selecting the highest number of potential impacts across all locations and all seasons for each species/stock. Small Ship Shock trials could take place any season within the deep offshore water of the Virginia Capes Range Complex or in the spring, summer, or fall within the Jacksonville Range Complex and could occur up to three times over a five-year period. The Large Ship Shock trial could take place in the Jacksonville Range Complex during the Spring, Summer, or Fall and during any season within the deep offshore water of the Virginia Capes Range Complex or within the Gulf of Mexico. The Large Ship Shock Trial could occur once over 5 years. For serious injury/mortality takes over the five-year period, an annual average of 0.2 whales from each dolphin species/stock listed below (*i.e.,* 1 take divided by 5 years to get the annual number) or 1.2 dolphins in the case of short-beaked common dolphin (*i.e.,* 6 takes divided by 5 years to get the annual number) is used in further analysis in the ''Negligible Impact Analysis and Determination'' section.

TABLE 41—SPECIES SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FROM SHIP SHOCK TRIALS

Species/stock	Small ship shock			Large ship shock			5-Year total		
	Level B	Level A	Mortality	Level B	Level A	Mortality	Level B	Level A	Mortality
Suborder Mysticeti (baleen whales)									
Family Balaenidae (right whales)									
North Atlantic right whale	**1**	**0**	**0**	**2**	**0**	**0**	**5**	**0**	**0**
Western North Atlantic*	1	0	0	2	0	0	5	0	0
Family Balaenopteridae (roquals)									
Blue whale	**0**	**0**	**0**	**1**	**0**	**0**	**1**	**0**	**0**
Western North Atlantic (Gulf of St. Lawrence)*	0	0	0	1	0	0	1	0	0
Bryde's whale	**3**	**0**	**0**	**6**	**1**	**0**	**15**	**1**	**0**
Northern Gulf of Mexico*	0	0	0	3	1	0	3	1	0
NSD†	3	0	0	6	0	0	15	0	0
Minke whale	**19**	**1**	**0**	**39**	**3**	**0**	**96**	**6**	**0**
Canadian East Coast	19	1	0	39	3	0	96	6	0
Fin whale	**131**	**3**	**0**	**234**	**27**	**0**	**627**	**36**	**0**
Western North Atlantic*	131	3	0	234	27	0	627	36	0
Humpback whale	**8**	**0**	**0**	**20**	**2**	**0**	**44**	**2**	**0**
Gulf of Maine	8	0	0	20	2	0	44	2	0
Sei whale	**12**	**1**	**0**	**27**	**4**	**0**	**63**	**7**	**0**
Nova Scotia*	12	1	0	27	4	0	63	7	0
Suborder Odontoceti (toothed whales)									
Family Physeteridae (sperm whale)									
Sperm whale*	**1**	**1**	**0**	**3**	**4**	**0**	**6**	**7**	**0**
Gulf of Mexico Oceanic	0	0	0	2	0	0	2	0	0
North Atlantic	1	1	0	3	4	0	6	7	0
Family Kogiidae (sperm whales)									
Dwarf sperm whale	**46**	**28**	**0**	**91**	**70**	**0**	**229**	**154**	**0**
Gulf of Mexico Oceanic	0	0	0	51	64	0	51	64	0
Western North Atlantic	46	28	0	91	70	0	229	154	0
Pygmy sperm whale	**46**	**28**	**0**	**91**	**70**	**0**	**229**	**154**	**0**
Northern Gulf of Mexico	0	0	0	51	64	0	51	64	0
Western North Atlantic	46	28	0	91	70	0	229	154	0
Family Ziphiidae (beaked whales)									
Blainville's beaked whale	**1**	**0**	**0**	**1**	**1**	**0**	**4**	**1**	**0**
Northern Gulf of Mexico	0	0	0	1	0	0	1	0	0
Western North Atlantic	1	0	0	1	1	0	4	1	0
Cuvier's beaked whale	**2**	**1**	**0**	**2**	**3**	**0**	**4**	**1**	**0**
Northern Gulf of Mexico	0	0	0	1	0	0	1	0	0
Western North Atlantic	2	1	0	2	3	0	8	6	0
Gervais' beaked whale	**1**	**0**	**0**	**1**	**1**	**0**	**8**	**6**	**0**
Northern Gulf of Mexico	0	0	0	1	0	0	1	0	0
Western North Atlantic	1	0	0	1	1	0	4	1	0
Northern bottlenose whale	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Western North Atlantic	0	0	0	0	0	0	0	0	0
Sowerby's beaked whale	**1**	**0**	**0**	**1**	**1**	**0**	**4**	**1**	**0**
Western North Atlantic	1	0	0	1	1	0	4	1	0
True's beaked whale	**1**	**0**	**0**	**1**	**1**	**0**	**4**	**1**	**0**
Western North Atlantic	1	0	0	1	1	0	4	1	0
Family Delphinidae (dolphins)									
Atlantic spotted dolphin	**6**	**4**	**0**	**8**	**12**	**0**	**26**	**24**	**0**

TABLE 41—SPECIES SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FROM SHIP SHOCK TRIALS—Continued

Species/stock	Small ship shock			Large ship shock			5-Year total		
	Level B	Level A	Mortality	Level B	Level A	Mortality	Level B	Level A	Mortality
Northern Gulf of Mexico	0	0	0	2	1	0	2	1	0
Western North Atlantic	6	4	0	8	12	0	26	24	0
Atlantic white-sided dolphin	**1**	**1**	**0**	**3**	**9**	**1**	**6**	**12**	**1**
Western North Atlantic	1	1	0	3	9	1	6	12	1
Bottlenose dolphin	**13**	**10**	**0**	**16**	**24**	**0**	**55**	**54**	**0**
Choctawhatchee Bay	0	0	0	0	0	0	0	0	0
Gulf of Mexico Eastern Coastal	0	0	0	0	0	0	0	0	0
Gulf of Mexico Northern Coastal	0	0	0	1	1	0	1	1	0
Gulf of Mexico Western Coastal	0	0	0	0	0	0	0	0	0
Indian River Lagoon Estuarine System	0	0	0	0	0	0	0	0	0
Jacksonville Estuarine System	0	0	0	0	0	0	0	0	0
Mississippi Sound, Lake Borgne, Bay Boudreau	0	0	0	0	0	0	0	0	0
Northern Gulf of Mexico Continental Shelf	0	0	0	10	6	0	10	6	0
Northern Gulf of Mexico Oceanic	0	0	0	10	9	0	10	9	0
Northern North Carolina Estuarine System	0	0	0	0	0	0	0	0	0
Southern North Carolina Estuarine System	0	0	0	0	0	0	0	0	0
Western North Atlantic Northern Florida Coastal	0	0	0	0	0	0	0	0	0
Western North Atlantic Central Florida Coastal	0	0	0	0	0	0	0	0	0
Western North Atlantic Northern Migratory Coastal	0	0	0	0	0	0	0	0	0
Western North Atlantic Offshore	13	10	0	16	24	0	55	54	0
Western North Atlantic South Carolina/Georgia Coastal	0	0	0	0	0	0	0	0	0
Western North Atlantic Southern Migratory Coastal	0	0	0	0	0	0	0	0	0
Clymene dolphin	**2**	**5**	**0**	**9**	**8**	**0**	**15**	**23**	**0**
Northern Gulf of Mexico	0	0	0	8	6	0	8	6	0
Western North Atlantic	2	5	0	9	8	0	15	23	0
False killer whale	**0**	**0**	**0**	**2**	**1**	**0**	**2**	**1**	**0**
Northern Gulf of Mexico	0	0	0	2	1	0	2	1	0
Western North Atlantic	0	0	0	2	0	0	2	0	0
Fraser's dolphin	**0**	**0**	**0**	**2**	**3**	**0**	**2**	**3**	**0**
Northern Gulf of Mexico	0	0	0	2	3	0	2	3	0
Western North Atlantic	0	0	0	0	0	0	0	0	0
Killer whale	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Northern Gulf of Mexico	0	0	0	0	0	0	0	0	0
Western North Atlantic	0	0	0	0	0	0	0	0	0
Long-finned pilot whale	**2**	**2**	**0**	**5**	**6**	**0**	**11**	**12**	**0**
Western North Atlantic	2	2	0	5	6	0	11	12	0
Melon-headed whale	**1**	**1**	**0**	**5**	**4**	**0**	**8**	**7**	**0**
Northern Gulf of Mexico	0	0	0	4	4	0	4	4	0
Western North Atlantic	1	1	0	5	1	0	8	4	0
Pantropical spotted dolphin	**2**	**3**	**0**	**25**	**20**	**1**	**31**	**29**	**1**
Northern Gulf of Mexico	0	0	0	25	20	1	25	20	1
Western North Atlantic	2	3	0	7	3	0	13	12	0
Pygmy killer whale	**0**	**0**	**0**	**1**	**1**	**0**	**1**	**1**	**0**
Northern Gulf of Mexico	0	0	0	1	1	0	1	1	0
Western North Atlantic	0	0	0	1	0	0	1	0	0
Risso's dolphin	**1**	**1**	**0**	**3**	**1**	**0**	**6**	**4**	**0**
Northern Gulf of Mexico	0	0	0	2	1	0	2	1	0
Western North Atlantic	1	1	0	3	1	0	6	4	0
Rough-toothed dolphin	**1**	**0**	**0**	**3**	**2**	**0**	**6**	**2**	**0**
Northern Gulf of Mexico	0	0	0	2	2	0	2	2	0
Western North Atlantic	0	0	0	0	0	0	0	0	0
Short-beaked common dolphin	**40**	**51**	**1**	**67**	**107**	**3**	**187**	**260**	**6**
Western North Atlantic	40	51	1	67	107	3	187	260	6
Short-finned pilot whale	**2**	**2**	**0**	**4**	**5**	**0**	**10**	**11**	**0**
Northern Gulf of Mexico	0	0	0	2	3	0	2	3	0
Western North Atlantic	2	2	0	4	5	0	10	11	0
Spinner dolphin	**3**	**1**	**0**	**37**	**45**	**1**	**46**	**48**	**1**
Northern Gulf of Mexico	0	0	0	37	45	1	37	45	1
Western North Atlantic	3	1	0	7	3	0	16	6	0
Striped dolphin	**4**	**8**	**0**	**10**	**12**	**0**	**22**	**36**	**0**
Northern Gulf of Mexico	0	0	0	4	3	0	4	3	0
Western North Atlantic	4	8	0	10	12	0	22	36	0
White-beaked dolphin	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Western North Atlantic	0	0	0	0	0	0	0	0	0
Family Phocoenidae (porpoises)									
Harbor porpoise	**43**	**41**	**0**	**120**	**81**	**0**	**249**	**204**	**0**
Gulf of Maine/Bay of Fundy	43	41	0	120	81	0	249	204	0
Suborder Pinnipedia									
Family Phocidae (true seals)									
Gray seal	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Western North Atlantic	0	0	0	0	0	0	0	0	0
Harbor seal	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Western North Atlantic	0	0	0	0	0	0	0	0	0
Harp seal	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

TABLE 41—SPECIES SPECIFIC TAKE PROPOSED FOR AUTHORIZATION FROM SHIP SHOCK TRIALS—Continued

Species/stock	Small ship shock			Large ship shock			5-Year total		
	Level B	Level A	Mortality	Level B	Level A	Mortality	Level B	Level A	Mortality
Western North Atlantic	0	0	0	0	0	0	0	0	0
Hooded seal	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Western North Atlantic	0	0	0	0	0	0	0	0	0

Note: The table displays maximum ship shock impacts to marine mammals by species (in bold text), as well as maximum impacts on individual stocks.
* ESA-listed species' stocks within the AFTT Study Area.
† NSD: No stock designated.

Take From Vessel Strikes

Vessel strike to marine mammals is not associated with any specific training or testing activity but is rather an extremely limited and sporadic, but possible, accidental result of Navy vessel movement within the AFTT Study Area or while in transit. There have been three recorded Navy vessel strikes of large whales (*i.e.,* mysticetes and sperm whales) in the AFTT Study Area to from 2009 through 2017 (nine years). In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the AFTT Study Area, the Navy requests incidental takes based on the resulting probabilities presented in their analysis as described in detail in Chapter 6 of the Navy's rulemaking and LOA application (and further refine ship strike analysis on NMFS website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and coordination with NMFS), as well as the cumulative low history of Navy vessel strikes since 2009 and introduction of the Marine Species Awareness Training and adoption of additional mitigation measures. Most Navy-reported whale strikes have not been identified to the species level, however, small delphinids are neither expected nor authorized to be struck by Navy vessels since: They have not been struck historically by Navy AFTT activities, their smaller size and maneuverability makes a strike from a larger vessel much less likely as illustrated in worldwide ship-strike records, and the majority of the Navy's faster-moving activities are located in offshore areas where smaller delphinid densities are less. Accordingly, NMFS proposes takes of large whales only over the course of the five-year regulations from training and testing activities as discussed below.

The Navy estimated that it may strike, and take by serious injury or mortality, up to three large whales incidental to the Proposed Activity over the course of the five years of the AFTT regulations. Because of the number of incidents in which the struck animal has remained unidentified to species, the Navy cannot quantifiably predict that the potential takes will be of any particular species, and therefore requested incidental take authorization for up to two of any the following species in the five-year period: Humpback whale (Gulf of Maine stock), fin whale (Western North Atlantic stock), minke (Canadian East Coast stock), and sperm whale (North Atlantic stock) and one of any of the following: Sei whale (Nova Scotia stock), blue whale (Western North Atlantic stock), sperm whale (Gulf of Mexico Oceanic stock).

NMFS agrees that the request for mortal takes of three large whales (of any species listed in previous bullet) over the five-year period of the rule is reasonable based on the available strike data (three strikes by Navy over nine years) and the Navy's analysis, but does not agree that two mortal takes of any one species is likely. When the probability of hitting more than one individual of the same species within the five-year period is considered in combination with the available data indicating the proportional historical strikes of different species and the probability of hitting the same species twice, the likelihood of hitting the same species of whale twice in five years is very low (under to well under 10 percent). Therefore, we find that it is unlikely that the same species would be struck twice during the five-year regulatory period and are proposing to authorize up to three mortal takes of no more than one from any of the species of large whales over the five-year period, which means an annual average of 0.2 whales from each species/stock listed above (*i.e.,* 1 take divided by 5 years to get the annual number).

In addition to procedural mitigation, the Navy will implement measures in mitigation areas used by NARW for foraging, calving, and migration (see Section 11, Mitigation Measures of the Navy's rulemaking and LOA application and a full analysis of Mitigation in Chapter 5 of the AFTT DEIS/OEIS). These measures, which go above and beyond those focused on other species (*e.g.,* funding of and communication with sightings systems, implementation of speed reductions during applicable circumstances in certain areas) have helped the Navy avoid striking a NARW during training and testing activities in the past; and therefore, are likely to eliminate the potential for future strikes to occur. In particular, the mitigation pertaining to vessels, including the continued participation in and sponsoring of the Early Warning System, will help Navy vessels avoid NARW during transits and training and testing activities. The Early Warning System is a comprehensive information exchange network dedicated to reducing the risk of vessel strikes to NARW off the southeast United States from all mariners (*i.e.,* Navy and non-Navy vessels). Navy participants include the Fleet Area Control and Surveillance Facility, Jacksonville; Commander, Naval Submarine Forces, Norfolk, Virginia; and Naval Submarine Support Command. The Navy, U.S. Coast Guard, U.S. Army Corps of Engineers, and NMFS collaboratively sponsor daily aerial surveys from December 1 through March 31 (weather permitting) to observe for NARW from the shoreline out to approximately 30–35 nmi offshore. Aerial surveyors relay sightings information to all mariners transiting within the NARW calving habitat (*e.g.,* commercial vessels, recreational boaters, and Navy ships). Refer to Section 11 (Mitigation Measures) of the Navy's rulemaking and LOA application for a full list of these measures.

Regarding the Bryde's whale, due to low numbers, almost exclusively limited to Gulf of Mexico, and limited ship traffic that overlaps with Bryde's whale habitat, Navy does not anticipate any ship strike takes.

Proposed Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on

the availability of such species or stock for subsistence uses'' (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.''

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210, 1229 (D. Haw. Mar. 31, 2015), the Court stated that NMFS ''appear[s] to think [it] satisf[ies] the statutory 'least practicable adverse impact' requirement with a 'negligible impact' finding.'' More recently, expressing similar concerns in a challenge to our last U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar (SURTASS LFA) incidental take rule (77 FR 50290), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact standard [. . .] .'' As the Ninth Circuit noted in its opinion, however, the Court was interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with, and expands upon, previous rules we have issued (such as the Navy Gulf of Alaska rule (82 FR 19530)).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and U.S. Fish and Wildlife Service's implementing regulations for section 101(a)(5)(A) both define ''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 and 50 CFR 18.27(c)) Recruitment (*i.e.,* reproduction) and survival rates are used to determine population growth rates [1] and, therefore are considered in evaluating population level impacts.

As we stated in the preamble to the final rule for the incidental take implementing regulations, not every population-level impact violates the negligible impact requirement. The negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. [T]he key factor is the significance of the level of impact on rates of recruitment or survival. See 54 FR 40338, 40341–42 (September 29, 1989).

While some level of impact on population numbers or growth rates of a species or stock may occur and still satisfy the negligible impact requirement—even without consideration of mitigation—the least practicable adverse impact provision separately requires NMFS to prescribe means of ''effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance [. . .], which are typically identified as mitigation measures.'' [2]

The negligible impact and least practicable adverse impact standards in the MMPA both call for evaluation at the level of the ''species or stock.'' The MMPA does not define the term ''species.'' However, Merriam-Webster defines ''species'' to include ''related organisms or *populations* potentially capable of interbreeding.'' See *www.merriam-webster.com/dictionary/species* (emphasis added). The MMPA defines ''stock'' as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature. 16 U.S.C. 1362(11). The definition of ''population'' is ''a group of interbreeding organisms that represents the level of organization at which speciation begins.'' *www.merriam-webster.com/dictionary/population.* The definition of ''population'' is strikingly similar to the MMPA's definition of ''stock,'' with both involving groups of individuals that belong to the same species and located in a manner that allows for interbreeding.'' In fact, the term ''stock'' in the MMPA is interchangeable with the statutory term ''population stock.'' 16 U.S.C. 1362(11). Thus, the MMPA terms ''species'' and ''stock'' both relate to populations, and it is therefore appropriate to view both the negligible impact standard and the least practicable adverse impact standard, both of which call for evaluation at the level of the species or stock, as having a population-level focus.

This interpretation is consistent with Congress's statutory findings for enacting the MMPA, nearly all of which are most applicable at the species or stock (*i.e.,* population) level. See 16 U.S.C. 1361 (finding that it is species and population stocks that are or may be in danger of extinction or depletion; that it is species and population stocks that should not diminish beyond being significant functioning elements of their ecosystems; and that it is species and population stocks that should not be permitted to diminish below their optimum sustainable population level). Annual rates of recruitment (*i.e.,* reproduction) and survival are the key biological metrics used in the evaluation of population-level impacts, and accordingly these same metrics are also used in the evaluation of population level impacts for the least practicable adverse impact standard.

Recognizing this common focus of the least practicable adverse impact and negligible impact provisions on the ''species or stock'' does not mean we conflate the two standards; despite some common statutory language, we recognize the two provisions are different and have different functions. First, a negligible impact finding is required before NMFS can issue an incidental take authorization. Although it is acceptable to use mitigation measures to reach a negligible impact finding, 50 CFR 216.104(c), no amount of mitigation can enable NMFS to issue an incidental take authorization for an activity that still would not meet the negligible impact standard. Moreover, even where NMFS can reach a negligible impact finding—which we emphasize does allow for the possibility of some ''negligible'' population-level impact—the agency must still prescribe measures that will effect the least practicable amount of adverse impact upon the affected species or stock.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus

[1] A growth rate can be positive, negative, or flat.

[2] For purposes of this discussion we omit reference to the language in the standard for least practicable adverse impact that says we also must mitigate for subsistence impacts because they are not at issue in this regulation.

ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, we reiterate that the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts; whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[3]

In *NRDC* v. *Pritzker,* the Court stated, ''[t]he statute is properly read to mean that even if population levels are not threatened *significantly,* still the agency must adopt mitigation measures aimed at protecting *marine mammals* to the greatest extent practicable in light of military readiness needs.'' *Id.* at 1134 (emphases added). This statement is consistent with our understanding stated above that even when the effects of an action satisfy the negligible impact standard (*i.e.,* in the Court's words, ''population levels are not threatened significantly''), still the agency must prescribe mitigation under the least practicable adverse impact standard. However, as the statute indicates, the focus of both standards is ultimately the impact on the affected ''species or stock,'' and not solely focused on or directed at the impact on individual marine mammals.

We have carefully reviewed and considered the Ninth Circuit's opinion in *NRDC* v. *Pritzker* in its entirety. While the Court's reference to ''marine mammals'' rather than ''marine mammal species or stocks'' in the italicized language above might be construed as a holding that the least practicable adverse impact standard applies at the individual ''marine mammal'' level, *i.e.,* that NMFS must require mitigation to minimize impacts to each individual marine mammal unless impracticable, we believe such an interpretation reflects an incomplete appreciation of the Court's holding. In our view, the opinion as a whole turned on the Court's determination that NMFS had not given separate and independent meaning to the least practicable adverse impact standard apart from the negligible impact standard, and further, that the Court's use of the term ''marine mammals'' was not addressing the question of whether the standard applies to individual animals as opposed to the species or stock as a whole. We recognize that while consideration of mitigation can play a role in a negligible impact determination, consideration of mitigation measures extends beyond that analysis. In evaluating what mitigation measures are appropriate NMFS considers the potential impacts of the Proposed Activity, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

Implementation of Least Practicable Adverse Impact Standard

Given this most recent Court decision, we further clarify how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. 16 U.S.C. 1371(a)(5)(A)(ii).

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures designed to avoid or minimize impacts on marine mammals from activities that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is not always available for every activity type, and additional study is still needed to describe how specific disturbance events affect the fitness of individuals of certain species, there have been significant improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may typically be predicted given a detailed understanding of the activity, the environment, and the affected species or stocks. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation that we had not previously considered, becomes available and necessitates reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reduction of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and will be carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve operational

[3] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

restrictions in an area or time that impedes the Navy's ability to detect or track enemy submarines (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of ''least practicable adverse impact'' will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock, the greater the weight that measure(s) is given when considered in combination with practicability to determine the appropriateness of the mitigation measure(s), and vice versa. In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and will be carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. We discuss consideration of these factors in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.*[4] The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of goals are often applied to reduce the likelihood or severity of adverse species- or stock-level impacts: Avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that were expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard authorizes NMFS to weigh a variety of factors when evaluating appropriate mitigation measures, it does not compel mitigation for every kind of take, or every individual taken, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of certain mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: The stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the Potential Biological Removal (PBR) level (as defined in 16 U.S.C. 1362(20)); the affected species or stock is a small, resident population; or the stock is involved in an unusual mortality event (UME) or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective or successful, then either that measure should be modified or the potential value of the measure to reduce effects is lowered.

2. *Practicability.* Factors considered may include 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 (16 U.S.C. 1371(a)(5)(A)(ii)).

NMFS reviewed the proposed activities and the suite of proposed mitigation measures as described in the Navy's rulemaking and LOA application and the AFTT DEIS/OEIS to determine if they would result in the least practicable adverse effect on marine mammals. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which are informed by years of experience and monitoring. A complete discussion of the evaluation process used by the Navy to develop, assess, and select mitigation measures, which was informed by input form NMFS, can be found in Chapter 5 (Mitigation) of the AFTT DEIS/OEIS and is summarized below. The Navy proposes to implement mitigation measures to avoid potential impacts from acoustic, explosive, and physical disturbance and strike stressors.

In summary, the Navy proposes a suite of procedural mitigation measures that we expect to result in a reduction in the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, ship strike, and impacts to marine mammal habitat. Specifically, the Navy uses a combination of delayed starts, powerdowns, and shutdowns to avoid serious injury or mortality, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disruption. Additional procedural vessel operation mitigation is included to minimize or avoid the likelihood of ship strikes, with an additional focus on right whales. The Navy also proposes to implement time/area restrictions intended to reduce take of marine mammals in areas or times where they are known to engage in important behaviors, such as feeding or calving, where the disruption of those behaviors would be more likely to result in population-level impacts. The Navy assessed the practicability of the measures it proposed in the context of personnel safety, practicality, and their impacts on the Navy's ability to meet their Title 10 requirements and found that the measures were supportable. NMFS has evaluated the mitigation measures the Navy has proposed and the measures will both sufficiently reduce impacts on the affected marine

[4] We recognize the least practicable adverse impact standard requires consideration of measures that will address minimizing impacts on the availability of the species or stocks for subsistence uses where relevant. Because subsistence uses are not implicated for this action we do not discuss them. However, a similar framework would apply for evaluating those measures, taking into account the MMPA's directive that we make a finding of no unmitigable adverse impact on the availability of the species or stocks for taking for subsistence, and the relevant implementing regulations.

mammal species and stocks and their habitats and be practicable for Navy implementation. Therefore, the mitigation measures assure that Navy's activities will have the least practicable adverse impact on the species and stocks and their habitat.

The Navy also evaluated several measures in the Navy's AFTT DEIS/OEIS that are not included in the Navy's rulemaking and LOA application for the Proposed Activity, and NMFS concurs that their inclusion was not appropriate to support the least practicable adverse impact standard based on our assessment. In summary, first, commenters sometimes recommend that the Navy reduce their overall amount of training, reduce explosive use, modify their sound sources, completely replace live training with computer simulation, or include time of day restrictions. All of these proposed measures could potentially reduce the number of marine mammals taken, via direct reduction of the activities or amount of sound energy put in the water. However, as the Navy has described in Chapter 5 of the AFTT DEIS/OEIS, they need to train and test in the conditions in which they fight—and these types of modifications fundamentally change the activity in a manner that would not support the purpose and need for the training and testing (*i.e.,* are entirely impracticable) and therefore are not considered further. Second, the Navy evaluated a suite of additional potential procedural mitigation measures, including increased mitigation zones, additional passive acoustic and visual monitoring, and decreased vessel speeds. Some of these measures have the potential to incrementally reduce take to some degree in certain circumstances, though the degree to which this would occur is typically low or uncertain. However, as described in the Navy's analysis, the impracticability of implementation outweighed the potential reduction of impacts to marine mammal species or stocks (see Chapter 5 of AFTT DEIS/OEIS). NMFS reviewed the Navy's evaluation and concurs that the measures proposed by the Navy and discussed above affect the least practicable adverse impact on the marine mammal species or stocks and their habitat and that the addition of these other measures would not meet that standard.

Below are the mitigation measures that NMFS determined will ensure the least practicable adverse impact on all affected species and stocks and their habitat, including the specific considerations for military readiness activities. The following sections summarize the mitigation measures that will be implemented in association with the training and testing activities analyzed in this document. The Navy's mitigation measures are organized into two categories: procedural mitigation and mitigation areas.

Procedural Mitigation

Procedural mitigation is mitigation that the Navy will implement whenever and wherever an applicable training or testing activity takes place within the AFTT Study Area. The Navy customizes procedural mitigation for each applicable activity category or stressor. Procedural mitigation generally involves: (1) The use of one or more trained Lookouts to diligently observe for specific biological resources (including marine mammals) within a mitigation zone, (2) requirements for Lookouts to immediately communicate sightings of specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.,* halt an activity) until certain recommencement conditions have been met. The first procedural mitigation (Table 42) is designed to aid Lookouts and other applicable personnel with their observation, environmental compliance, and reporting responsibilities. The remainder of the procedural mitigations (Tables 43 through Tables 62) are organized by stressor type and activity category and includes acoustic stressors (*i.e.,* active sonar, airguns, pile driving, weapons firing noise), explosive stressors (*i.e.,* sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, line charge testing and ship shock trials), and physical disturbance and strike stressors *(i.e.,* vessel movement, towed in-water devices, small-, medium-, and large-caliber non-explosive practice munitions, non-explosive missiles and rockets, non-explosive bombs and mine shapes).

TABLE 42—PROCEDURAL MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION

Procedural mitigation description
Stressor or Activity: • All training and testing activities, as applicable. *Mitigation Zone Size and Mitigation Requirements:* • Appropriate personnel involved in mitigation and training or testing activity reporting under the Proposed Activity will complete one or more modules of the U.S Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: ○ Introduction to the U.S. Navy Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.,* ESA, MMPA) and the corresponding responsibilities that are relevant to Navy training and testing activities. The material explains why environmental compliance is important in supporting the Navy's commitment to environmental stewardship ○ Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on marine mammals and sea turtles, and including floating vegetation, jellyfish aggregations, and flocks of seabirds. ○ U.S. Navy Protective Measures Assessment Protocol. This module provides the necessary instruction for accessing mitigation requirements during the event planning phase using the Protective Measures Assessment Protocol software tool. ○ U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting. This module provides instruction on the procedures and activity reporting requirements for the Sonar Positional Reporting System and marine mammal incident reporting.

Procedural Mitigation for Acoustic Stressors

Mitigation measures for acoustic stressors are provided in Tables 43 through 46.

Procedural Mitigation for Active Sonar

Procedural mitigation for active sonar is described in Table 43 below.

TABLE 43—PROCEDURAL MITIGATION FOR ACTIVE SONAR

Procedural mitigation description
Stressor or Activity: • Low-frequency active sonar, mid-frequency active sonar, high-frequency active sonar. • For vessel-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.,* sonar sources towed from manned surface platforms). • For aircraft-based active sonar activities, mitigation applies to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.,* rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (e.g., maritime patrol aircraft). *Number of Lookouts and Observation Platform:* • Hull-mounted sources: ○ Platforms without space or manning restrictions while underway: 2 Lookouts at the forward part of the ship. ○ Platforms with space or manning restrictions while underway: 1 Lookout at the forward part of a small boat or ship. ○ Platforms using active sonar while moored or at anchor (including pierside): 1 Lookout. ○ Pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia: 4 Lookouts. • Sources that are not hull-mounted: ○ 1 Lookout on the ship or aircraft conducting the activity. *Mitigation Zone Size and Mitigation Requirements:* • Prior to the start of the activity (*e.g.,* when maneuvering on station), observe for floating vegetation and marine mammals; if resource is observed, do not commence use of active sonar. • Low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar will implement the following mitigation zones: ○ During the activity, observe for marine mammals; power down active sonar transmission by 6 dB if resource is observed within 1,000 yd of the sonar source; power down by an additional 4 dB (10 dB total) if resource is observed within 500 yd of the sonar source; and cease transmission if resource is observed within 200 yd of the sonar source. • Low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar will implement the following mitigation zone: ○ During the activity, observe for marine mammals; cease active sonar transmission if resource is observed within 200 yd of the sonar source. • To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence active sonar transmission until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-deployed sonar sources or 30 min. for vessel-deployed sonar sources; (4) for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or (5) for activities using hull-mounted sonar, the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave, and are therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone). • The Navy will notify the Port Authority prior to the commencement of pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia. At these locations, the Navy will conduct active sonar activities during daylight hours to ensure adequate sightability of manatees, and will equip Lookouts with polarized sunglasses. After completion of pierside sonar testing activities at Port Canaveral and Kings Bay, the Navy will continue to observe for marine mammals for 30 min within the mitigation zone. The Navy will implement a reduction of at least 36 dB from full power for mid-frequency active sonar transmissions at Kings Bay. The Navy will communicate sightings of manatees made during or after pierside sonar testing activities at Kings Bay to the Georgia Department of Natural Resources sightings hotline, Base Natural Resources Manager, and Port Operations. Communications will include information on the time and location of a sighting, the number and size of animals sighted, a description of any research tags (if present), and the animal's direction of travel. Port Operations will disseminate the sightings information to other vessels operating near the sighting and will keep logs of all manatee sightings.

Procedural Mitigation for Airguns

Procedural mitigation for airguns is described in Table 44 below.

TABLE 44—PROCEDURAL MITIGATION FOR AIRGUNS

Procedural mitigation description
Stressor or Activity: • Airguns. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on a ship or pierside. *Mitigation Zone Size and Mitigation Requirements:* • 150 yd around the airgun: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station), observe for floating vegetation, and marine mammals; if resource is observed, do not commence use of airguns. ○ During the activity, observe for marine mammals; if resource is observed, cease use of airguns. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence the use of airguns until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the airgun; (3) the mitigation zone has been clear from any additional sightings for 30 min.; or (4) for mobile activities, the airgun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Pile Driving

Procedural mitigation for pile driving is described in Table 45 below.

TABLE 45—PROCEDURAL MITIGATION FOR PILE DRIVING

Procedural mitigation description
Stressor or Activity: • Pile driving and pile extraction sound during Elevated Causeway System training. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the shore, the elevated causeway, or a small boat. *Mitigation Zone Size and Mitigation Requirements:* • 100 yd around the pile driver: ○ 30 min prior to the start of the activity, observe for floating vegetation and marine mammals; if resource is observed, do not commence impact pile driving or vibratory pile extraction. ○ During the activity, observe for marine mammals; if resource is observed, cease impact pile driving or vibratory pile extraction. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence pile driving until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or (3) the mitigation zone has been clear from any additional sightings for 30 min.

Procedural Mitigation for Weapons Firing Noise

Procedural mitigation for weapons firing noise is described in Table 46 below.

TABLE 46—PROCEDURAL MITIGATION FOR WEAPONS FIRING NOISE

Procedural mitigation description
Stressor or Activity: • Weapons firing noise associated with large-caliber gunnery activities. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the ship conducting the firing. • Depending on the activity, the Lookout could be the same as the one described in Table 49 for Explosive Medium-Caliber and Large-Caliber Projectiles or in Table 60 for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions. *Mitigation Zone Size and Mitigation Requirements:* • 30° on either side of the firing line out to 70 yd from the muzzle of the weapon being fired: ○ Prior to the start of the activity, observe for floating vegetation, and marine mammals; if resource is observed, do not commence weapons firing. ○ During the activity, observe for marine mammals; if resource is observed, cease weapons firing. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence weapons firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; (3) the mitigation zone has been clear from any additional sightings for 30 min.; or (4) for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Explosive Stressors

Mitigation measures for explosive stressors are provided in Tables 47 through 57.

Procedural Mitigation for Explosive Sonobuoys

Procedural mitigation for explosive sonobuoys is described in Table 47 below.

TABLE 47—PROCEDURAL MITIGATION FOR EXPLOSIVE SONOBUOYS

Procedural mitigation description
Stressor or Activity: • Explosive sonobuoys. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft or on small boat. *Mitigation Zone Size and Mitigation Requirements:* • 600 yd around an explosive sonobuoy: ○ Prior to the start of the activity (*e.g.,* during deployment of a sonobuoy field, which typically lasts 20–30 min.), conduct passive acoustic monitoring for marine mammals, and observe for floating vegetation and marine mammals; if resource is visually observed, do not commence sonobuoy or source/receiver pair detonations. ○ During the activity, observe for marine mammals; if resource is observed, cease sonobuoy or source/receiver pair detonations. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence the use of explosive sonobuoys until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained.

Procedural Mitigation for Explosive Torpedoes

Procedural mitigation for explosive torpedoes is described in Table 48 below.

TABLE 48—PROCEDURAL MITIGATION FOR EXPLOSIVE TORPEDOES

Procedural mitigation description
Stressor or Activity: • Explosive torpedoes. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Zone Size and Mitigation Requirements:* • 2,100 yd around the intended impact location: ○ Prior to the start of the activity (*e.g.,* during deployment of the target), the Navy will conduct passive acoustic monitoring for marine mammals, and observe for floating vegetation, jellyfish aggregations, and marine mammals; if resource is visually observed, the Navy will not commence firing. ○ During the activity, the Navy will observe for marine mammals and jellyfish aggregations; if resource is observed, the Navy will cease firing. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained. ○ After completion of the activity, the Navy will observe for marine mammals; if any injured or dead resources are observed, the Navy will follow established incident reporting procedures.

Procedural Mitigation for Medium- and Large-Caliber Projectiles

Procedural mitigation for medium- and large-caliber projectiles is described in Table 49 below.

TABLE 49—PROCEDURAL MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES

Procedural mitigation description
Stressor or Activity: • Gunnery activities using explosive medium-caliber and large-caliber projectiles. • Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:*

TABLE 49—PROCEDURAL MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES—Continued

Procedural mitigation description
• 1 Lookout on the vessel or aircraft conducting the activity. • For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in Table 46 for Weapons Firing Noise. *Mitigation Zone Size and Mitigation Requirements:* • 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles, • 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles, or • 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence firing. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease firing. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-based firing or 30 min. for vessel-based firing; or (4) for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Explosive Missiles and Rockets

Procedural mitigation for explosive missiles and rockets is described in Table 50 below.

TABLE 50—PROCEDURAL MITIGATION FOR EXPLOSIVE MISSILES AND ROCKETS

Procedural mitigation description
Stressor or Activity: • Aircraft-deployed explosive missiles and rockets. • Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Zone Size and Mitigation Requirements:* • 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight, or • 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight: ○ Prior to the start of the activity (*e.g.,* during a fly-over of the mitigation zone), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence firing. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease firing. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained.

Procedural Mitigation for Explosive Bombs

Procedural mitigation for explosive bombs is described in Table 51 below.

TABLE 51—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS

Procedural mitigation description
Stressor or Activity: • Explosive bombs. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in the aircraft conducting the activity. *Mitigation Zone Size and Mitigation Requirements:* • 2,500 yd around the intended target: ○ Prior to the start of the activity (*e.g.,* when arriving on station), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence bomb deployment. ○ During target approach, the Navy will observe for marine mammals; if resource is observed, the Navy will cease bomb deployment.

TABLE 51—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS—Continued

Procedural mitigation description
○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence bomb deployment until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; (3) the mitigation zone has been clear from any additional sightings for 10 min.; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Sinking Exercises

Procedural mitigation for sinking exercises is described in Table 52 below.

TABLE 52—PROCEDURAL MITIGATION FOR SINKING EXERCISES

Procedural mitigation description
Stressor or Activity:
• Sinking exercises.
Number of Lookouts and Observation Platform:
• 2 Lookouts (one positioned in an aircraft and one on a vessel).
Mitigation Zone Size and Mitigation Requirements:
• 2.5 nmi around the target ship hulk:
○ 90 min. prior to the first firing, the Navy will conduct aerial observations for floating vegetation, jellyfish aggregations, and marine mammals; if resource is observed, the Navy will not commence firing.
○ During the activity, the Navy will conduct passive acoustic monitoring and visually observe for marine mammals from the vessel; if resource is visually observed, the Navy will cease firing.
○ Immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours, observe for marine mammals from the aircraft and vessel; if resource is observed, the Navy will not commence firing.
○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or (3) the mitigation zone has been clear from any additional sightings for 30 min.
○ For 2 hours after sinking the vessel (or until sunset, whichever comes first), the Navy will observe for marine mammals; if any injured or dead resources are observed, the Navy will allow established incident reporting procedures.

Procedural Mitigation for Explosive Mine Countermeasure and Neutralization Activities

Procedural mitigation for explosive mine countermeasure and neutralization activities is described in Table 53 below.

TABLE 53—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES

Procedural mitigation description
Stressor or Activity:
• Explosive mine countermeasure and neutralization activities.
Number of Lookouts and Observation Platform:
• 1 Lookout positioned on a vessel or in an aircraft when using up to 0.1–5 lb net explosive weight charges.
• 2 Lookouts (one in an aircraft and one on a small boat) when using up to 6–650 lb net explosive weight charges.
Mitigation Zone Size and Mitigation Requirements:
• 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight, or
• 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines):
○ Prior to the start of the activity (*e.g.,* when maneuvering on station; typically, 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence detonations.
○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease detonations.
○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence detonations until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained.
○ After completion of the activity, the Navy will observe for marine mammals and sea turtles (typically 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained); if any injured or dead resources are observed, the Navy will follow established incident reporting procedures.

Procedural Mitigation for Explosive Mine Neutralization Activities Involving Navy Divers

Procedural mitigation for explosive mine neutralization activities involving Navy divers is described in Table 54 below.

TABLE 54—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS

Procedural mitigation description
Stressor or Activity: • Mine neutralization activities involving Navy divers. *Number of Lookouts and Observation Platform:* • 2 Lookouts (two small boats with one Lookout each, or one Lookout on a small boat and one in a rotary-wing aircraft) when implementing the smaller mitigation zone. • 4 Lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew will serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone. *Mitigation Zone Size and Mitigation Requirements:* • The Navy will not set time-delay firing devices (0.1–20 lb net explosive weight) to exceed 10 min. • 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight, or • 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–20 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence detonations or fuse initiation. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease detonations or fuse initiation. ○ All divers placing the charges on mines will support the Lookouts while performing their regular duties and will report all marine mammal sightings to their supporting small boat or Range Safety Officer. ○ To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, boats will position themselves near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), will position themselves on opposite sides of the detonation location (when two boats are used), and will travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. ○ If used, aircraft will travel in a circular pattern around the detonation location to the maximum extent practicable. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence detonations or fuse initiation until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min. during activities under positive control with aircraft that have fuel constraints, or 30 min. during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices. • After completion of an activity using time-delay firing devices, the Navy will observe for marine mammals for 30 min.; if any injured or dead resources are observed, the Navy will follow established incident reporting procedures.

Procedural Mitigation for Maritime Security Operations—Anti-Swimmer Grenades

Procedural mitigation for maritime security operations—anti-swimmer grenades is described in Table 55 below.

TABLE 55—PROCEDURAL MITIGATION FOR MARITIME SECURITY OPERATIONS—ANTI-SWIMMER GRENADES

Procedural mitigation description
Stressor or Activity: • Maritime Security Operations—Anti-Swimmer Grenades. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the small boat conducting the activity. *Mitigation Zone Size and Mitigation Requirements:* • 200 yd around the intended detonation location: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence detonations. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease detonations. • To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence detonations until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; (3) the mitigation zone has been clear from any additional sightings for 30 min.; or (4) the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Line Charge Testing

Procedural mitigation for line charge testing is described in Table 56 below.

TABLE 56—PROCEDURAL MITIGATION FOR LINE CHARGE TESTING

Procedural mitigation description
Stressor or Activity: • Line charge testing. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on a vessel. *Mitigation Zone Size and Mitigation Requirements:* • 900 yd around the intended detonation location: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence detonations. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease detonations. • To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence detonations until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; or (3) the mitigation zone has been clear from any additional sightings for 30 min.

Procedural Mitigation for Ship Shock Trials

Procedural mitigation for ship shock trials is described in Table 57 below.

TABLE 57—PROCEDURAL MITIGATION FOR SHIP SHOCK TRIALS

Procedural mitigation description
Stressor or Activity: • Ship shock trials. *Number of Lookouts and Observation Platform:* • A minimum of 10 Lookouts or trained marine species observers (or a combination thereof) positioned either in an aircraft or on multiple vessels *(i.e.,* a Marine Animal Response Team boat and the test ship). • If aircraft are used, Lookouts or trained marine species observers will be in an aircraft and on multiple vessels. • If aircraft are not used, a sufficient number of additional Lookouts or trained marine species observers will be used to provide vessel-based visual observation comparable to that achieved by aerial surveys. *Mitigation Zone Size and Mitigation Requirements:* • The Navy will not conduct ship shock trials in the Jacksonville Operating Area during North Atlantic right whale calving season from November 15 through April 15. • The Navy develops detailed ship shock trial monitoring and mitigation plans approximately 1-year prior to an event and will continue to provide these to NMFS for review and approval. • Pre-activity planning will include selection of one primary and two secondary areas where marine mammal populations are expected to be the lowest during the event, with the primary and secondary locations located more than 2 nmi from the western boundary of the Gulf Stream for events in the Virginia Capes Range Complex or Jacksonville Range Complex. • If it is determined during pre-activity surveys that the primary area is environmentally unsuitable (*e.g.,* observations of marine mammals or presence of concentrations of floating vegetation), the shock trial could be moved to a secondary site in accordance with the detailed mitigation and monitoring plan provided to NMFS. • 3.5 nmi around the ship hull: ○ Prior to the detonation (at the primary shock trial location) in intervals of 5 hrs., 3 hrs., 40 min., and immediately before the detonation, the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not trigger the detonation. ○ During the activity, the Navy will observe for marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds; if resource is observed, the Navy will cease triggering the detonation. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence the triggering of a detonation until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the ship hull; or (3) the mitigation zone has been clear from any additional sightings for 30 min. ○ After completion of each detonation, the Navy will observe for marine mammals; if any injured or dead resources are observed, the Navy will follow established incident reporting procedures and halt any remaining detonations until the Navy can consult with NMFS and review or adapt the mitigation, if necessary. ○ After completion of the ship shock trial, the Navy will conduct additional observations during the following 2 days (at a minimum) and up to 7 days (at a maximum); if any injured or dead resources are observed, the Navy will follow established incident reporting procedures.

Procedural Mitigation for Physical Disturbance and Strike Stressors

Mitigation measures for physical disturbance and strike stressors are provided in Table 58 through Table 62.

Procedural Mitigation for Vessel Movement

Procedural mitigation for vessel movement used during the Proposed Activities is described in Table 58 below.

TABLE 58—PROCEDURAL MITIGATION FOR VESSEL MOVEMENT

Procedural mitigation description
Stressor or Activity: • Vessel movement. • The mitigation will not be applied if: (1) The vessel's safety is threatened, (2) the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring, etc.), or (3) the vessel is operated autonomously. *Number of Lookouts and Observation Platform:* • 1 Lookout on the vessel that is underway. *Mitigation Zone Size and Mitigation Requirements:* • 500 yd around whales: ○ When underway, the Navy will observe for marine mammals; if a whale is observed, the Navy will maneuver to maintain distance. • 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels): ○ When underway, the Navy will observe for marine mammals; if a marine mammal other than a whale, bow-riding dolphin, or hauled-out pinniped is observed, the Navy will maneuver to maintain distance.

Procedural Mitigation for Towed In-Water Devices

Procedural mitigation for towed in-water devices is described in Table 59 below.

TABLE 59—PROCEDURAL MITIGATION FOR TOWED IN-WATER DEVICES

Procedural mitigation description
Stressor or Activity: • Towed in-water devices. • Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. • The mitigation will not be applied if the safety of the towing platform is threatened. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on a manned towing platform. *Mitigation Zone Size and Mitigation Requirements:* • 250 yd around marine mammals: ○ When towing an in-water device, observe for marine mammals; if resource is observed, maneuver to maintain distance.

Procedural Mitigation for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions

Procedural mitigation for small-, medium-, and large-caliber non-explosive practice munitions is described in Table 60 below.

TABLE 60—PROCEDURAL MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS

Procedural mitigation description
Stressor or Activity: • Gunnery activities using small-, medium-, and large-caliber non-explosive practice munitions. • Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the platform conducting the activity. • Depending on the activity, the Lookout could be the same as the one described in Table 46 for Weapons Firing Noise. *Mitigation Zone Size and Mitigation Requirements:* ○ 200 yd around the intended impact location: ○ Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence firing. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease firing.

TABLE 60—PROCEDURAL MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS—Continued

Procedural mitigation description
○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-based firing or 30 min. for vessel-based firing; or (4) for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Non-Explosive Missiles and Rockets

Procedural mitigation for non-explosive missiles and rockets is described in Table 61 below.

TABLE 61—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE MISSILES AND ROCKETS

Procedural mitigation description
Stressor or Activity: • Aircraft-deployed non-explosive missiles and rockets. • Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Zone Size and Mitigation Requirements:* • 900 yd around the intended impact location: ○ Prior to the start of the activity (*e.g.,* during a fly-over of the mitigation zone), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence firing. ○ During the activity, the Navy will observe for marine mammals; if resource is observed, the Navy will cease firing. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence firing until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained.

Procedural Mitigation for Non-Explosive Bombs and Mine Shapes

Procedural mitigation for non-explosive bombs and mine shapes is described in Table 62 below.

TABLE 62—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE BOMBS AND MINE SHAPES

Procedural mitigation description
Stressor or Activity: • Non-explosive bombs. • Non-explosive mine shapes during mine laying activities. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Zone Size and Mitigation Requirements:* • 1,000 yd around the intended target: ○ Prior to the start of the activity (*e.g.,* when arriving on station), the Navy will observe for floating vegetation and marine mammals; if resource is observed, the Navy will not commence bomb deployment or mine laying. ○ During approach of the target or intended minefield location, the Navy will observe for marine mammals; if resource is observed, the Navy will cease bomb deployment or mine laying. ○ To allow a sighted marine mammal to leave the mitigation zone, the Navy will not recommence bomb deployment or mine laying until one of the recommencement conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; (3) the mitigation zone has been clear from any additional sightings for 10 min.; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Mitigation Areas

In addition to procedural mitigation, the Navy will implement mitigation measures within specific areas and/or times to avoid or minimize potential impacts on marine mammals (see Figures 11.2–1 through 11.2–3 of the Navy's rulemaking and LOA application). The Navy reanalyzed existing mitigation areas and considered new habitat areas suggested by the public, NMFS, and other non-Navy organizations, including NARW critical habitat, important habitat for sperm whales, biologically important areas (BIAs), and National Marine Sanctuaries. The Navy worked collaboratively with NMFS to develop mitigation areas using inputs from the Navy's operational community, the best available science discussed in Chapter 3 of the AFTT DEIS/OEIS (Affected Environment and Environmental Consequences), published literature, predicted activity impact footprints, and marine species monitoring and density data. The Navy will continue to work with NMFS to finalize its mitigation areas through the development of the rule. The Navy considered a mitigation area to be effective and thereby warranted, if it met all three of the following criteria and also was determined to be practicable:

- The mitigation area is a key area of biological or ecological importance or contains cultural resources: The best available science suggests that the mitigation area contains submerged cultural resources (*e.g.,* shipwrecks) or is important to one or more species or resources for a biologically important life process (*i.e.,* foraging, migration, reproduction) or ecological function (*e.g.,* shallow-water coral reefs that provide critical ecosystem functions);
- The mitigation would result in an avoidance or reduction of impacts: Implementing the mitigation would likely result in an avoidance or reduction of impacts on (1) species, stocks, or populations of marine mammals based on data regarding seasonality, density, and animal behavior; or (2) other biological or cultural resources based on their distribution and physical properties; and
- The mitigation area would result in a net benefit to the biological or cultural resource: Implementing the mitigation would not simply shift from one area or species to another, resulting in a similar or worse level of effect.

Information on the mitigation measures that the Navy will implement within mitigation areas is provided in Table 63 through Table 65. The mitigation applies year-round unless specified otherwise in the tables.

Mitigation Areas Off Northeastern United States

Mitigation areas for of the Northeastern United States are described in Table 63 below and also depicted in Figure 11.2–1 in the Navy's rulemaking and LOA application.

TABLE 63—MITIGATION AREAS OFF THE NORTHEASTERN UNITED STATES

Mitigation area description
Stressor or Activity: • Sonar. • Explosives. • Physical disturbance and strikes. *Mitigation Area Requirements:* • Northeast North Atlantic Right Whale Mitigation Areas (year-round): ○ The Navy will minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar to the maximum extent practicable. ○ The Navy will not use Improved Extended Echo Ranging sonobuoys (within 3 nmi of the mitigation area), explosive and non-explosive bombs, in-water detonations, and explosive torpedoes. ○ For activities using non-explosive torpedoes, the Navy will conduct activities during daylight hours in Beaufort sea state 3 or less. The Navy will use three Lookouts (one positioned on a vessel and two in an aircraft during dedicated aerial surveys) to observe the vicinity of the activity. An additional Lookout will be positioned on the submarine, when surfaced. Immediately prior to the start of the activity, Lookouts will observe for floating vegetation and marine mammals; if the resource is observed, the activity will not commence. During the activity, Lookouts will observe for marine mammals; if observed, the activity will cease. To allow a sighted marine mammal to leave the area, the Navy will not recommence the activity until one of the recommencement conditions has been met: (1) The animal is observed exiting the vicinity of the activity; (2) the animal is thought to have exited the vicinity of the activity based on a determination of its course, speed, and movement relative to the activity location; or (3) the area has been clear from any additional sightings for 30 min. During transits and normal firing, ships will maintain a speed of no more than 10 knots. During submarine target firing, ships will maintain speeds of no more than 18 knots. During vessel target firing, ship speeds may exceed 18 knots for brief periods of time (e.g., 10–15 min.). ○ For all activities, before vessel transits, the Navy will conduct a web query or email inquiry to the National Oceanographic and Atmospheric Administration Northeast Fisheries Science Center's North Atlantic Right Whale Sighting Advisory System to obtain the latest North Atlantic right whale sighting information. Vessels will use the obtained sightings information to reduce potential interactions with North Atlantic right whales during transits. Vessels will implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and when operating at night or during periods of reduced visibility. • Gulf of Maine Planning Awareness Mitigation Area (year-round): ○ The Navy will not plan major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises), and will not conduct more than 200 hours of hull-mounted mid-frequency active sonar per year. ○ If the Navy needs to conduct major training exercises or more than 200 hours of hull-mounted mid-frequency active sonar per year for national security, it will provide NMFS with advance notification and include the information in any associated training or testing activities or monitoring reports. • Northeast Planning Awareness Mitigation Areas (year-round): ○ The Navy will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable. ○ The Navy will not conduct more than four major training exercises per year (all or a portion of the exercise). ○ If the Navy needs to conduct additional major training exercises for national security, it will provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

Mitigation Areas off the Mid-Atlantic and Southeastern United States

Mitigation areas off the Mid-Atlantic and Southeastern United States are described in Table 64 below and also depicted in Figure 11.2–2 in the Navy's rulemaking and LOA application.

TABLE 64—MITIGATION AREAS OFF THE MID-ATLANTIC AND SOUTHEASTERN UNITED STATES

Mitigation area description
Stressor or Activity: • Sonar. • Explosives. • Physical disturbance and strikes. *Mitigation Area Requirements:* • Southeast North Atlantic Right Whale Mitigation Area (November 15 through April 15): ○ The Navy will not conduct: (1) Low-frequency active sonar (except as noted below), (2) mid-frequency active sonar (except as noted below), (3) high-frequency active sonar, (4) missile and rocket activities (explosive and non-explosive), (5) small-, medium-, and large-caliber gunnery activities, (6) Improved Extended Echo Ranging sonobuoy activities, (7) explosive and non-explosive bombing activities, (8) in-water detonations, and (9) explosive torpedo activities. ○ To the maximum extent practicable, the Navy will minimize the use of: (1) Helicopter dipping sonar, (2) low-frequency active sonar and hull-mounted mid-frequency active sonar used for navigation training, and (3) low-frequency active sonar and hull-mounted mid-frequency active sonar used for object detection exercises. ○ Before transiting or conducting training or testing activities, the Navy will initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville will advise vessels of all reported whale sightings in the vicinity to help vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander, Submarine Force, Atlantic will coordinate any submarine operations that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Vessels will use the obtained sightings information to reduce potential interactions with North Atlantic right whales during transits. Vessels will implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past 12 hours, or when operating at night or during periods of poor visibility. To the maximum extent practicable, vessels will minimize north-south transits. • Mid-Atlantic Planning Awareness Mitigation Areas (year-round): ○ The Navy will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable. ○ The Navy will not conduct more than four major training exercises per year (all or a portion of the exercise). ○ If the Navy needs to conduct additional major training exercises for national security, it will provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

Mitigation Areas in the Gulf of Mexico

Mitigation areas in the Gulf of Mexico are described in Table 65 below and also depicted in Figure 11.2–3 in the Navy's rulemaking and LOA application.

TABLE 65—MITIGATION AREAS IN THE GULF OF MEXICO

Mitigation area description
Stressor or Activity: • Sonar. *Mitigation Area Requirements:* • Gulf of Mexico Planning Awareness Mitigation Areas (year-round): ○ The Navy will avoid planning major training exercises (i.e., Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) involving the use of active sonar to the maximum extent practicable. ○ The Navy will not conduct any major training exercises in the Gulf of Mexico Planning Awareness Mitigation Areas under the Proposed Activity. ○ If the Navy needs to conduct additional major training exercises in these areas for national security, it will provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

Summary of Mitigation

The Navy's mitigation measures are summarized in Tables 66 and 67. Figure 11.3–1 in the Navy's rulemaking and LOA application depicts the mitigation areas that the Navy developed for marine mammals in the AFTT Study Area.

Summary of Procedural Mitigation

A summary of procedural mitigation is described in Table 66 below.

TABLE 66—SUMMARY OF PROCEDURAL MITIGATION

Stressor or activity	Summary of mitigation zone or other mitigation
Environmental Awareness and Education	Afloat Environmental Compliance Training for applicable personnel.
Active Sonar	Depending on sonar source: 1,000 yd power down, 500 yd power down, and 200 yd shut down; or 200 yd shut down.
Airguns	150 yd.

TABLE 66—SUMMARY OF PROCEDURAL MITIGATION—Continued

Stressor or activity	Summary of mitigation zone or other mitigation
Pile Driving	100 yd.
Weapons Firing Noise	30° on either side of the firing line out to 70 yd.
Explosive Sonobuoys	600 yd.
Explosive Torpedoes	2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles	1,000 yd. (large-caliber projectiles), 600 yd. (medium-caliber projectiles during surface-to-surface activities), or 200 yd. (medium-caliber projectiles during air-to-surface activities).
Explosive Missiles and Rockets	900 yd. (0.6–20 lb net explosive weight), or 2,000 yd. (21–500 lb net explosive weight).
Explosive Bombs	2,500 yd.
Sinking Exercises	2.5 nmi.
Explosive Mine Countermeasure and Neutralization Activities	600 yd (0.1–5 lb net explosive weight), or 2,100 yd (6–650 lb net explosive weight).
Mine Neutralization Activities Involving Navy Divers	500 yd (0.1–20 lb net explosive weight for positive control charges), or 1,000 yd (21–60 lb net explosive weight for positive control charges and all charges using time-delay fuses).
Maritime Security Operations—Anti-Swimmer Grenades	200 yd.
Line Charge Testing	900 yd.
Ship Shock Trials	3.5 nmi.
Vessel Movement	500 yd (whales), or 200 yd (other marine mammals).
Towed In-Water Devices	250 yd.
Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions.	200 yd.
Non-Explosive Missiles and Rockets	900 yd.
Non-Explosive Bombs and Mine Shapes	1,000 yd.

Notes: lb: pounds; nmi: nautical miles; yd: yards.

Summary of Mitigation Areas

A summary of mitigation areas is described in Table 67 below. Mitigation areas for marine mammals in the AFTT Study Area are also depicted in Figure 11.3–1 in the Navy's rulemaking and LOA application.

TABLE 67—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Mitigation area	Summary of mitigation requirements
Mitigation Areas for Marine Mammals	
Northeast North Atlantic Right Whale Mitigation Area.	• The Navy will minimize use of active sonar to the maximum extent practicable. • The Navy will not use explosives that detonate in the water. • The Navy will conduct non-explosive torpedo testing during daylight hours in Beaufort sea state 3 or less using three Lookouts (one on a vessel, two in an aircraft during dedicated aerial surveys) and an additional Lookout on the submarine when surfaced; during transits, ships will maintain a speed of no more than 10 knots; during firing, ships will maintain a speed of no more than 18 knots except for brief periods of time during vessel target firing. • Navy will obtain the latest North Atlantic right whale sightings data. • Vessels will implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past week, and when operating at night or during periods of reduced visibility.
Gulf of Maine Planning Awareness Mitigation Area.	• The Navy will not plan major training exercises. • The Navy will not conduct more than 200 hours of hull-mounted mid-frequency active sonar per year.
Northeast Planning Awareness Mitigation Areas, Mid-Atlantic Planning Awareness Mitigation Areas.	• The Navy will avoid planning major training exercises to the maximum extent practicable. • The Navy will not conduct more than four major training exercises per year (all or a portion of the exercise).
Southeast North Atlantic Right Whale Mitigation Area (November 15 through April 15).	• The Navy will not conduct active sonar except as necessary for navigation and object detection training, and dipping sonar. • The Navy will not expend explosive or non-explosive ordnance. • The Navy will obtain the latest North Atlantic right whale sightings data. • Vessels will implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past 12 hours, and when operating at night or during periods of reduced visibility. • To the maximum extent practicable, vessels will minimize north-south transits.
Gulf of Mexico Planning Awareness Mitigation Areas.	• The Navy will avoid planning major training exercises to the maximum extent practicable. • The Navy will not conduct any major training exercises (all or a portion of the exercise) in each area under the Proposed Activity.

Notes: min.: minutes; nmi: nautical miles.

Mitigation Areas for Seafloor Resources

Mitigation areas for seafloor resources are described in Table 68 and Table 69 below. Because these measures, in particular, are not related directly to protecting marine mammals and their habitat, they are not a requirement of this MMPA rulemaking. However, they are part of the Navy's Proposed Activity and are therefore included here for informational purposes.

TABLE 68—MITIGATION AREAS FOR SEAFLOOR RESOURCES

Mitigation area description
Stressor or Activity: • Explosives. • Physical disturbance and strikes. Resource Protection Focus: • Shallow-water coral reefs. • Live hard bottom. • Artificial reefs. • Shipwrecks. Mitigation Area Requirements (year-round): • Within the anchor swing circle of shallow-water coral reefs, live hard bottom, artificial reefs, and shipwrecks: ○ The Navy will not conduct precision anchoring (except in designated anchorages). • Within a 350-yd radius of live hard bottom, artificial reefs, and shipwrecks: ○ The Navy will not conduct explosive mine countermeasure and neutralization activities or explosive mine neutralization activities involving Navy divers. ○ The Navy will not place mine shapes, anchors, or mooring devices on the seafloor. • Within a 350-yd radius of shallow-water coral reefs: ○ The Navy will not conduct explosive or non-explosive small-, medium-, and large-caliber gunnery activities using a surface target; explosive or non-explosive missile and rocket activities using a surface target; explosive or non-explosive bombing and mine laying activities; explosive or non-explosive mine countermeasure and neutralization activities; and explosive or non-explosive mine neutralization activities involving Navy divers. ○ The Navy will not place mine shapes, anchors, or mooring devices on the seafloor. • Within the South Florida Ocean Measurement Facility Testing Range: ○ The Navy will use real-time geographic information system and global positioning system (along with remote sensing verification) during deployment, installation, and recovery of anchors and mine-like objects and during deployment of bottom-crawling unmanned underwater vehicles in waters deeper than 10 ft to avoid shallow-water coral reefs and live hard bottom. ○ Vessels deploying anchors, mine-like objects, and bottom-crawling unmanned underwater vehicles will aim to hold a relatively fixed position over the intended mooring or deployment location using a dynamic positioning navigation system with global positioning system. ○ The Navy will minimize vessel movement and drift in accordance with mooring installation and deployment plans, and will conduct activities during sea and wind conditions that allow vessels to maintain position and speed control during deployment, installation, and recovery of anchors, mine-like objects, and bottom-crawling unmanned underwater vehicles. ○ Vessels will operate within waters deep enough to avoid bottom scouring or prop dredging, with at least a 1-ft clearance between the deepest draft of the vessel (with the motor down) and the seafloor at mean low water. ○ The Navy will not anchor vessels or spud over shallow-water coral reefs and live hard bottom. ○ The Navy will use semi-permanent anchoring systems that are assisted with riser buoys over soft bottom habitats to avoid contact of mooring cables with shallow-water coral reefs and live hard bottom.

TABLE 69—SUMMARY OF MITIGATION AREAS FOR SEAFLOOR RESOURCES

Mitigation area	Summary of mitigation requirements
Mitigation Areas for Seafloor Resources	
Shallow-water coral reefs	• The Navy will not conduct precision anchoring (except in designated anchorages), explosive mine countermeasure and neutralization activities, explosive or non-explosive mine neutralization activities involving Navy divers, explosive or non-explosive small-, medium-, and large-caliber gunnery activities using a surface target, explosive or non-explosive missile and rocket activities using a surface target, or explosive or non-explosive bombing or mine laying activities. • The Navy will not place mine shapes, anchors, or mooring devices on the seafloor. • Within the South Florida Ocean Measurement Facility Testing Range, the Navy will implement additional measures, such as using real-time positioning and remote sensing information to avoid shallow-water coral reefs during deployment, installation, and recovery of anchors and mine-like objects, and during deployment of bottom-crawling unmanned underwater vehicles.
Live hard bottom	• The Navy will not conduct precision anchoring (except in designated anchorages), explosive mine countermeasure and neutralization activities, or explosive mine neutralization activities involving Navy divers. • The Navy will not place mine shapes, anchors, or mooring devices on the seafloor. • Within the South Florida Ocean Measurement Facility Testing Range, the Navy will implement additional measures, such as using real-time positioning and remote sensing information to avoid live hard bottom during deployment, installation, and recovery of anchors and mine-like objects, and during deployment of bottom-crawling unmanned underwater vehicles.
Artificial reefs, Shipwrecks	• The Navy will not conduct precision anchoring (except in designated anchorages), explosive mine countermeasure and neutralization activities, or explosive mine neutralization activities involving Navy divers. • The Navy will not place mine shapes, anchors, or mooring devices on the seafloor.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the Navy's EIS, which reflect many of the comments that have arisen via NMFS or public input in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into consideration (see Adaptive Management, below)) are appropriate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding these activities and the proposed mitigation measures. While NMFS has preliminarily determined that the Navy's proposed mitigation measures would effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, 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 incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Integrated Comprehensive Monitoring Program (ICMP)

The Navy's ICMP is intended to coordinate marine species monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. This process includes conducting an annual adaptive management review meeting, at which the Navy and NMFS jointly consider the prior-year goals, monitoring results, and related scientific advances to determine if monitoring plan modifications are warranted to more effectively address program goals. Although the ICMP does not specify actual monitoring field work or individual projects, it does establish a matrix of goals and objectives that have been developed in coordination with NMFS. As the ICMP is implemented through the Strategic Planning Process, detailed and specific studies will be developed which support the Navy's top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to contribute towards one or more of the following top-level goals:

- An increase in our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);
- An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* sound, explosive detonation, or military expended materials), through better understanding of one or more of the following: (1) The action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels); (2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part), and/or; (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);
- An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);
- An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: (1) The long-term fitness and survival of an individual; or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);
- An increase in our understanding of the effectiveness of mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the incidental take regulations and LOAs and ESA Incidental Take Statement;
- An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and
- Ensuring that adverse impact of activities remains at the least practicable level.

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around intermediate scientific objectives and a

conceptual framework incorporating a progression of knowledge, spanning occurrence, exposure, response, and consequence. The Strategic Planning Process for Marine Species Monitoring is used to set overarching intermediate scientific objectives, develop individual monitoring project concepts, identify potential species of interest at a regional scale, evaluate, prioritize and select specific monitoring projects to fund or continue supporting for a given fiscal year, execute and manage selected monitoring projects, and report and evaluate progress and results. This process addresses relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navymarinespecies monitoring.us/*).

Past and Current Monitoring in the AFTT Study Area

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the AFTT Study Area and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the proposed training and testing activities within the AFTT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *http://www.navymarinespeciesmonitoring.us.*

The Navy's marine species monitoring program typically supports 10–15 projects in the Atlantic at any given time with an annual budget of approximately $3.5M. Current projects cover a range of species and topics from collecting baseline data on occurrence and distribution, to tracking whales and sea turtles, to conducting behavioral response studies on beaked whales and pilot whales. The navy's marine species monitoring web portal provides details on past and current monitoring projects, including technical reports, publications, presentations, and access to available data and can be found at: *https://www.navymarinespecies monitoring.us/regions/atlantic/current-projects/.*

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training and testing activities in the AFTT Study Area would contain an adaptive management component. Our understanding of the effects of Navy training and testing activities (*e.g.,* acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of five-year regulations for these.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes to existing mitigation and monitoring requirements are appropriate. NMFS and the Navy would meet to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. The results from monitoring reports and other studies may be viewed at *https://www.navymarinespeciesmonitoring.us/.*

Proposed Reporting

In order to issue incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rulemaking may contain additional minor details not contained here. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespecies monitoring.us.* Currently, there are several different reporting requirements pursuant to these proposed regulations:

Notification of Injured, Live Stranded or Dead Marine Mammals

The Navy will abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available for review at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Annual AFTT Monitoring Report

The Navy shall submit an annual report to NMFS of the AFTT monitoring describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and AFTT Study Area to allow for comparison in different geographic locations. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process. Such a report would describe progress of knowledge made with respect to intermediate scientific objectives within the AFTT Study Area associated with the Integrated Comprehensive Monitoring Program. Similar study questions shall be treated together so that summaries can be provided for each topic area. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

Annual AFTT Exercise Report

Each year, the Navy shall submit a preliminary report to NMFS detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. Each year, the Navy shall submit a detailed report to NMFS within 3 months after the anniversary of the date of issuance of the LOA. The annual report shall contain information on Major Training

Exercises (MTEs) and Testing Exercises, Sinking Exercise (SINKEX) events, and a summary of all sound sources used (total hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin). The analysis in the detailed report will be based on the accumulation of data from the current year's report and data presented in the previous report. Information included in the classified annual reports may be used to inform future adaptive management of activities within the AFTT Study Area.

Major Training Exercises Notification

The Navy shall submit an electronic report to NMFS within fifteen calendar days after the completion of any major training exercise indicating: Location of the exercise; beginning and end dates of the exercise; and type of exercise.

Five-Year Close-Out Exercise Report

This report will be included as part of the 2023 annual exercise report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the five-year total for each sound source bin with a comparison to the five-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the EIS and final rule determinations. The report will be submitted to NMFS three months after the expiration of the rule. NMFS will provide comments to the Navy on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not provide comments.

Preliminary Analysis and Negligible Impact Determination

Negligible Impact Analysis

Introduction

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 mortality, serious injury, and Level A or Level B harassment (as presented in Tables 39–41), 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, other ongoing sources of human-caused mortality, ambient noise levels, and specific consideration of take by Level A harassment or serious injury or mortality (hereafter referred to as M/SI) previously authorized for other NMFS activities).

In the Estimated Take section, we identified the subset of potential effects that would be expected to rise to the level of takes, and then identified the number of each of those takes that we believe could occur (mortality) or are likely to occur (harassment) based on the methods described. Not all takes are created equal, in other words, the impact that any given take will have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of an disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). Here, we evaluate the likely impacts of the enumerated harassment takes that are proposed for authorization or anticipated to occur in this rule, in the context of the specific circumstances surrounding these predicted take. We also include a specific assessment of serious injury or mortality takes that could occur, as well as consideration of the traits and statuses of the affected species and stocks. Last, we pull all of this information, as well as other more taxa-specific information, together into group-specific discussions that support our negligible impact conclusions for each stock.

Harassment

The Navy's proposed activity reflects representative levels/ranges of training and testing activities, accounting for the natural fluctuation in training, testing, and deployment schedules. This approach is representative of how Navy's activities are conducted over any given year over any given five-year period. Specifically, to calculate take, the Navy provided a range of levels for each activity/source type for a year—they used the maximum annual level to calculate annual takes, and they used the sum of three nominal years (average level) and two maximum years to calculate five-year takes for each source type. The Proposed Activity contains a more realistic annual representation of activities, but includes years of a higher maximum amount of testing to account for these fluctuations. There may be some flexibility in that the exact number of hours, items, or detonations that may vary from year to year, but take totals would not exceed the five-year totals indicated in Tables 39 through 41. We base our analysis and negligible impact determination (NID) on the maximum number of takes that could occur or are likely to occur, although, as stated before, the number of takes are only a part of the analysis, which includes extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, we provide some general analysis immediately below that applies to all the species listed in Tables 39 through 41, given that some of the anticipated effects of the Navy's training and testing activities on marine mammals are expected to be relatively similar in nature. However, below that, we break our analysis into species (and/or stock), or groups of species (and the associated stocks) where relevant similarities exist, to provide more specific information related to the anticipated effects on individuals or where there is information about the status or structure of any species that would lead to a differing assessment of the effects on the species or stock.

The Navy's harassment take request is based on its model and post-model analysis, which NMFS believes appropriately predicts that amount of harassment that is likely to occur. In the discussions below, the ''acoustic analysis'' refers to the Navy's modeling results and post-model analysis. The model calculates sound energy propagation from sonar, other active acoustic sources, and explosives during

naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse energy received by a marine mammal exceeds the thresholds for effects. Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered (*e.g.,* no power down or shut down) and without any avoidance of the activity by the animal. The final step of the quantitative analysis of acoustic effects, which occurs after the modeling, is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. NMFS provided input to, and concurred with, the Navy on this process and the Navy's analysis, which is described in detail in Section 6 of the Navy's rulemaking and LOA application (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) was used to quantify harassment takes for this rule.

Generally speaking, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. However, there is also growing evidence of the importance of distance in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter 2012). The estimated number of Level A and Level B takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level A and Level B harassment threshold) that are anticipated to occur over the five-year period. These instances may represent either a very brief exposure (seconds) or, in some cases, longer durations of exposure within a day. Some individuals may experience multiple instances of take over the course of the year, while some members of a species or stock may not experience take at all. Depending on the location, duration, and frequency of activities, along with the distribution and movement of marine mammals, individual animals may be exposed to impulse or non-impulse sounds at or above the Level A and Level B harassment threshold on multiple days. However, the Navy is currently unable to estimate the number of individuals that may be taken during training and testing activities. The model results estimate the total number of takes that may occur to a smaller number of individuals.

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed earlier would also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Level B takes, then, may have a stress-related physiological component as well; however, we would not expect the Navy's generally short-term, intermittent, and (in the case of sonar) transitory activities to create conditions of long-term, continuous noise leading to long-term physiological stress responses in marine mammals.

The estimates calculated using the behavioral response function do not differentiate between the different types of behavioral responses that rise to the level of Level B harassments. As described in the Navy's application, the Navy identified (with NMFS' input) the types of behaviors that would be considered a take (moderate behavioral responses as characterized in Southall *et al.,* 2007 (*e.g.,* altered migration paths or dive profiles, interrupted nursing breeding or feeding, or avoidance) that also would be expected to continue for the duration of an exposure) and then compiled the available data indicating at what received levels and distances those responses have occurred, and used the indicated literature to build biphasic behavioral response curves that are used to predict how many instances of behavioral take occur in a day. Nor do the estimates provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. We therefore consider the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

For sonar (LFAS/MFAS/HFAS) used in the AFTT Study Area, the Navy provided information estimating the percentage of animals that may exhibit a significant behavior response under each behavioral response function that would occur within 6-dB increments (percentages discussed below in the Group and Species-Specific Analysis section). As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to lead to adverse effects on the reproductive success or survivorship of the animal. The majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. We anticipate more severe effects from takes when animals are exposed to higher received levels. These discussions are presented within each species group below in the Group and Species-Specific Analysis section. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment (see the Group and Species-Specific Analysis section below for more detailed information) from Navy activities might necessarily be expected to potentially result in more severe responses. To fully understand the likely impacts of the predicted/authorized take on an individual (*i.e.,* what is the likelihood or degree of fitness impacts), one must look closely at the available contextual information, such as the duration of likely exposures and the likely severity of the exposures (*e.g.,* will they occur from high level hull-mounted sonars or smaller less impactful sources). Moore and Barlow (2013) emphasizes the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is

a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises such as ASW activities, typically include vessels that are continuously moving at speeds typically 10–15 knots, or higher, and likely cover large areas that are relatively far from shore (typically more than 12 nmi from shore) and in waters greater than 600 ft deep, in addition to the fact that marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Further, the Navy does not necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered unlikely for the majority of takes. However, it is also worth noting that the Navy conducts many different types of noise-producing activities over the course of the year and it is likely that some marine mammals will be exposed to more than one and taken on multiple days, even if they are not sequential.

Durations of Navy activities utilizing tactical sonar sources and explosives vary and are fully described in Appendix A of the AFTT DEIS/OEIS. Sonar used during ASW would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in the Navy's rulemaking and LOA request and included hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. Most ASW sonars are MFAS (1–10 kHz); however, some sources may use higher or lower frequencies. Duty cycles can vary widely, from rarely used to continuously active. ASW training activities using hull mounted sonar proposed for the AFTT Study Area generally last for only a few hours. Some ASW exercises can generally last for 2–10 days, or as much as 21 days for an MTE -Large Integrated ASW (see Table 4). For these multi-day exercises there will be extended intervals of non-activity in between active sonar periods. Because of the need to train in a large variety of situations, the Navy does not typically conduct successive ASW exercises in the same locations. Given the average length of ASW exercises (times of sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans in the would not likely remain in proximity to the sound source, it is unlikely that an animal would be exposed to LFAS/MFAS/HFAS at levels or durations likely to result in a substantive response that would then be carried on for more than one day or on successive days.

Most planned explosive events are scheduled to occur over a short duration (1–8 hours); however, the explosive component of the activity only lasts for minutes (see Tables 4 through 7). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time. Although SINKEXs may last for up to 48 hrs, (4–8 hours, possibly 1–2 days), they are almost always completed in a single day and only one event is planned annually for the AFTT training activities. They are stationary and conducted in deep, open water (where fewer marine mammals would typically be expected to be randomly encountered), and they have rigorous monitoring (*i.e.,* during the activity, conduct passive acoustic monitoring and visually observe for marine mammals 90 min prior to the first firing, during the event, and 2 hrs after sinking the vessel) and shutdown procedures all of which make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days.

Last, as described previously, Navy modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are equated, as appropriate, to harassment takes (and further corrected to account for mitigation and avoidance). As further noted, for active acoustics, it is more challenging to parse out the number of individuals taken from this larger number of instances. One method that NMFS can use to help better understand the overall scope of the impacts is to compare these total instances of take against the abundance of that stock. For example, if there are 100 takes in a population of 100, one can assume either that every individual was exposed above acoustic thresholds in no more than one day, or that some smaller number were exposed in one day but a few of those individuals were exposed in multiple days. At a minimum, it provides a relative picture of the scale of impacts to each stock. When calculating the proportion of a population affected by takes (*e.g.,* the number of takes divided by population abundance), it is important to choose an appropriate population estimate to make the comparison. While the SARs provide the official population estimate for a given species or stock in a given year (and are typically based solely on the most recent survey data), the SARs are often not used to estimate takes, instead modeled density information is used. If takes are calculated from another dataset (for example a broader sample of survey data) and compared to the population estimate from the SARs, it may distort the percent of the population affected because of different population baselines.

The estimates found in NMFS's SARs remain the official estimates of stock abundance where they are current. These estimates are typically generated from the most recent shipboard and/or aerial surveys conducted. Studies based on abundance and distribution surveys restricted to U.S. waters are unable to detect temporal shifts in distribution beyond U.S. waters that might account for any changes in abundance within U.S. waters. NMFS's SAR estimates also may not incorporate correction for detection bias. In these cases, they should generally be considered as underestimates, especially for cryptic or long-diving species (*e.g.,* beaked whales, *Kogia* spp., sperm whales). In some cases, NMFS's abundance estimates show substantial year-to-year variability. For the reasons stated above, we used the Navy's abundance predictions to make relative comparisons between the exposures predicted by the outputs of the model and the overall abundance predicted by the model. However, our use of the Navy's abundance estimates is not intended to make any statement about NMFS's SAR abundance estimates.

The Navy uses, and NMFS supports the use of spatially and temporally explicit density models that vary in space and time to estimate their potential impacts to species. See the *U.S. Navy Marine Species Density Database Phase III for the Atlantic Fleet Training and Testing Area Technical Report* to learn more on how the Navy selects density information and the models selected for individual species. These models may better characterize how Navy impacts can vary in space and time but often predict different population abundances than the SARs.

Models may predict different population abundances for many

reasons. The models may be based on different data sets or different temporal predictions may be made. The SARs are often based on single years of NMFS surveys whereas the models used by the Navy generally include multiple years of survey data from NMFS, the Navy, and other sources. To present a single, best estimate, the SARs often use a single season survey where they have the best spatial coverage (generally summer). Navy models often use predictions for multiple seasons, where appropriate for the species, even when survey coverage in non-summer seasons is limited, to characterize impacts over multiple seasons as Navy activities may occur in any season. Predictions may be made for different spatial extents. Many different, but equally valid, habitat and density modeling techniques exist and these can also be the cause of differences in population predictions. Differences in population estimates may be caused by a combination of these factors. Even similar estimates should be interpreted with caution and differences in models be fully understood before drawing conclusions.

The Navy Study Area covers a broad area in the western North Atlantic Ocean and the Navy has tried to find density estimates for this entire area, where appropriate given species distributions. However, only a small number of Navy training and testing activities occur outside of the U.S. EEZ. As such, NMFS believes that the average population predicted by Navy models across seasons in the U.S. EEZ is the best baseline to use when analyzing takes as a proportion of population. This is a close approximation of the actual population used in Navy take analysis as occasionally sound can propagate outside of the U.S. EEZ and a small number of exercises do occur in international waters. This approximation will be less accurate for species with major changes in density close to the U.S. EEZ or far offshore. In all cases it is important to understand the differences between Navy models and the SARs on a species by species case. Models of individual species or stocks were not available for all species and takes had to be proportioned to the species or stock level from takes predicted on models at higher taxonomic levels. See the various Navy technical reports mentioned previously in this rule that detail take estimation and density model selection for details.

TTS

NMFS and the Navy have estimated that some individuals of some species of marine mammals may sustain some level of TTS from active sonar. As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Tables 72–77 indicate the amounts of TTS that may be incurred by different stocks from exposure to active sonar and explosives. No TTS is estimated from airguns or piledriving activities. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The Navy's MF sources the 1–10 kHz frequency band, which suggests that if TTS were to be induced by any of these MF sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 10 and 100 kHz, which means that TTS could range up to 200 kHz; however, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is even less likely). TTS from explosives would be broadband.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this proposed rule. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the Lookouts and the nominal speed of an active sonar vessel (10–15 knots). In the TTS studies (see Threshold Shift section), some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, since any hull-mounted sonar such as the SQS–53 (MFAS), emits a ping typically every 50 seconds, incurring those levels of TTS is highly unlikely.

3. Duration of TTS (recovery time)—In the TTS laboratory studies (see Threshold Shift) section), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.,* 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during LFAS/MFAS/HFAS training and testing exercises in the AFTT Study Area, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few hours (and any incident of TTS would likely be far less severe due to the short duration of the majority of the events and the speed of a typical vessel). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would most likely be sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher received level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues. If impaired, marine mammals would typically be aware of their impairment and are sometimes able to implement behaviors to compensate (see Acoustic Masking or Communication Impairment section), though these compensations may incur energetic costs.

Acoustic Masking or Communication Impairment

Masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which continues beyond the duration of the signal. Standard MFAS typically pings every 50 seconds for hull-mounted sources. Hull-mounted anti-submarine sonars can also be used in an object detection mode known as ''Kingfisher'' mode (*e.g.,* used on vessels when transiting to and from port), pulse

length is shorter, but pings are much closer together in both time and space, since the vessel goes slower when operating in this mode. For the majority of sources, the pulse length is significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 50 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked.

Most ASW sonars and countermeasures use MF ranges and a few use LF and HF ranges. Most of these sonar signals are limited in the temporal, frequency, and spatial domains. The duration of most individual sounds is short, lasting up to a few seconds each. Some systems operate with higher duty cycles or nearly continuously, but typically use lower power. Nevertheless, masking may be more prevalent at closer ranges to these high-duty cycle and continuous active sonar systems. Most ASW activities are geographically dispersed and last for only a few hours, often with intermittent sonar use even within this period. Most ASW sonars also have a narrow frequency band (typically less than one-third octave). These factors reduce the likelihood of sources causing significant masking in mysticetes. HF sonars are typically used for mine hunting, navigation, and object detection, HF (greater than 10 kHz) sonars fall outside of the best hearing and vocalization ranges of mysticetes). Furthermore, HF (above 10 kHz) attenuate more rapidly in the water due to absorption than do lower frequency signals, thus producing only a small zone of potential masking. Masking in mysticetes due to exposure to high-frequency sonar is unlikely. Masking effects from LFAS/MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly resemble the characteristics of any marine mammal's vocalizations. Masking could occur in mysticetes due to the overlap between their low-frequency vocalizations and the dominant frequencies of airgun pulses, however, masking in odontocetes or pinnipeds is less likely unless the airgun activity is in close range when the pulses are more broadband. Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as during vibratory pile driving and from vessels. The other sources used in Navy training and testing, many of either higher frequencies (meaning that the sounds generated attenuate even closer to the source) or lower amounts of operation, are similarly not expected to result in masking.

PTS From Sonar and Explosives and Tissue Damage From Explosives

Tables 72–77 indicates the number of individuals of each of species and stock for which Level A harassment in the form of PTS resulting from exposure to active sonar and/or explosives estimated to occur. Tables 72–77 also indicate the number of individuals of each of species and stock for which Level A harassment in the form of tissue damage resulting from exposure to explosive detonations is estimated to occur. The number of individuals to potentially incur PTS annually (from sonar and explosives) for the predicted species ranges from 0 to 471 (471 for harbor porpoise), but is more typically a few up to 33 (with the exception of a few species). The number of individuals to potentially incur tissue damage from explosives for the predicted species ranges from 0 to 36 (36 for short-beaked common dolphin), but is typically zero in most cases. Overall the Navy's model estimated that 8 delphinidae annually would be exposed to explosives during training and testing at levels that could result in non-auditory injury. The Navy's model estimated that 1 sperm whale and 94 delphinidae annually could experience non-auditory injury. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar-emitting vessel at a close distance, NMFS believes that the mitigation measures (*i.e.,* shutdown/powerdown zones for active sonar) would typically ensure that animals would not be exposed to injurious levels of sound, however, here we analyze the impacts of those potential takes in case they should occur. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during ASW exercises—passive acoustic detections are used as a cue for Lookouts' visual observations when passive acoustic assets are already participating in an activity) in addition to lookouts on vessels to detect marine mammals for mitigation implementation.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominally 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious dependent upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. We also assume that the acoustic exposures sufficient to trigger onset PTS (or TTS) would be accompanied by physiological stress responses, although the sound characteristics that correlate with specific stress responses in marine mammals are poorly understood. As discussed above for Behavioral Harassment, we would not expect the Navy's generally short-term, intermittent, and (in the case of sonar) transitory activities to create conditions of long-term, continuous noise leading to long-term physiological stress responses in marine mammals.

For explosive activities, the Navy implements mitigation measures (described in Proposed Mitigation Measures) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Observing for marine mammals during the explosive activities will include aerial and passive acoustic detection methods (when they are available and part of the activity) before the activity begins, in order to cover the mitigation zones that can range from 200 yds (183 m) to 2,500 yds (2,286 m) depending on the source (*e.g.,* explosive sonobuoy, explosive torpedo, explosive bombs) and 2.5 nmi for sinking exercise (see Tables 47–56).

Observing for marine mammals during ship shock (which includes lookouts in aircraft or on multiple vessels), begins 5 hrs before the detonation and extends 3.5 nmi from the ship's hull (see Table 57). Nearly all

explosive events will occur during daylight hours to improve the sightability of marine mammals improving mitigation effectiveness. The proposed mitigation is expected to reduce the likelihood that all of the proposed takes will occur, however, we analyze the type and amount of Level A take indicated in Tables 39 through 41. Generally speaking, the number and degree of potential injury are low.

Serious Injury and Mortality

NMFS proposes to authorize a very small number of serious injuries or mortalities that could occur in the event of a ship strike or as a result of marine mammal exposure to explosive detonations (ship shock trials). We note here that the takes from potential ship strikes or explosive exposures enumerated below could result in non-serious injury, but their worse potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

In addition, we discuss here the connection between the mechanisms for authorizing incidental take under section 101(a)(5) for activities, such as Navy's testing and training in the AFTT Study Area, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, Potential Biological Removal (PBR), and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) 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,'' and is a measure that can help evaluate the effects of M/SI on a marine mammal species or stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.'' A primary goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of N_{min} incorporates the precision and variability associated with abundance information and is intended to provide reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995). In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated as well as potential bias stemming from lack of knowledge (Wade, 1998).

PBR can be used as a consideration of the effects of M/SI on a marine mammal stock but was applied specifically to work within the management framework for commercial fishing incidental take. PBR cannot be applied appropriately outside of the section 118 regulatory framework for which it was designed to inform without consideration of how it applies in 118 and how other statutory management frameworks differ. PBR was not designed as an absolute threshold limiting commercial fisheries, but rather as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. PBR is not used to grant or deny authorization of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent consideration of PBR may be relevant to considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5) and the use of PBR under section 118. The standard for authorizing incidental take under section 101(a)(5) continues to be, among other things, whether the total taking will have a negligible impact on the species or stock. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), acknowledging that negligible impact under section 101(a)(5) is a separate standard from PBR under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the Endangered Species Act) to add compliance with the new section 118 but kept the requirement for a negligible impact finding, showing that the determination of negligible impact and application of PBR may share certain features but are different.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' (16 U.S.C. 1362(19))), but nothing in the MMPA requires the application of PBR outside the management of commercial fisheries interactions with marine mammals.

Nonetheless, NMFS recognizes that as a quantitative tool, PBR may be useful in certain instances as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, PBR can help inform the potential effects of M/SI, most readily for determining when anticipated M/SI clearly would not contribute to exceeding the negligible impact level. We first calculate a metric for each

species or stock that incorporates information regarding ongoing anthropogenic mortality/serious injury into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called ''residual PBR.'' (Wood *et al.,* 2012). We then consider the maximum potential incidental M/SI from the activities being evaluated relative to an insignificance threshold, which is 10 percent of residual PBR for that species or stock. For a species or stock with incidental M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.,* in the absence of any other take) cannot affect annual rates of recruitment and survival. In a prior incidental take rulemaking and in the commercial fishing context, this threshold is identified as the significance threshold, but it is more accurately an insignificance threshold outside commercial fishing because it represents the level at which there is no need to consider other factors in determining the role of M/SI in affecting rates of recruitment and survival. Assuming that any additional incidental take by harassment would not exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock.

Where M/SI for a species or stock exceeds the insignificance threshold—or even residual PBR—that information is relevant to, but not determinative of, whether the M/SI along with any anticipated take by harassment exceeds negligible impact. We also consider all relevant information that could either increase or reduce the level of concern related to the significance of a given level of take. Specifically, we consider implementation of mitigation measures, additional population stressors, and other possible effects—both positive and negative—in addition to the interaction of those mortalities with incidental taking by harassment.

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. No mortalities or serious injuries are anticipated from Navy's sonar activities. In addition, all mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemaking for the NMFS Northeast Fisheries Science Center has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI from Navy's ship strike analysis for the affected mysticetes and sperm whales (see Table 70) and from the Navy's explosive detonations for the affected dolphin species (see Table 71) in consideration of NMFS's threshold for identifying insignificant M/SI take (10 percent of residual PBR (69 FR 43338; July 20, 2004)). By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic mortality, we begin our evaluation of whether the potential incremental addition of M/SI through Navy's ship strikes and explosive detonations may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

Based on the methods discussed previously, NMFS believes that mortal takes of three large whales over the course of the five-year rule could occur, but that no more than one of any species of humpback whale, fin whale, sei whale, minke whale, blue whale, or sperm whale (either GOM or North Atlantic) would occur. This means an annual average of 0.2 whales from each species as described in Table 70 (*i.e.,* 1 take over 5 years divided by 5 to get the annual number) is proposed for authorization.

The Navy has also requested a small number of takes by serious injury or mortality from explosives. To calculate the annual average of mortalities for explosives in Table 71 we used the same method as described for vessel strikes. The annual average is the number of takes divided by 5 years to get the annual number.

TABLE 70—SUMMARY INFORMATION RELATED TO AFTT SHIP STRIKE, 2018–2023

Species (stock)	Stock abundance (Nbest) *	Annual proposed take by serious injury or mortality [1]	Total annual M/SI * [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	Vessel collisions (Y/N); annual rate of M/SI from vessel collision *	PBR *	NEFSC authorized take (annual)	Residual PBR–PBR minus annual M/SI (%) [3]	Stock trend * [4]	UME (Y/N); number and year
Fin whale (Western North Atlantic).	1,618	0.2	3.8	Y; 1.8	Y; 2	2.5	0	−1.3	?	N
Sei whale (Nova Scotia).	357	0.2	0.8	N	Y; 0.8	0.5	0	−0.3	?	N
Minke Whale (Canadian East Coast).	2,591	0.2	8.25	Y; 6.45	Y; 1.6	14	1	4.75	?	?
Blue whale (Western North Atlantic).	unknown	0.2	unknown	N	N	0.9	0	unknown	?	?
Humpback whale (Gulf of Maine).	823	0.2	9.05	Y; 7.25	Y; 1.8	13	0	3.95	↑	Y/27 in 2017 (53 in 2016 and 2017 combined).
Sperm whale (North Atlantic).	2,288	0.2	0.8	Y; 0.8	Y; 0.2	3.6	0	2.8	?	?
Sperm whale (Gulf of Mexico).	763	0.2	0	N	N	1.1	0	1.1	?	Y/5 in 2010–2014.

* Presented in the SARS.

[1] This column represent the annual take by serious injury or mortality by vessel collision and was calculated by the number of mortalities proposed for authorization divided by five years (the length of the rule and LOAs).

[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either Navy strikes or NEFSC takes to ensure not double-counted against PBR. However, for these species, there were no were no takes from either Navy or NEFSC to deduct that would be considered double-counting.

[3] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the SARs).

[4] See relevant SARs for more information regarding stock status and trends.

TABLE 71. SUMMARY INFORMATION RELATED TO AFTT SERIOUS INJURY OR MORTALITY FROM EXPLOSIVES (SHIP SHOCK TRIALS), 2018–2023

Species (stock)	Stock abundance (Nbest) *	Annual proposed take by serious injury or mortality [1]	Total annual M/SI* [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	PBR *	NEFSC authorized take (annual)	Residual PBR–PBR minus annual M/SI [3]	Stock trend * [4]	UME (Y/N); number and year
Atlantic white-sided dolphin (Western N. Atlantic).	48,819	0.2	74	74	304	0.6	230	?	N
Pantropical spotted dolphin (Northern Gulf of Mexico).	50,880	0.2	4.4	4.4	407	0	402.6	?	Y/3 in 2010–2014.
Short-beaked common dolphin (Western N. Atlantic).	70,184	1.2	409	409	577	2	168	?	N
Spinner dolphin (Northern Gulf of Mexico).	11,411	0.2	0	0	62	0	62	?	Y/7 in 2010–2014.

* Presented in the SARS.
[1] This column represents the annual take by serious injury or mortality during ship shock trials and was calculated by the number of mortalities proposed for authorization divided by five years (the length of the rule and LOAs).
[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either Navy or NEFSC takes to ensure not double-counted against PBR. However, for these species, there were no were no takes from either Navy or NEFSC to deduct that would be considered double-counting.
[3] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the SARs).
[4] See relevant SARs for more information regarding stock status and trends.

Humpback Whale

For humpback whale (Gulf of Maine stock) PBR is currently set at 13 and the total annual M/SI of 9.05 yielding a residual PBR of 3.95. The M/SI value includes incidental fishery interaction records of 7.25, and records of vessel collisions of 1.8. The proposed authorization of 0.2 mortalities is below the insignificance threshold of 10 percent of residual PBR (0.395); therefore, we consider the addition of 0.2 an insignificant incremental addition to human-caused mortality. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

While the proposed authorization of mortalities is below the insignificant threshold, because of the going UME for humpback whales, we address what actions may be occurring that may reduce the risk of mortalities of humpbacks. Of note, the Atlantic Large Whale Take Reduction Plan (ALWTRP) is a program to reduce the risk of serious injury and death of large whales caused by accidental entanglement in U.S. commercial trap/pot and gillnet fishing gear. It aims to reduce the number of whales taken by gear entanglements focusing on fin whales, humpback whales, and NARW. Effective September 1, 2015 the ALWTRP included new gear marking areas for gillnets and trap/pots for Jeffrey's Ledge and Jordan Basin (Gulf of Maine), two important high-use areas for humpback whales and NARWs. The only study available that examined the effectiveness of the ALWTRP reviewed the regulations up to 2009 (Pace *et al.* 2014) and the results called for additional mitigation measures needed to reduce entanglements. After this study period, NMFS put two major regulatory actions in place—the 2007 sinking groundline rule that went into effect in 2009 (73 FR 51228) and the 2014 vertical line rule that went into effect in 2015 (79 FR 36586). NMFS Fisheries Science Centers are convening a working group in January 2018 to make recommendations on the best analytical approach to measure how effective these regulations have been. However, the Office of Law Enforcement (OLE) report that of gear checked by OLE under the ALWTRP, they found a compliance rate of 94.49 percent in FY–2015 and 84.42 percent in FY–2016.

Sperm Whale (North Atlantic)

For sperm whales (North Atlantic stock) PBR is currently set at 3.6 and the total annual M/SI of 0.8 yielding a residual PBR of 2.8. The M/SI value includes incidental fishery interaction records of 0.6, and records of vessel collisions of 2.0. The proposed authorization of 0.2 mortalities falls below the insignificance threshold of 10 percent of residual PBR (0.28), therefore, we consider the addition of 0.2 an insignificant incremental addition to human-caused mortality. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Sperm Whale (Gulf of Mexico)

For sperm whales (Gulf of Mexico stock) PBR is currently set at 1.1 and the total annual M/SI of 0 yielding a residual PBR of 1.1. The M/SI value includes incidental fishery interaction records of 0, and records of vessel collisions of 0. The proposed authorization of 0.2 mortalities does not fall below the insignificance threshold of 10 percent of residual PBR (0.11), but is below residual PBR, which means that the total anticipated human-caused mortality is still not expected to exceed that needed to allow the stock to reach or maintain its OSP level. The information contained here will be considered in combination with the harassment assessment included later in this section.

Additional information on sperm whale mortalities was considered in our analysis because the proposed mortalities did not fall below the insignificant threshold of 10 percent of residual PBR (however, still below residual PBR). Sperm whales associated with a UME (described below) appears to be an isolated event and the UME investigation determined that the DWH oil spill is the most likely explanation for the elevated stranding numbers in the northern Gulf of Mexico. An UME was declared for cetaceans in the northern Gulf of Mexico 2010–2014 (for more information refer to the Description of Marine Mammals section). During 2010–2013, five sperm whales from this stock were considered to be part of the UME. No vessel strikes have been documented in recent years (2009–2013) for sperm whales in the Gulf of Mexico. Historically, one possible sperm whale mortality due to a vessel strike has been documented for the Gulf of Mexico. The incident occurred in 1990 in the vicinity of Grande Isle, Louisiana. Deep cuts on the dorsal surface of the whale indicated the ship strike was probably pre-mortem (Jensen and Silber 2004). The status of sperm whales in the northern Gulf of Mexico, relative to OSP, is unknown.

There are insufficient data to determine the population trends for this stock.

Minke Whale

For minke whales (Canadian East Coast stock) PBR is currently set at 14 and the total annual M/SI of 8.25 yielding a residual PBR of 5.75. The M/SI value includes incidental fishery interaction records of 6.45, and records of vessel collisions of 1.6. The proposed authorization of 0.2 mortalities annually from the Navy's activities (in addition to the 1.0 annual mortality from the NEFSC) yields a total of 1.2 mortalities, which does not fall below the insignificance threshold of 10 percent of residual PBR (0.575), but is below residual PBR. This means that the total anticipated human-caused mortality is still not expected to exceed that needed to allow the stock to reach or maintain its OSP level. In addition, the abundance of minke whales is likely greater as the most recent estimate is substantially lower than the estimate from the previous 2015 SAR abundance (20,741 minkes with a PBR of 162). The 2015 SAR abundance included data from the 2007 Canadian Trans-North Atlantic Sighting Surveys (TNASS) while the current estimate did not. For the purposes of the 2016 SAR, as recommended in the GAMMS II Workshop Report (Wade and Angliss 1997), estimates older than eight years are deemed unreliable, so the 2016 SAR estimate must not include data from the 2007 TNASS. The 2016 SARS indicated that the estimate should not be interpreted as a decline in abundance of this stock, as previous estimates are not directly comparable. Therefore, the PBR is likely much greater for this species, which could mean that the real residual PBR may not be exceeded. The information contained here will be considered in combination with the harassment assessment included later in this section.

Blue Whale

For blue whales (Western North Atlantic stock) PBR is currently set at 0.9 and the total annual M/SI is unknown and therefore residual PBR is unknown. The proposed authorization of 0.2 mortalities is below PBR and there is no other known mortality, so the total anticipated human-caused mortality is not expected to exceed PBR. Additional information on blue whale mortalities was considered in our analysis because the proposed mortalities did not fall below the insignificant threshold of 10 percent of residual PBR (however, still below PBR). There have been no observed fishery-related mortalities or serious injury. There are no recent confirmed records of mortality or serious injury to blue whales in the U.S. Atlantic EEZ. One historical record points to a ship strike; however it was concluded that the whale may have been died outside the U.S. Atlantic EEZ. In March 1998, a dead 20 m (66 ft) male blue whale was brought into Rhode Island waters on the bow of a tanker. The cause of death was determined to be ship strike; however, some of the injuries were difficult to explain from the necropsy. Therefore, we think the likelihood of the Navy hitting a blue whale is discountable. There are insufficient data to determine population trends for this species. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Fin Whale

For fin whales (Western North Atlantic stock) PBR is currently set at 2.5 and the total annual M/SI of 3.8 yielding a residual PBR of −1.3. The fact that residual PBR is negative means that the total anticipated human-caused mortality is expected to exceed PBR even in the absence of additional take by the Navy. However, we note that there is a strong likelihood the abundance estimate used to calculate PBR was biased low due to incomplete coverage of the stock's range, and, therefore, this PBR calculation is likely low. The best abundance estimate available for the fin whale stock is 1,618 and that it is likely that the available estimate underestimates this stock's abundance because much of the stock's range was not included in the surveys upon which the estimate is based.

Proposed mortality above residual PBR (however, still below PBR) necessitates the consideration of all additional available information on mortality in the analysis. Of note, the ALWTRP (as described above) is a program to reduce the risk of serious injury and death of large whales caused by accidental entanglement in U.S. commercial trap/pot and gillnet fishing gear. It aims to reduce the number of whales taken by gear entanglements focusing on fin whales, humpback whales, and NARW. NMFS Fisheries Science Centers are convening a working group in January 2018 to make recommendations on the best analytical approach to measure how effective these regulations have been.

As noted previously, PBR, as a tool, is inherently conservative and is not intended to be used as an absolute cap. The Navy's proposed serious injury or mortality take of 0.2 individual fin whales is low in and of itself (the lowest non-zero value possible over a five-year period), and as a portion of the total projected overage of human-caused mortality of 3.8. Additionally, as noted above, PBR may be underestimated, which could mean that the real residual PBR may not be exceeded. However, the exceedance of residual PBR necessitates that close attention to the remainder of the impacts on fin whales from this activity to ensure that the total authorized impacts are negligible.

Sei Whale

For sei whales (Nova Scotia stock) PBR is currently set at 0.5 and the total annual M/SI of 0.8 yielding a residual PBR of −0.3. The M/SI value includes incidental fishery interaction records of 0, and records of vessel collisions of 0.8. The fact that residual PBR is negative means that the total anticipated human-caused mortality is expected to exceed PBR even in the absence of additional take by the Navy. However, we note that there is a strong likelihood the abundance estimate used to calculate PBR was biased low due to incomplete coverage of the stock's range, and, therefore, this PBR calculation may also be low. It should be noted that the population abundance estimate of 357 is considered the best available for the Nova Scotia stock of sei whales. However, this estimate must be considered conservative because all of the known range of this stock was not surveyed. It should be noted that the abundance survey from which it was derived excluded waters off the Scotian Shelf, an area encompassing a large portion of the stated range of the stock. The status of this stock relative to OSP in the U.S. Atlantic EEZ is unknown. There are insufficient data to determine population trends for sei whales.

Proposed mortality above residual PBR (however, still below PBR) necessitates the consideration of all additional available information on mortality in the analysis. As noted previously, PBR, as a tool, is inherently conservative and is not intended to be used as an absolute cap. The Navy's proposed serious injury or mortality take of 0.2 individual sei whales is low in and of itself (the lowest non-zero value possible over a five-year period), and the total projected overage of human-caused mortality of 0.8 is also low. However, the exceedance of residual PBR necessitates that close attention to the remainder of the impacts on sei whales from the Navy's activities to ensure that the total authorized impacts are negligible.

Atlantic White-Sided Dolphin

For Atlantic white-sided dolphins (Western Atlantic stock) PBR is currently set at 304 and the total annual M/SI of 74 yielding a residual PBR of 230. The proposed authorization of 0.2 mortalities from the Navy's activities (in addition to 0.6 mortalities from the NEFSC) yields a total of 0.8 mortalities, which falls below the insignificance threshold of 10 percent of residual PBR (23.0). Therefore, we consider the addition of 0.8 an insignificant incremental increase to human-caused mortality and do not consider additional factors related to mortality further. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Pantropical Spotted Dolphin

The Pantropical spotted dolphins (Northern Gulf of Mexico stock) PBR is currently set at 407 and the total annual M/SI of 4.4 yielding a residual PBR of 402.6. The proposed authorization of 0.2 mortalities annually falls below the insignificance threshold of 10 percent of residual PBR (40.26) and, therefore, we consider the addition of 0.2 an insignificant incremental increase to human-caused mortality and do not consider additional factors related to mortality further. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Short-Beaked Common Dolphin

For short-beaked common dolphins (Western North Atlantic stock) PBR is currently set at 577 and the total annual M/SI of 409 yielding a residual PBR of 168. The proposed authorization of 1.2 mortalities annually from the Navy's activities (in addition to the 2.0 mortalities from the NEFSC) yields a total of 3.2 mortalities annually and falls below the insignificance threshold of 10 percent of residual PBR (16.8) and, therefore, we consider the addition of 3.2 an insignificant incremental increase to human-caused mortality and do not consider additional factors related to mortality further. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Spinner Dolphin

The spinner dolphins (Northern Gulf of Mexico stock) PBR is currently set at 62 and the total annual M/SI of 0 yielding a residual PBR of 62. The proposed authorization of 0.2 mortalities annually falls below the insignificance threshold of 10 percent of residual PBR (6.2) and, therefore, we consider the addition of 0.2 an insignificant incremental increase to human-caused mortality and do not consider additional factors related to mortality further. This information will be considered in combination with our assessment of the impacts of harassment.

Group and Species-Specific Analysis

In the discussions below, the ''acoustic analysis'' refers to the Navy's analysis, which includes the use of several models and other applicable calculations as described in the Estimated Take of Marine Mammals section. The quantitative analysis process used for the AFTT DEIS/OEIS and the Navy's rulemaking and LOA application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles (U.S. Department of the Navy, 2017a). The Navy Acoustic Effects Model estimates acoustic and explosive effects without taking mitigation into account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. To account for mitigation, as well as avoidance, for marine mammals, the Navy developed a methodology to conservatively quantify the likely degree that mitigation and avoidance will reduce model-estimated PTS to TTS for exposures to sonar and other transducers, and reduce model-estimated mortality and injury for exposures to explosives.

The amount and type of incidental take of marine mammals anticipated to occur from exposures to sonar and other active acoustic sources and explosions during the five-year training and testing period are shown in Tables 39 and 40 as well as ship shock trials shown in Table 41. The vast majority of predicted exposures (greater than 99 percent) are expected to be Level B harassment (non-injurious TTS and behavioral reactions) from acoustic and explosive sources during training and testing activities at relatively low received levels.

The analysis below may in some cases (*e.g.,* mysticetes, porpoises, pinnipeds) address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), have similar hearing capabilities, and/or are known to generally behaviorally respond similarly to acoustic stressors. Animals belonging to each stock within a species would have the same hearing capabilities and behaviorally respond in the same manner as animals in other stocks within the species. Therefore our analysis below also considers the effects of Navy's activities on each affected stock. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they will either be described within the section or the species will be included as a separate sub-section.

Mysticetes

In Table 72 below, for mysticetes, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 72: Annual takes of Level B and Level A harassment, mortality for mysticetes in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Mysticeti (baleen whales)												
Family Balaenidae (right whales)												
North Atlantic right whale*	Western North Atlantic	209	376	0	0	0	585	585	343	343	171	171
Family Balaenopteridae (rorquals)												
Blue whale*	Western North Atlantic (Gulf of St. Lawrence)	12	32	0	0	0.2	44	47	9	104	491	46
Bryde's whale	Northern Gulf of Mexico	27	31	1	0	0	59	59	50	50	118	118
	NSD	76	260	0	0	0	336	360	50	563	672	64
Minke whale	Canadian East Coast	768	3,201	5	0	0.2	3974	4146	730	7686	544	54
Fin whale*	Western North Atlantic	1,740	3,824	33	0	0.2	5597	5649	1,660	14769	337	38
Humpback whale	Gulf of Maine	241	472	3	0	0.2	716	767	496	4580	144	17
Sei whale*	Nova Scotia	243	560	4	0	0.2	807	833	246	11737	328	7

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

The annual mortality of 0.2 is because we expect no more than one mortality over the course of five years from vessel strikes as previously described above.

Of these species, North Atlantic right whale, blue whale, fin whale, and sei whale are listed as endangered under the ESA and depleted under the MMPA. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

As noted previously, the estimated takes represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise. However, some repeated exposures across different activities could occur over the year, especially where numerous activities occur in generally the same area with more resident species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be exposed multiple times, but based on the nature of the Navy's activities and the movement patterns of marine mammals, it is unlikely that any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur. They are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple time is still only taken on a small percentage of the days of the year.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to mysticetes from sonar and other active sound sources during testing and training activities would be primarily from ASW events. It is important to note although ASW is one of the warfare areas of focus during MTEs, there are significant periods when active ASW sonars are not in use. Nevertheless, behavioral reactions are assumed more likely to be significant during MTEs than during other ASW activities due to the duration (*i.e.,* multiple days) and scale (*i.e.,* multiple sonar platforms) of the MTEs. In other words, in the range of potential behavioral effects that might expect to be part of a response that qualifies as an instance take (which by nature of the way it is modeled/counted, occurs within one day), the less severe end might include exposure to comparatively lower levels of a sound, at a detectably greater distance from the animal, for a few or several minutes, and that could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. The more severe end, which occurs a smaller amount of the time (when the animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day) might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. As noted in the Potential Effects section, there are multiple

examples from behavioral response studies of odontocetes ceasing their feeding dives when exposed to sonar pulses at certain levels, but alternately, blue whales were less likely to show a visible response to sonar exposures at certain levels when feeding then they have been observed responding to when traveling.

Most Level B harassments to mysticetes from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 160 and 172 dB SPL (64 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

Research and observations show that if mysticetes are exposed to sonar or other active acoustic sources they may react in a number of ways depending on the characteristics of the sound source, their experience with the sound source, and whether they are migrating or on seasonal grounds (*i.e.,* breeding or feeding). Behavioral reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012). Overall, mysticetes have been observed to be more reactive to acoustic disturbance when a noise sources is located directly on their migration route. Mysticetes disturbed while migrating could pause their migration or route around the disturbance. Although they may pause temporarily, they will resume migration shortly after. Animals disturbed while engaged in other activities such as feeding or reproductive behaviors may be more likely to ignore or tolerate the disturbance and continue their natural behavior patterns. Therefore, most behavioral reactions from mysticetes are likely to be short-term and low to moderate severity.

While MTEs may have a longer duration they are not concentrated in small geographic areas over that time period. MTES use thousands to 10s of thousands of square miles of ocean space during the course of the event. There is no Navy activity in the proposed action that is both long in duration (more than a day) and concentrated in the same location. For example, Goldbogen *et al.* (2013) indicated some horizontal displacement of deep foraging blue whales in response to simulated MFA sonar. Given these animals' mobility and large ranges, we would expect these individuals to temporarily select alternative foraging sites nearby until the exposure levels in their initially selected foraging area have decreased. Therefore, temporary displacement from initially selected foraging habitat is not expected to impact the fitness of any individual animals because we would expect suitable foraging to be available in close proximity.

Richardson *et al.* (1995) noted that avoidance (temporary displacement of an individual from an area) reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the startle or flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Some mysticetes may avoid larger activities such as a MTE as it moves through an area, although these activities generally do not use the same training locations day-after-day during multi-day activities. Therefore, displaced animals could return quickly after the MTE finishes. Due to the limited number and broad geographic scope of MTEs, it is unlikely that most mysticetes would encounter a major training exercise more than once per year and no MTEs will occur in the Gulf of Mexico Planning Awareness Area. In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to expose the same population of animals repeatedly over a short period except around homeports and fixed instrumented ranges.

The implementation of mitigation and the sightability of mysticetes (due to their large size) reduces the potential for a significant behavioral reaction or a threshold shift to occur, though we have analyzed the impacts that are anticipated to occur that we have therefore proposed to authorize. As noted previously, when an animal incurs a threshold shift, it occurs in the frequency from that of the source up to one octave above—this means that threshold shift caused by Navy sonar sources will typically occur in the range of 2–20 kHz, and if resulting from hull-mounted sonar, will be in the range of 3.5–7 kHz. The majority of mysticete vocalizations, including for right whales, occurs in frequencies below 1kHz, which means that TTS incurred by mysticetes will not interfere with conspecific communication. When we look in ocean areas where the Navy has been intensively training and testing with sonar and other active acoustic sources for decades, there is no data suggesting any long-term consequences to mysticetes from exposure to sonar and other active acoustic sources.

The Navy will implement mitigation areas that will avoid or reduce impacts to mysticetes and contains BIAs for large whales and critical habitat for NARW. The NARW is a small, at risk species with an ongoing UME. In order to mitigate the number and potential severity of any NARW takes, from November 15 through April 15, the Navy will not conduct LFAS/MFAS/HFAS, except for sources that will be minimized to the maximum extent practicable during helicopter dipping, navigation training, and object detection exercises within the Southeast NARW Mitigation Area. As discussed previously, the majority of takes result from exposure to the higher power hull-mounted sonar during major training exercises, which will not occur here. The activities that are allowed to occur such as those used for navigation training or object detection exercises use lower level sources that operate in a manner less likely to result in more concerning affects (*i.e.,* single sources for shorter overall amounts of time—*e.g.,* activity is less than two hours). Animals in these protected areas are engaged in important behaviors, either feeding or interacting with calves, during which if they were disturbed the impacts could be more impactful (*e.g.,* if whales were displaced from preferred feeding habitat for weeks, there could be energetic consequences more likely to lead to an adverse effects on fitness, or if exposure to activities caused a severe disturbance to a cow-calf pair that resulted in the pair becoming separated, it could increase the risk of predation for the calf). By limiting activities in these, the number of takes that would occur in areas is decreased and the probability of a more severe impact is reduced. The Southeast NARW Mitigation Area encompasses a portion of the NARW migration and calving areas identified by LaBrecque *et al.* (2015a) and a portion of the southeastern NARW critical habitat. Outside of the Southeast NARW

Mitigation Area, active sonar would be used for ASW activities and for pierside sonar testing at Kings Bay, Georgia. The best available density data for the AFTT Study Area shows that the areas of highest density are off the southeastern United States in areas that coincide with the Southeast NARW Mitigation Area. Therefore, the majority of active sonar use would occur outside of the areas of highest seasonal NARW density and important use off the southeastern United States. In addition, before transiting or conducting testing and training activities, the Navy will coordinate to obtain Early Warning System NARW sighting data to help vessels and aircraft reduce potential interactions with NARWs.

The Navy will also minimize the use of active sonar in the Northeast NARW Mitigation Area. Refer to Proposed Mitigation Measures for a description of the area. A limited number of torpedo activities (non-explosive) would be conducted in August and September. Many NARW will have migrated south out of the area by that time. Torpedo training or testing activities would not occur within 2.7 nmi of the Stellwagen Bank NMS which is critical habitat for NARW foraging. Stellwagen Bank NMS also provides feeding and nursery grounds for NARW, humpback, sei and fin whales. The Northeast NARW Mitigation Area also contains the NARW feedings BIAs (3), NARW mating BIA (1), and NARW critical habitat.

The large whale feeding BIAs are included in the Navy's Gulf of Maine Mitigation Area. The humpback whale (1), minke whale (2), fin whale (2), and sei whale (1) feeding BIAs are within the Gulf of Maine Mitigation Area where the Navy will not plan MTEs, and will not conduct more than 200 hrs of hull-mounted MFAS per year. The Northeast Mitigation Area, which is just south of the Gulf of Maine Mitigation Area, will also avoid MTEs to the maximum extent possible and not conduct more than four MTEs per year.

The Bryde's whale BIA is inclusive of the Gulf of Mexico Planning Awareness Mitigation Areas where the Navy will avoid planning MTEs (*i.e.,* Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) involving the use of active sonar to the maximum extent practicable. The Navy will not conduct any major training exercises in the Gulf of Mexico Planning Awareness Mitigation Areas under the Proposed Activity.

As described previously there are three ongoing UMEs for NARW, humpback whales, and minke whales. There is significant concern regarding the status of the NARW, both because of the ongoing UME and because of the overall status of the stock. However, the Navy's mitigation measures make NARW mortality unlikely—and we do not propose to authorize such take—and the newly expanded mitigation areas further reduce the extent of potential behavioral disruption in areas that are important for NARW, hence reducing the significance of such disruption. NMFS also has concern regarding the UME for humpback whales. NMFS, in coordination with our stranding network partners, continue to investigate the recent mortalities, environmental conditions, and population monitoring to better understand how the recent humpback whale mortalities occurred. Ship speed reduction rules are in effect for commercial and large vessel during high concentrations of NARW, and require vessels greater than or equal to 65 feet in length to reduce speeds to 10 knots or less while entering or departing ports. While this rule was put into place primarily for the NARW presence in New England and Mid-Atlantic waters, it does benefit other whale species, such as humpback whales that are in those areas from November through July. NOAA is reviewing ship-tracking data to ensure compliance with the ship speed reduction rule around Cape Cod, New York, and the Chesapeake Bay areas. However, the Navy's mitigation measures make humpback mortality low to unlikely and therefore, NMFS proposes to authorize only one mortality over the entire five-year period of the rule. The UME for minke whales was recently declared. More research is needed on the preliminary findings of the necropsies. As part of the UME investigation process, NOAA is assembling an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, and determine the next steps for the investigation.

In summary and as described above, the following information primarily supports our preliminary determination that the impacts resulting from Navy's activities are not expected to adversely affect the mysticete stocks taken through effects on annual rates of recruitment or survival:

- As described in the ''Serious Injury or Mortality'' section above, up to one serious injury or mortality over five years is proposed for authorization for large whales (see Table 70). As described above, the proposed mortality for humpback whale and sperm whale (North Atlantic stock) fall below the insignificance threshold, the proposed mortality for the sperm whale (Gulf of Mexico stock) and minke whale is below residual PBR, and while residual PBR is not known for blue whales (as total annual M/SI is unknown), no other fishery-related or ship strike mortalities are known to have occurred, so the total human-caused mortality is very low. The total human-caused mortality for fin and sei whales is already projected to exceed PBR even in the absence of additional mortality caused by the Navy. However, as discussed in greater detail previously, the ALWTRP is in place to reduce the likelihood of entanglement of large whales by trap/pot and gillnet fishing gear and NMFS is currently analyzing its effectiveness. When we consider the factors discussed above, the fact that the PBR metric is inherently conservative, and the fact that the Navy's potential incremental increase in the mortal takes is fractionally small (0.2 annually) are considered, NMFS believes that this single death over five years will not result in adverse impacts on annual rates of recruitment or survival.
- As described above, any PTS that may occur is expected to be of a small degree, and any TTS of a relatively small degree because of the unlikelihood that animals would be close enough for a long enough period of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives. Further, as noted above, any threshold shift incurred from sonar would be in the frequency range of 2–20 kHz, which above the frequency of the majority of mysticete vocalizations, and therefore would not be expected to interfere with conspecific communication.
- While the majority of takes are caused by exposure during ASW activities the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammal swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days,
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs for mysticetes are applied, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 160 dB. However, the majority (*e.g.,* 64 percent) of the takes results from exposures below 172 dB. The majority of the takes have a relatively lower likelihood to have severe impacts.

• For the total instances of all of the different types of takes, the numbers indicating the instances of total take as a percentage of abundance are between 7 and 118 percent over the whole Navy Study Area, and between 118 and 672 percent in the US EEZ alone (Table 72). While these percentages may seem high, when spread over the entire year and a very large range, the scale of the effects are such that over the whole Navy Study area, individuals are taken an average of 0 or 1–2 times per year, and some subset of these individuals in the US EEZ are taken an average of 1–7 times (based on the percentages above, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.

• NMFS is very concerned about the status of the NARW stock, both because of the increased number of deaths and because of the health of the rest of the stock. However, the Navy's mitigation measures make ship strike unlikely (and it is unauthorized) and the newly expanded mitigation areas further reduce the behavioral disruption in areas that are important for NARW, hence reducing the likelihood of more severe impacts that would be more likely to lead to fitness impacts, as discussed above.

• The Navy's mitigation areas are inclusive of BIAs for mysticetes and will avoid or reduce the number and severity of impacts to these stocks (Table 72).

Consequently, the AFTT activities are not expected to adversely impact rates of recruitment or survival of any of the stocks of mysticete whales (Table 72 above in this section).

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales

In Table 73 below, for sperm whale, dwarf sperm whales, and pygmy sperm whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 73. Annual takes of Level B and Level A harassment, mortality for sperm whales, dwarf sperm whales, and pygmy sperm whales in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Family Physeteridae (sperm whale)												
Sperm whale*	Gulf of Mexico Oceanic	1,107	25	0	0	0	1132	1132	2,114	2,114	54	54
	North Atlantic	22,229	627	3	1	0.2	22860	26740	3,950	61,700	579	43
Family Kogiidae (sperm whales)												
Dwarf sperm whale	Gulf of Mexico Oceanic	339	453	70	0	0	862	862	1,107	1,107	78	78
	Western North Atlantic	3,851	8,975	94	0	0	12920	13164	611	3,641	2116	362
Pygmy sperm whale	Northern Gulf of Mexico	339	453	70	0	0	862	862	1,107	1,107	78	78
	Western North Atlantic	3,851	8,975	94	0	0	12920	13164	611	3,641	2116	362

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

The annual mortality of 0.2 is because we expect no more than one mortality over the course of five years from vessel strikes as previously described above.

Sperm whales (*Physeter microcephalus*) are listed as endangered under the ESA and depleted under the MMPA. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

As noted previously, the estimated takes represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise, however, some repeated exposures across different activities could occur over the year, especially where events occur in the generally the same area with more resident species. In short, we expect that the total

anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. For example, the number of dwarf sperm whale and pygmy sperm whale (Western North Atlantic stocks) takes in the US EEZ are notably higher as compared to the abundance in the US EEZ, suggesting that on average, 16 percent of the individuals that comprise the abundance in the US EEZ might be taken an average of 21 times per year based on the percentages above in Table 73. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for months out of the year, much less on sequential days. In addition, although NMFS does not currently identify a trend for *Kogia spp.* populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia* spp. abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013).

Most Level B harassments to sperm whales and *Kogia spp.* from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 160 and 166 dB SPL (66 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

Sperm whales have shown resilience to acoustic and human disturbance, although they may react to sound sources and activities within a few kilometers. Sperm whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, avoid the area by swimming away or diving, or display aggressive behavior (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012). Some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range, which could temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010).

The quantitative analysis predicts a few PTS per year from sonar and other transducers (during training and testing activities); however, *Kogia* whales would likely avoid sound levels that could cause higher levels of TTS (greater than 20 dB) or PTS. TTS and PTS thresholds for high-frequency cetaceans, including *Kogia* whales, are lower than for all other marine mammals, which leads to a higher number of estimated impacts relative to the number of animals exposed to the sound as compared to other hearing groups (*e.g.,* mid-frequency cetaceans).

The Navy will implement a mitigation area that will avoid or reduce impacts to sperm whales (*Physeter microcephalus*). Nearly the entire important sperm whale habitat (Mississippi Canyon) is included in the Gulf of Mexico Mitigation Area where the Navy will avoid planning MTEs involving the use of active sonar to the maximum extent practical.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from Navy's activities are not expected to adversely affect sperm whales and *Kogia spp.* through effects on annual rates of recruitment or survival:

- As described in the ''Serious Injury or Mortality'' section above, up to one mortality over five years (0.2 annually) is proposed for authorization for sperm whales (either Gulf of Mexico or North Atlantic stocks). The proposed serious injury or mortality for sperm whales falls below the insignificant threshold for the North Atlantic stock. It does not fall below the insignificance threshold for the Gulf of Mexico stock, but is below residual PBR, which means that the total anticipated human-caused mortality is not expected to exceed PBR. Historically, one possible sperm whale mortality due to a vessel strike has been documented for the Gulf of Mexico in 1990. NMFS believes that this single death over five years will not result in adverse impacts on annual rates of recruitment or survival.
- As described above, any PTS that may occur is expected to be of a relatively smaller degree because of the unlikelihood that animals would be close enough for a long enough amount of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives.
- Large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels (relative to marine mammals swim speeds), and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts.
- While the majority of takes are caused by exposure during ASW activities, the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammal swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days,
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs are applied for odontecetes, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 160 dB. However, the majority (*e.g.,* 66 percent) of the takes results from exposures below 166 dB. The majority of the takes have a relatively lower likelihood in have severe impacts.

• For the total instances of all of the different types of takes, the numbers indicating the instances of total take as a percentage of abundance are between 54 and 362 percent over the whole Navy Study Area, and between 54 and 579 percent in the US EEZ alone for all species except the Western North Atlantic dwarf and pygmy sperm whales, which are 2116 (Table 73). While these percentages may seem high, when spread over the entire year and a very large range, the scale of the effects are such that over the whole Navy Study area, individuals are taken an average of 0 or 1–4 times per year, and some subset of these individuals for all but pygmy and dwarf sperm whales in the US EEZ are taken an average of 1–6 times (based on the percentages above, respectively, but with some taken more or less). A subset of dwarf and pygmy sperm whales in the US EEZ (about 16 percent of the total abundance of the Navy Study Area) could be taken an average of 21 times each. These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.

• For the endangered sperm whale (Gulf of Mexico), additional mitigation measures further reduce the likelihood of behavioral disruption in areas that are important for sperm whales. Nearly the entire important sperm whale habitat (Mississippi Canyon) is included in the Gulf of Mexico Mitigation Area.

• *Kogia spp.* are not depleted under the MMPA, nor are they listed under the ESA. Although NMFS does not currently identify a trend for *Kogia spp.* populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia spp.* abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013).

• The AFTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for sperm whales or *Kogia spp.* and there is no designated critical habitat in the AFTT Study Area.

Consequently, the AFTT activities are not expected to adversely impact rates of recruitment or survival of any of the analyzed stocks of sperm whales, dwarf sperm whales, or pygmy sperm whales (Table 73 above in this section).

Dolphins and Small Whales

In Table 74 below, for dolphins and small whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 74. Annual takes of Level B and Level A harassment, mortality for dolphins and small whales in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Atlantic spotted dolphin	Northern Gulf of Mexico	69,225	3,610	3	0	0	72838	72838	47,676	47,676	153	153
	Western North Atlantic	198,387	18,832	26	6	0	217251	235053	52,118	250,648	417	94
Atlantic white sided dolphin	Western North Atlantic	42,894	2,158	7	3	0.2	45062	47147	14,332	137,305	314	34
Bottlenose dolphin	Choctawhatchee Bay	941	32	0	0	0	973	973	99	99	984	984
	Gulf of Mexico Eastern Coastal	42	0	0	0	0	42	42	9,888	9,888	0	0
	Gulf of Mexico Northern Coastal	15,644	834	2	0	0	16480	16480	8,476	8,476	194	194
	Gulf of Mexico Western Coastal	7,191	635	0	0	0	7826	7826	33,903	33,903	23	23
	Indian River Lagoon Estuarine System	255	31	0	0	0	286	286	36	36	790	790
	Jacksonville Estuarine System	74	13	0	0	0	87	87	27	27	320	320
	Mississippi Sound, Lake Borgne, Bay Boudreau	1	0	0	0	0	1	1	198	198	1	1
	Northern Gulf of Mexico Continental Shelf	121,223	6,287	15	1	0	127526	127526	72,043	72,043	177	177
	Northern Gulf of Mexico Oceanic	13,947	706	8	2	0	14663	14663	18,364	18,364	80	80
	Northern North Carolina Estuarine System	2,844	483	0	0	0	3327	3327	3,622	3,622	92	92
	Southern North Carolina Estuarine System	0	0	0	0	0	0	0	0	0	0	/
	Western North Atlantic Northern Florida Coastal	1,145	90	0	0	0	1235	1235	906	906	136	136
	Western North Atlantic Central Florida Coastal	7,100	513	0	0	0	7613	7613	4,528	4,528	168	168
	Western North Atlantic Northern Migratory Coastal	33,993	3,051	7	0	0	37051	37051	9,962	9,962	372	372
	Western North Atlantic Offshore	389,543	34,500	77	9	0	424129	431022	64,298	186,260	660	231
	Western North Atlantic South Carolina/Georgia Coastal	5,544	416	0	0	0	5960	5960	3,622	3,622	165	165
	Western North Atlantic Southern Migratory Coastal	15,411	1,305	2	0	0	16718	16718	7,245	7,245	231	231
Clymene dolphin	Northern Gulf of Mexico	4,174	99	5	2	0	4280	4280	10,942	10,942	39	39
	Western North Atlantic	90,269	7,353	10	3	0	97635	111052	15,370	171,202	635	65
False killer whale	Northern Gulf of Mexico	1,902	72	1	0	0	1975	1975	3,136	3,136	63	63
	Western North Atlantic	10,655	839	0	0	0	11494	12402	1,254	16,144	917	77
Fraser's dolphin	Northern Gulf of Mexico	1,123	58	2	1	0	1184	1184	1,637	1,637	72	72
	Western North Atlantic	4,070	258	0	0	0	4328	5637	411	17,588	1053	32
Killer whale	Northern Gulf of Mexico	33	0	0	0	0	33	33	176	176	19	19
	Western North Atlantic	109	6	0	0	0	115	122	15	472	767	26
Long-finned pilot whale	Western North Atlantic	33,440	1,577	7	1	0	35025	38810	3,863	447,431	907	9
Melon-headed whale	Northern Gulf of Mexico	3,067	66	3	1	0	3137	3137	6,725	6,725	47	47
	Western North Atlantic	47,715	3,673	3	0	0	51391	55537	5,821	69,526	883	80
Pantropical spotted dolphin	Northern Gulf of Mexico	25,924	596	15	6	0.2	26541	26541	82,055	82,055	32	32
	Western North Atlantic	191,781	14,576	8	1	0	206366	232860	30,088	275,964	686	84
Pygmy killer whale	Northern Gulf of Mexico	720	16	1	0	0	737	737	2,062	2,062	36	36
	Western North Atlantic	8,232	604	0	0	0	8836	9660	1,052	12,296	840	79
Risso's dolphin	Northern Gulf of Mexico	1,647	43	1	0	0	1691	1691	3,096	3,096	55	55
	Western North Atlantic	38,336	2,194	2	0	0	40532	41497	5,601	39,085	724	106
Rough-toothed dolphin	Northern Gulf of Mexico	3,849	177	1	1	0	4028	4028	4,824	4,824	83	83
	Western North Atlantic	24,848	2,407	0	0	0	27255	29138	2,793	34,768	976	84
Short-beaked common dolphin	Western North Atlantic	540,513	30,552	101	36	1.2	571203	571464	73,481	520,317	777	110
Short-finned pilot whale	Northern Gulf of Mexico	1,835	26	3	0	0	1864	1864	2,032	2,032	92	92
	Western North Atlantic	38,691	2,334	5	1	0	41031	54640	6,578	450,146	624	12
Spinner dolphin	Northern Gulf of Mexico	7,803	277	31	14	0.2	8125	8125	13,653	13,653	60	60
	Western North Atlantic	94,193	8,105	5	1	0	102304	110540	11,280	135,573	907	82
Striped dolphin	Northern Gulf of Mexico	2,449	69	2	1	0	2521	2521	4,871	4,871	52	52
	Western North Atlantic	165,832	11,292	16	4	0	177144	202821	52,222	322,542	339	63
White-beaked dolphin	Western North Atlantic	80	4	0	0	0	84	84	42	42	200	200

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

The annual mortality of 0.2 is because we expect no more than one mortality over the course of five years from vessel strikes as previously described above.

As noted previously, the estimated takes represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of

individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise, however, some repeated exposures across different activities could occur over the year, especially where events occur in the generally the same area with more resident species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. For example, for Choctawatchee Bay stock of bottlenose dolphins, takes in the US EEZ are notably higher as compared to the abundance in the US EEZ, suggesting that on average, individuals might be taken an average of 10 times per year based on the percentages above. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for months out of the year, much less on sequential days. For other stocks, Fraser's dolphin for example (Western North Atlantic stock), takes in the US EEZ are notably higher as compared to the abundance in the US EEZ, suggesting that on average, the 2–3 percent of the individuals that comprise the abundance in the US EEZ might be taken an average of 10 times per year based on the percentages above—but when takes are considered across the whole study area, they equate to only about 32 percent of the abundance, suggesting that no more than a third of the individuals would be taken and those that are would be only once a year on average.

Most Level B harassments to dolphins and small whales from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 160 and 166 dB SPL (66 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

Research and observations show that if delphinids are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Delphinids may not react at all until the sound source is approaching within a few hundred meters to within a few kilometers depending on the environmental conditions and species. Delphinids that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, change their behaviors or vocalizations, avoid the sound source by swimming away or diving, or be attracted to the sound source (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012).

Many of the recorded delphinid vocalizations overlap with the MFAS/HFAS TTS frequency range (2–20 kHz); however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur as a result of exposure to MFAS/HFAS.

Of the BIAs for small and resident populations of bottlenose dolphin (Gulf of Mexico and East Coast), these identified areas are within bays and estuaries where the Navy does not use explosives and conduct limited activities by sonar and other transducers. For example, in the Northern North Carolina Estuarine dolphins (BIA), one-third of the takes are from sub-navigation and ship object avoidance (less impactful sonar activity) events which occur in/out of Chesapeake Bay. This area is on the northern border of this BIA which further reduces the possibility of modeled takes that would result in significant impacts. The other two-thirds of the takes for the Northern North Carolina Estuarine dolphins are from Civilian Port Defense which would occur at most only once in five years in the vicinity of that BIA. Similarly, for the Indian River Lagoon Estuarine system bottlenose dolphins (BIA), all the level B takes are from also from the less impactful sonar activity of sub-navigation and ship object avoidance and are events of short duration (approx. 30 minutes). Two small and resident populations of bottlenose dolphin BIAs (Northern North Carolina Estuarine System and Southern North Carolina Estuarine System) may be impacted during pile driving activities for the Elevated Causeway System at Marine Corps Base Camp Lejeune, North Carolina; however, only one modeled take of a Northern North Carolina Estuarine System bottlenose dolphin is predicted. There are no modeled takes from any activities to Southern North Carolina Estuarine System bottlenose dolphins (BIA) and only one modeled take to Mississippi Sound BIA from sonar. No takes are predicted from airguns for any bottlenose dolphin BIAs. Therefore, impacts are expected to be short-term and minor by Level B harassment and mostly all behavioral takes. Abandonment of the area would not be anticipated to the small and resident bottlenose dolphin populations (BIAs) from the Navy's training and testing activities.

One of these BIAs, the bottlenose dolphin of Barataria Bay, Louisiana (and showing persistent impacts by the Cetacean UME in the Northern Gulf of Mexico) were recently fitted with satellite-linked transmitters, showing that most dolphins remained within the bay, while those that entered nearshore coastal waters remained within 1.75 km (Wells *et al.,* 2017). While the Navy's activities are very limited in this type of habitat, the Navy is not conducting

training or testing where Barataria Bay dolphins inhabit and therefore no takes will occur to this stock.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from Navy's activities are not expected to adversely affect dolphins and small whales taken through effects on annual rates of recruitment or survival:

- As described in the ''Serious Injury or Mortality'' section (Table 71), up to nine serious injuries or mortalities over five years are proposed for authorization for four species of dolphins (short-beaked common dolphin, Atlantic white-sided dolphin, pantropical spotted dolphin, and spinner dolphins). However, the proposed serious injury or mortality for these species falls below the insignificance threshold, and, therefore, we consider the addition an insignificant incremental increase to human-caused mortality.
- As described above, any PTS that may occur is expected to be of a relatively smaller degree because of the unlikelihood that animals would be close enough for a long enough amount of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives.
- While the majority of takes are caused by exposure during ASW activities, the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammal swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days.
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs are applied for odontecetes, this means that all of the takes from hull-mounted (MF1) sonar result from above exposure 160 dB. However, the majority (*e.g.,* 66 percent) of the takes results from exposures below 166 dB. The majority of the takes have a relatively lower likelihood to have severe impacts.
- For the total instances of all of the different types of takes, the numbers indicating the instances of total take as a percentage of abundance are between 1 and 984 percent over the whole Navy Study Area (with more than half the stocks being under 100), and between 1 and 1053 percent in the US EEZ alone (Table 74). While these percentages may seem high, when spread over the entire year and a very large range, the scale of the effects are such that over the whole Navy Study area, individuals are taken an average of 0 or 1–10 times per year (with the majority closer to 1), and some subset of these individuals in the US EEZ are taken an average of 1–11 times (based on the percentages above, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.
- Of the BIAs for small and resident populations of bottlenose dolphin BIAs (Gulf of Mexico and East Coast), these identified areas are within bays and estuaries where the Navy does not use explosives nor generally train/test with sonar and other transducers. Therefore, impacts are short-term and minor mostly due to Level B harassment behavioral takes. Significant impacts are not anticipated to the small and resident bottlenose dolphin populations (BIAs) from the Navy's training and testing activities.
- No takes are anticipated or authorized for the Barataria Bay dolphins (one of the BIAs for bottlenose dolphin and showing persistent impacts by the Cetacean UME in the Northern Gulf of Mexico).
- The AFTT activities are not expected to occur routinely in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for delphinids. Stocks of delphinid species found in the AFTT Study Area are not depleted under the MMPA, nor are they listed under the ESA.

Consequently, the activities are not expected to adversely impact rates of recruitment or survival of any of the stocks of analyzed delphinid species (Table 74, above in this section).

Porpoises

In Table 75, below for porpoises, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 75. Annual takes of Level B and Level A harassment, mortality for porpoises in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Family Phocoenidae (porpoises)												
Harbor porpoise	Gulf of Maine/Bay of Fundy	137,509	26,510	471	0	0	164490	166392	16,552	195,727	994	85

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Nearly 100 percent of takes annually for harbor porpoises are from Level B harassment either behavioral or TTS (less than 1 percent for PTS) (Table 75 above). No mortalities are anticipated. As noted previously, the estimated takes

represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise, however, some repeated exposures across different activities could occur over the year, especially where events occur in the generally the same area with more resident species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. For harbor porpoise, takes in the US EEZ are notably higher as compared to the abundance in the US EEZ, suggesting that on average, the 8 percent of the individuals that comprise the abundance in the US EEZ might be taken an average of 10 times per year based on the percentages above—but when takes are considered across the whole Study area, they equate to only about 85 percent of the abundance, suggesting that not all individuals will be taken every year, and those that are would be only once a year on average.

The greater likelihood is that not every individual is taken or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for months out of the year, much less on sequential days.

Most Level B harassments to harbor porpoise from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 154 and 160 dB SPL (59 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

The number of harbor porpoise behaviorally harassed by exposure to LFAS/MFAS/HFAS in the AFTT Study Area is generally higher than the other species. Of note, harbor porpoises have been shown to be particularly sensitive to sound and therefore have been assigned a lower harassment threshold, *i.e.,* a more distant distance cutoff (40 km for high source level, 20 km for moderate source level). This means that many of the authorized takes are expected to result from lower-level exposures, but we also note the growing literature to support the fact that marine mammals differentiate sources of the same level emanating from different distances, and exposures from more distant sources are likely comparatively less impactful. Animals that do not exhibit a significant behavioral reaction would likely recover from any incurred costs, which reduces the likelihood of long-term consequences, such as reduced fitness, for the individual or population.

A small and resident population area for harbor porpoises identified by LaBrecque *et al.* (2015a, 2015b) overlaps a portion of the northeast corner of the Northeast Range Complexes. Navy testing activities that use sonar and other transducers could occur year round within the Northeast Range Complexes. The harbor porpoise BIA is included in the Gulf of Maine Mitigation Area where the Navy will not plan MTEs (Composite Training Unit or Fleet/Sustainment Exercises) and will not conduct more than 200 hrs of hull-mounted MFAS per year. As discussed above, harbor porpoise reactions to sonar could be significant in some cases. Due to the limited overlap of the identified harbor porpoise area and the Northeast Range Complexes, only a subset of estimated behavioral reactions would occur within the identified harbor porpoise small and resident population area. It is unlikely that these behavioral reactions would have significant impacts on the natural behavior of harbor porpoises or cause abandonment of the harbor porpoise small and resident population area identified by LaBrecque *et al.* (2015a, 2015b). Due to the intermittent nature of explosive activities that could take place within the identified harbor porpoise area, significant impacts to natural behaviors within or abandonment of the small and resident population area for harbor porpoises are not anticipated.

Animals that experience hearing loss (TTS or PTS) may have reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. Some porpoise vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz). Recovery from a threshold shift (TTS; partial hearing loss) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). More severe shifts may not fully recover and thus would be considered PTS.

Harbor porpoises have been observed to be especially sensitive to human activity (Tyack *et al.,* 2011; Pirotta *et al.,* 2012). The information currently available regarding harbor porpoises suggests a very low threshold level of response for both captive (Kastelein *et al.,* 2000; Kastelein *et al.,* 2005) and wild (Johnston, 2002) animals. Southall *et al.* (2007) concluded that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~90 to 120 dB). Research and observations of harbor porpoises for other locations show that this species is wary of human activity and will display profound avoidance behavior for anthropogenic sound

sources in many situations at levels down to 120 dB re 1 μPa (Southall, 2007). Harbor porpoises routinely avoid and swim away from large motorized vessels (Barlow *et al.,* 1988; Evans *et al.,* 1994; Palka and Hammond, 2001; Polacheck and Thorpe, 1990). Harbor porpoises may startle and temporarily leave the immediate area of the training or testing until after the event ends.

ASW training activities using hull mounted sonar proposed for the AFTT Study Area generally last for only a few hours. Some ASW exercises can generally last for 2–10 days, or as much as 21 days for an MTE-Large Integrated ASW (see Table 1.3–1 of the Navy's rulemaking and LOA application). For these multi-day exercises there will be extended intervals of non-activity in between active sonar periods. In addition, the Navy does not typically conduct ASW activities in the same locations. Given the average length of ASW events (times of continuous sonar use) and typical vessel speed, combined with the fact that the majority of porpoises in the AFTT Study Area would not likely remain in an area for successive days, it is unlikely that an animal would be exposed to active sonar at levels likely to result in a substantive response (*e.g.,* interruption of feeding) that would then be carried on for more than one day or on successive days.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from Navy's activities are not expected to adversely affect harbor porpoises taken through effects on annual rates of recruitment or survival:

- No mortalities of harbor porpoises are proposed for authorization or anticipated to occur.
- As described above, any PTS that may occur is expected to be of a relatively smaller degree because of the unlikelihood that harbor porpoise would be close enough for a long enough amount of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives.
- While the majority of takes are caused by exposure during ASW activities, the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammal swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days.
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs are applied for harbor porpoise, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 59 percent) of the takes results from exposures below 160 dB. The majority of the takes have a relatively lower likelihood to have severe impacts.
- For the total instances of all of the different types of takes, the number indicating the instances of total take as a percentage of abundance is 994 percent over the whole Navy Study Area, and 85 percent in the US EEZ alone (Table 75). While these percentages may seem high, when spread over the entire year and a very large range, the scale of the effects are such that over the whole Navy Study area, individuals are taken an average of 0 or 1 times per year, and the 8 percent of these individuals in the US EEZ are taken an average of 10 times (based on the percentages above in Table 75, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.
- The AFTT activities could occur in areas important for harbor porpoises; however, due to the geographic dispersion and limited duration of those activities, they are unlikely to have a significant impact on feeding, reproduction, or other known critical behaviors.
- Harbor porpoise found in the AFTT Study Area are not depleted under the MMPA, nor are they listed under the ESA.
- The harbor porpoise BIA is included in the Gulf of Maine Mitigation Area where the Navy will not plan MTEs (Composite Training Unit or Fleet/Sustainment Exercises) and will not conduct more than 200 hrs of hull-mounted MFAS per year.

Consequently, the activities are not expected to adversely impact rates of recruitment or survival of any of the analyzed harbor porpoise stocks (Table 65).

Beaked Whales

In Table 76 below, for beaked whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 76. Annual takes of Level B and Level A harassment, mortality for beaked whales in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Family Ziphiidae (beaked whales)												
Blainville's beaked whale	Northern Gulf of Mexico	1,420	8	0	0	0	1428	1428	966	966	148	148
	Western North Atlantic	20,931	190	1	0	0	21122	24263	1,274	14,277	1658	170
Cuvier's beaked whale	Northern Gulf of Mexico	1,487	8	0	0	0	1495	1495	966	966	155	155
	Western North Atlantic	77,321	696	3	0	0	78020	89408	4,704	52,716	1659	170
Gervais' beaked whale	Northern Gulf of Mexico	1,420	8	0	0	0	1428	1428	966	966	148	148
	Western North Atlantic	20,931	190	1	0	0	21122	24263	1,274	14,277	1658	170
Northern bottlenose whale	Western North Atlantic	1,906	4	0	0	0	1910	2118	100	688	1910	308
Sowersby's beaked whale	Western North Atlantic	20,960	190	1	0	0	21151	24292	1,274	14,277	1660	170
True's beaked whale	Western North Atlantic	20,960	190	1	0	0	21151	24292	1,274	14,277	1660	170

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

As noted previously, the estimated takes represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise, however, some repeated exposures across different activities could occur over the year, especially where events occur in the generally the same area with more resident species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. For the Atlantic stocks of beaked whales, takes in the US EEZ are notably higher as compared to the abundance in the US EEZ, suggesting that on average, for the 10 percent or less of the individuals that comprise the abundance in the US EEZ, they might be taken an average of 16–19 times per year based on the percentages above—but when takes are considered across the whole Study area, they equate to only about 170–308 percent of the abundance, suggesting that across the Study Area, individuals would be taken an average of 1–3 times per year. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days.

Most Level B harassments to beaked whales from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 148 and 160 dB SPL (91 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

As is the case with harbor porpoises, beaked whales have been shown to be particularly sensitive to sound and therefore have been assigned a lower harassment threshold, *i.e.,* a more distant distance cutoff (50 km for high source level, 25 km for moderate source level). This means that many of the authorized takes are expected to result from lower-level exposures, but we also note the growing literature to support the fact that marine mammals differentiate sources of the same level emanating from different distances, and exposures from more distant sources are likely comparatively less impactful.

Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012). Research has also shown that beaked whales are especially sensitive to the presence of human activity (Tyack *et al.,* 2011; Pirotta *et al.,*

2012). Beaked whales have been documented to exhibit avoidance of human activity or respond to vessel presence (Pirotta *et al.,* 2012). Beaked whales were observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). Some beaked whale vocalizations (*e.g.,* Northern bottlenose whale) may overlap with the MFAS/HFAS TTS frequency range (2–20 kHz); however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur as a result of exposure to MFAS/HFAS.

It has been speculated for some time that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with MFAS use. Research and observations show that if beaked whales are exposed to sonar or other active acoustic sources they may startle, break off feeding dives, and avoid the area of the sound source to levels of 157 dB re 1 µPa, or below (McCarthy *et al.,* 2011). Acoustic monitoring during actual sonar exercises revealed some beaked whales continuing to forage at levels up to 157 dB re 1 µPa (Tyack *et al.* 2011). Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated MFAS. Changes in the animal's dive behavior and locomotion were observed when received level reached 127 dB re 1µPa. However, Manzano-Roth *et al.* (2013) found that for beaked whale dives that continued to occur during MFAS activity, differences from normal dive profiles and click rates were not detected with estimated received levels up to 137 dB re 1 µPa while the animals were at depth during their dives. And in research done at the Navy's fixed tracking range in the Bahamas, animals were observed to leave the immediate area of the anti-submarine warfare training exercise (avoiding the sonar acoustic footprint at a distance where the received level was ''around 140 dB'' SPL, according to Tyack *et al.* [2011]) but return within a few days after the event ended (Claridge and Durban, 2009; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 2011; McCarthy *et al.,* 2011). Tyack *et al.* (2011) report that, in reaction to sonar playbacks, most beaked whales stopped echolocating, made long slow ascent to the surface, and moved away from the sound. A similar behavioral response study conducted in Southern California waters during the 2010–2011 field season found that Cuvier's beaked whales exposed to MFAS displayed behavior ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source (DeRuiter *et al.,* 2013b). However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. The study itself found the results inconclusive and meriting further investigation. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale.

Populations of beaked whales and other odontocetes on the Bahamas and other Navy fixed ranges that have been operating for decades, appear to be stable. Behavioral reactions (avoidance of the area of Navy activity) seem likely in most cases if beaked whales are exposed to anti-submarine sonar within a few tens of kilometers, especially for prolonged periods (a few hours or more) since this is one of the most sensitive marine mammal groups to anthropogenic sound of any species or group studied to date and research indicates beaked whales will leave an area where anthropogenic sound is present (Tyack *et al.,* 2011; De Ruiter *et al.,* 2013; Manzano-Roth *et al.,* 2013; Moretti *et al.,* 2014). Research involving tagged Cuvier's beaked whales in the SOCAL Range Complex reported on by Falcone and Schorr (2012, 2014) indicates year-round prolonged use of the Navy's training and testing area by these beaked whales and has documented movements in excess of hundreds of kilometers by some of those animals. Given that some of these animals may routinely move hundreds of kilometers as part of their normal pattern, leaving an area where sonar or other anthropogenic sound is present may have little, if any, cost to such an animal. Photo identification studies in the SOCAL Range Complex, a Navy range that is utilized for training and testing, have identified approximately 100 individual Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to 7 years apart (Falcone and Schorr, 2014). These results indicate long-term residency by individuals in an intensively used Navy training and testing area, which may also suggest a lack of long-term consequences as a result of exposure to Navy training and testing activities. Finally, results from passive acoustic monitoring estimated regional Cuvier's beaked whale densities were higher than indicated by the NMFS's broad scale visual surveys for the U.S. west coast (Hildebrand and McDonald, 2009).

Based on the findings above, it is clear that the Navy's long-term ongoing use of sonar and other active acoustic sources has not precluded beaked whales from also continuing to inhabit those areas. Based on the best available science, the Navy and NMFS believe that beaked whales that exhibit a significant TTS or behavioral reaction due to sonar and other active acoustic training or testing activities would generally not have long-term consequences for individuals or populations.

NMFS does not expect strandings, serious injury, or mortality of beaked whales to occur as a result of training activities. Stranding events coincident with Navy MFAS use in which exposure to sonar is believed to have been a contributing factor were detailed in the Stranding and Mortality section of this proposed rule. However, for some of these stranding events, a causal relationship between sonar exposure and the stranding could not be clearly established (Cox *et al.,* 2006). In other instances, sonar was considered only one of several factors that, in their aggregate, may have contributed to the stranding event (Freitas, 2004; Cox *et al.,* 2006). Because of the association between tactical MFAS use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation measures intended to more broadly minimize impacts to marine mammals, the reporting requirements set forth in this rule ensure that NMFS is notified if a stranded marine mammal is found (see General Notification of Injured or Dead Marine Mammals in the regulatory text below). Additionally, through the MMPA process (which allows for adaptive management), NMFS and the Navy will determine the appropriate way to proceed in the event that a causal relationship were to be found between Navy activities and a future stranding.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from the Navy's activities are not expected to adversely affect beaked whales taken through effects on annual rates of recruitment or survival:

- No mortalities of beaked whales are proposed for authorization or anticipated to occur.

- As described above, any PTS that may occur is expected to be of a relatively smaller degree because of the unlikelihood that animals would be close enough for a long enough amount of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives.
- While the majority of takes are caused by exposure during ASW activities the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammals swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days.
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs are applied for beaked whales, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 148 dB. However, the majority (*e.g.,* 91 percent) of the takes results from exposures below 160 dB. The majority of the takes have a relatively lower likelihood to have severe impacts.
- For the total instances of all of the different types of takes of the three Gulf of Mexico stocks of beaked whales, the numbers indicating the instances of total take as a percentage of abundance are between 148 and 155 (Table 76). When spread over the entire year and a very large range, the scale of the effects are such that individuals are taken an average of 1–2 times per year (based on the percentages above, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken for more than several days out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.
- For the total instances of all of the different types of takes of the Atlantic stocks of beaked whales, the numbers indicating the instances of total take as a percentage of abundance are between 170 and 308 percent over the whole Navy Study Area, and between 1658 and 1910 percent in the US EEZ alone (Table 76). While these percentages may seem high, when spread over the entire year and a very large range, the scale of the effects are such that over the whole Navy Study area, individuals are taken an average of 1–3 times per year, and the 10 percent or fewer of these individuals in the US EEZ are taken an average of 16–19 times (based on the percentages above, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for weeks or months out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.
- The AFTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for beaked whales.
- Beaked whales found in the AFTT Study Area are not depleted under the MMPA, nor are they listed under the ESA.

Consequently, the activities are not expected to adversely impact rates of recruitment or survival of any of the beaked whale stocks analyzed (Table 76 above in this section).

Pinnipeds

In Table 77 below, for pinnipeds, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Overall, takes from Level A harassment (PTS and Tissue Damage) account for less than one percent of all total takes.

Table 77: Annual takes of Level B and Level A harassment, mortality for pinnipeds in the AFTT study area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Pinnipedia												
Family Phocidae (true seals)												
Gray seal	Western North Atlantic	809	1,528	3	0	0	2340	2340	2,472	2,472	95	95
Harbor seal	Western North Atlantic	1,310	2,477	6	0	0	3793	3793	11,122	11,122	34	34
Harp seal	Western North Atlantic	6,339	9,955	3	0	0	16297	16297	7,242	7,242	225	225
Hooded seal	Western North Atlantic	448	466	0	0	0	914	914	880	880	104	104

Note: Above we compare predicted takes to abundance estimates generated from the same underlying density estimate, versus abundance estimates from the SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the EEZ only (where density estimates have lesser uncertainty and takes are notably greater) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

As noted previously, the estimated takes represent instances of take, not the number of individuals taken, and in almost all cases—some individuals are expected to be taken more than one time, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed 100 percent of the population, repeated takes of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We

look at this comparative metric to give us a relative sense across species/stocks of where larger portions of the stocks are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise, however, some repeated exposures across different activities could occur over the year, especially where events occur in generally the same area with more resident species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely any particular subset would be taken over more than a few sequential days—*i.e.,* where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities and marine mammals are not predicted to be taken for more than a few days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is still likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken every day for months out of the year, much less on sequential days.

Most Level B harassments to beaked whales from hull-mounted sonar (MF1) in the AFTT Study Area would result from received levels between 166 and 172 dB SPL (76 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response, because they are not expected to be repeated over sequential multiple days, impacts to individual fitness are not anticipated.

Research and observations show that pinnipeds in the water may be tolerant of anthropogenic noise and activity (a review of behavioral reactions by pinnipeds to impulsive and non-impulsive noise can be found in Richardson *et al.,* 1995 and Southall *et al.,* 2007). Available data, though limited, suggest that exposures between approximately 90 and 140 dB SPL do not appear to induce strong behavioral responses in pinnipeds exposed to nonpulse sounds in water (Jacobs and Terhune, 2002; Costa *et al.,* 2003; Kastelein *et al.,* 2006c). Based on the limited data on pinnipeds in the water exposed to multiple pulses (small explosives, impact pile driving, and seismic sources), exposures in the approximately 150 to 180 dB SPL range generally have limited potential to induce avoidance behavior in pinnipeds (Harris *et al.,* 2001; Blackwell *et al.,* 2004; Miller *et al.,* 2004). If pinnipeds are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Pinnipeds may not react at all until the sound source is approaching within a few hundred meters and then may alert, ignore the stimulus, change their behaviors, or avoid the immediate area by swimming away or diving. Effects on pinnipeds in the AFTT Study Area that are taken by Level B harassment, on the basis of reports in the literature as well as Navy monitoring from past activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from those areas, or not respond at all. In areas of repeated and frequent acoustic disturbance, some animals may habituate or learn to tolerate the new baseline or fluctuations in noise level. Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). While some animals may not return to an area, or may begin using an area differently due to training and testing activities, most animals are expected to return to their usual locations and behavior. Given their documented tolerance of anthropogenic sound (Richardson *et al.,* 1995 and Southall *et al.,* 2007), repeated exposures of individuals (*e.g.,* harbor seals) to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. As stated above, pinnipeds may habituate to or become tolerant of repeated exposures over time, learning to ignore a stimulus that in the past has not accompanied any overt threat.

Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and would not result in any adverse impact to the stock as a whole. Evidence from areas where the Navy extensively trains and tests provides some indication of the possible consequences resulting from those proposed activities. Almost all of the impacts estimated by the quantitative assessment are due to navigation and object avoidance (detection) activities in navigation lanes entering Groton, Connecticut. Navigation and object avoidance (detection) activities normally involve a single ship or submarine using a limited amount of sonar, therefore significant reactions are unlikely, especially in phocid seals. If seals are exposed to sonar or other active acoustic sources, they may react in various ways, depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Seals may not react at all until the sound source is approaching within a few hundred meters and then may alert, ignore the stimulus, change their behaviors, or avoid the immediate area by swimming away or diving. The use of sonar from navigation and object avoidance in Groton, Connecticut likely exposes the same sub-population of animals multiple times throughout the year. However, phocid seals are likely to only have minor and short-term behavioral reactions to these types of activities and significant behavioral reactions would not be expected in most cases, and long-term consequences for individual seals from a single or several impacts per year are unlikely.

Generally speaking, most pinniped stocks in the AFTT Study Area are thought to be stable or increasing. In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from the Navy's activities are not expected to adversely affect pinnipeds taken through effects on annual rates of recruitment or survival:

- No mortalities of pinnipeds are proposed for authorization or anticipated to occur.
- As described above, any PTS that may occur is expected to be of a relatively smaller degree because of the unlikelihood that animals would be close enough for a long enough amount of time to incur more severe PTS (for sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives.
- While the majority of takes are caused by exposure during ASW activities, the impacts from these exposures are not expected to have either significant or long-term effects because (and as discussed above):
  - ASW activities typically involve fast-moving assets (relative to marine mammals swim speeds) and individuals are not expected to be exposed either for long periods within a day or over many sequential days.
  - As discussed, the majority of the harassment takes result from hull-mounted sonar during MTEs. When distance cut offs are applied for pinnipeds, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 166 dB. However, the majority (*e.g.,* 76 percent) of the takes results from exposures below 172 dB. The majority of the takes have a relatively lower likelihood in have severe impacts.
- For the total instances of all of the different types of takes of pinnipeds, the numbers indicating the instances of total take as a percentage of abundance are between 34 and 225 (Table 77). When spread over the entire year and a very large range, the scale of the effects are such that individuals are taken an average of 0 to 1–2 times per year (based on the percentages above, respectively, but with some taken more or less). These averages allow that perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken for more than several days out of the year, much less on sequential days. These behavioral takes are not all expected to be of particularly high intensity and nor are they likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low.
- The AFTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for pinnipeds. Pinnipeds found in the AFTT Study Area are not depleted under the MMPA, nor are they listed under the ESA.

Consequently, the activities are not expected to adversely impact rates of recruitment or survival of any of the analyzed stocks of pinnipeds (Table 77 above in this section).

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Subsistence Harvest of Marine Mammals

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has preliminarily determined that the total taking affecting species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

ESA

There are five marine mammal species under NMFS jurisdiction that are listed As endangered or threatened under the ESA with confirmed or possible occurrence in the AFTT Study Area: Blue whale, fin whale, sei whale, sperm whale, and NARW. The Navy will consult with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of these regulations and LOAs under section 101(a)(5)(A) of the MMPA for AFTT activities. Consultation will be concluded prior to a determination on the issuance of the final rule and LOAs.

National Marine Sanctuaries Act

Some Navy activities may potentially affect resources within NMS. Pursuant to Section 304(d) of the National Marine Sanctuaries Act (NMSA), the Navy is consulting on activities as documented in the AFTT DEIS/OEIS on potential impacts to sanctuary resources, including marine mammals. The Navy will initiate consultation with NOAA's Office of National Marine Sanctuaries pursuant to the requirements of the NMSA as warranted by ongoing analysis of the activities and their effects on sanctuary resources.

NEPA

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 its Proposed Activity (*i.e.,* the issuance of an incidental take authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS plans to adopt the Navy's EIS/OEIS for AFTT Study Area provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing regulations and LOAs. NMFS is a cooperating agency on the Navy's DEIS.

The Navy's DEIS/OEIS was made available for public comment at *www.aftteis.com/* on June 30, 2017.

We will review all comments submitted in response to this document prior to concluding our NEPA process or making a final decision on the final rule and LOA requests.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOA to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: March 1, 2018.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart I of part 218 to read as follows:

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

Sec.

218.80 Specified activity and specified geographical region.
218.81 Effective dates.
218.82 Permissible methods of taking.
218.83 Prohibitions.
218.84 Mitigation requirements.
218.85 Requirements for monitoring and reporting.
218.86 Letters of Authorization.
218.87 Renewals and modifications of Letters of Authorization.
218.88–218.89 [Reserved]

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

§ 218.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy may be authorized in Letters of Authorization (LOAs) only if it occurs within the Atlantic Fleet Training and Testing (AFTT) Study Area, which includes areas of the western Atlantic Ocean along the east coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins at the mean high tide line along the U.S. coast and extends east to the 45-degree west longitude line, north to the 65 degree north latitude line, and south to approximately the 20-degree north latitude line. The AFTT Study Area also includes Navy pierside locations, bays, harbors, and inland waterways, and civilian ports where training and testing occurs.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy's conducting training and testing activities. The Navy's use of sonar and other transducers, in-water detonations, air guns, pile driving/extraction, and vessel movements incidental to training and testing exercises may cause take by harassment, serious injury or mortality as defined by the MMPA through the various warfare mission areas in which the Navy would conduct including amphibious warfare, anti-submarine warfare, expeditionary warfare, surface warfare, mine warfare, and other activities (sonar and other transducers ship shock trials, pile driving and removal activities, airguns, vessel strike).

§ 218.81 Effective dates.

Regulations in this subpart are effective [*date 30 days after date of publication of the final rule in the* ***Federal Register***] through [*date 5 years and 30 days after date of publication of the final rule in the* ***Federal Register***].

§ 218.82 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 218.87, the Holder of the LOAs (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.80(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives as well as serious injury or mortality associated with ship shock trials and vessel strikes provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

§ 218.83 Prohibitions.

Notwithstanding takings contemplated in § 218.82 and authorized by LOAs issued under § 216.106 of this chapter and § 218.86, no person in connection with the activities described in § 218.82 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 of this chapter and § 218.86;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

§ 218.84 Mitigation requirements.

When conducting the activities identified in § 218.80(c), the mitigation measures contained in any LOAs issued under § 216.106 of this chapter and § 218.86 must be implemented. These mitigation measures shall include the following requirements, but are not limited to:

(a) *Procedural Mitigation.* Procedural mitigation is mitigation that the Navy shall implement whenever and wherever an applicable training or testing activity takes place within the AFTT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.,* active sonar, air guns, pile driving, weapons firing noise), explosive stressors (*i.e.,* sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, line charge testing and ship shock trials), and physical disturbance and strike stressors *(i.e.,* vessel movement, towed in-water devices, small-, medium-, and large-caliber non-explosive practice munitions, non-explosive missiles and rockets, non-explosive bombs and mine shapes).

(1) *Environmental Awareness and Education.* Appropriate personnel involved in mitigation and training or testing activity reporting under the Proposed Activity shall complete one or more modules of the U.S Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training, U.S. Navy Protective Measures Assessment Protocol, and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active Sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.,* sonar sources towed from manned surface platforms). For aircraft-based active sonar activities, mitigation applies to sources that are positively controlled and deployed from manned aircraft that

do not operate at high altitudes (*e.g.,* rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.,* maritime patrol aircraft).

(i) Number of Lookouts and Observation Platform—(A) Hull-mounted sources: Two lookouts at the forward part of the ship for platforms without space or manning restrictions while underway; One lookout at the forward part of a small boat or ship for platforms with space or manning restrictions while underway; One lookout for platforms using active sonar while moored or at anchor (including pierside); and Four lookouts for pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia.

(B) Non-hull mounted sources: One lookout on the ship or aircraft conducting the activity.

(ii) Mitigation Zone and Requirements—(A) Prior to the start of the activity the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence use of active sonar.

(B) During low-frequency active sonar at or above 200 decibel (dB) and hull-mounted mid-frequency active sonar the Navy shall observe for marine mammals and power down active sonar transmission by 6 dB if resource is observed within 1,000 yards (yd) of the sonar source; power down by an additional 4 dB (10 dB total) if resource is observed within 500 yd of the sonar source; and cease transmission if resource is observed within 200 yd of the sonar source.

(C) During low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar the Navy shall observe for marine mammals and cease active sonar transmission if resource is observed within 200 yd of the sonar source.

(D) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence active sonar transmission until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar, the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave, and are therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(E) The Navy shall notify the Port Authority prior to the commencement of pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia. At these locations, the Navy shall conduct active sonar activities during daylight hours to ensure adequate sightability of manatees, and shall equip Lookouts with polarized sunglasses. After completion of pierside sonar testing activities at Port Canaveral and Kings Bay, the Navy shall continue to observe for marine mammals for 30 min within the mitigation zone. The Navy shall implement a reduction of at least 36 dB from full power for mid-frequency active sonar transmissions at Kings Bay. The Navy shall communicate sightings of manatees made during or after pierside sonar testing activities at Kings Bay to the Georgia Department of Natural Resources sightings hotline, Base Natural Resources Manager, and Port Operations. Communications shall include information on the time and location of a sighting, the number and size of animals sighted, a description of any research tags (if present), and the animal's direction of travel. Port Operations shall disseminate the sightings information to other vessels operating near the sighting and shall keep logs of all manatee sightings.

(3) *Air Guns.* (i) Number of Lookouts and Observation Platform—One lookout positioned on a ship or pierside.

(ii) Mitigation Zone and Requirements—150 yd around the air gun.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy shall observe for floating vegetation, and marine mammals; if resource is observed, the Navy shall not commence use of air guns.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease use of air guns.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence the use of air guns until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the air gun; the mitigation zone has been clear from any additional sightings for 30 min; or for mo108bile activities, the air gun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Pile Driving.* Pile driving and pile extraction sound during Elevated Causeway System training.

(i) Number of Lookouts and Observation Platform—One lookout positioned on the shore, the elevated causeway, or a small boat.

(ii) Mitigation Zone and Requirements—100 yd around the pile driver.

(A) Thirty minutes prior to the start of the activity, the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence impact pile driving or vibratory pile extraction.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease impact pile driving or vibratory pile extraction.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence pile driving until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) In the Navy Cherry Point Range Complex, the Navy shall maintain a log detailing any sightings and injuries to manatees during pile driving. If a manatee was sighted during the activity, upon completion of the activity, the Navy project manager or civilian equivalent shall prepare a report that summarizes all information on manatees encountered and submit the report to the USFWS, Raleigh Field Office. The Navy shall report any injury of a manatee to the USFWS, NMFS, and the North Carolina Wildlife Resources Commission.

(5) *Weapons Firing Noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) Number of Lookouts and Observation Platform—One lookout shall be positioned on the ship conducting the firing. Depending on the activity, the lookout could be the same as the one described in Explosive Medium-Caliber and Large-Caliber Projectiles or in Small-, Medium-and Large-Caliber Non-Explosive Practice Munitions.

(ii) Mitigation Zone and Requirements—Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the start of the activity, the Navy shall observe for floating vegetation, and marine mammals; if resource is observed, the Navy shall not commence weapons firing.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease weapons firing.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence weapons firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(6) *Explosive Sonobuoys.* (i) Number of Lookouts and Observation Platform—One lookout positioned in an aircraft or on small boat.

(ii) Mitigation Zone and Requirements—600 yd around an explosive sonobuoy.

(A) Prior to the start of the activity (*e.g.,* during deployment of a sonobuoy field, which typically lasts 20–30 min), the Navy shall conduct passive acoustic monitoring for marine mammals, and observe for floating vegetation and marine mammals; if resource is visually observed, the Navy shall not commence sonobuoy or source/receiver pair detonations.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease sonobuoy or source/receiver pair detonations.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence the use of explosive sonobuoys until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(7) *Explosive Torpedoes.* (i) Number of Lookouts and Observation Platform—One lookout positioned in an aircraft.

(ii) Mitigation Zone and Requirements—2,100 yd around the intended impact location.

(A) Prior to the start of the activity (*e.g.,* during deployment of the target), the Navy shall conduct passive acoustic monitoring for marine mammals, and observe for floating vegetation, jellyfish aggregations, and marine mammals; if resource is visually observed, the Navy shall not commence firing.

(B) During the activity, the Navy shall observe for marine mammals and jellyfish aggregations; if resource is observed, the Navy shall cease firing.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained. After completion of the activity, the Navy shall observe for marine mammals; if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures.

(8) *Explosive Medium-Caliber and Large-Caliber Projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) Number of Lookouts and Observation Platform—One Lookout on the vessel or aircraft conducting the activity. For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in Weapons Firing Noise in paragraph (a)(5)(i) of this section.

(ii) Mitigation Zone and Requirements—(A) 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles,

(B) 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles, or

(C) 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles:

(D) Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence firing.

(E) During the activity, observe for marine mammals; if resource is observed, the Navy shall cease firing.

(F) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-based firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(9) *Explosive Missiles and Rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) Number of Lookouts and Observation Platform—One lookout positioned in an aircraft.

(ii) Mitigation Zone and Requirements—(A) 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight, or

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight:

(C) Prior to the start of the activity (*e.g.,* during a fly-over of the mitigation zone), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence firing.

(D) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease firing.

(E) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(10) *Explosive Bombs.* (i) Number of Lookouts and Observation Platform—One lookout positioned in an aircraft conducting the activity.

(ii) Mitigation Zone and Requirements—2,500 yd around the intended target.

(A) Prior to the start of the activity (*e.g.,* when arriving on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence bomb deployment.

(B) During target approach, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease bomb deployment.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence bomb deployment until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(11) *Sinking Exercises.* (i) Number of Lookouts and Observation Platform—Two lookouts (one positioned in an aircraft and one on a vessel).

(ii) Mitigation Zone and Requirements—2.5 nmi around the target ship hulk.

(A) 90 min prior to the first firing, the Navy shall conduct aerial observations for floating vegetation, jellyfish aggregations, and marine mammals; if resource is observed, the Navy shall not commence firing.

(B) During the activity, the Navy shall conduct passive acoustic monitoring and visually observe for marine mammals from the vessel; if resource is visually observed, the Navy shall cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than 2 hrs, the Navy shall observe for marine mammals from the aircraft and vessel; if resource is observed, the Navy shall not commence firing.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min. For 2 hrs after sinking the vessel (or until sunset, whichever comes first), observe for marine mammals; if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures.

(12) *Explosive Mine Countermeasure and Neutralization Activities.* (i) Number of Lookouts and Observation Platform—(A) One lookout positioned on a vessel or in an aircraft when using up to 0.1–5 lb net explosive weight charges.

(B) Two lookouts (one in an aircraft and one on a small boat) when using up to 6–650 lb net explosive weight charges.

(ii) Mitigation Zone and Requirements—(A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight, or

(B) 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines):

(C) Prior to the start of the activity (*e.g.,* when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence detonations.

(D) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease detonations.

(E) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence detonations until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained. After completion of the activity, the Navy shall observe for marine mammals and sea turtles (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained); if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures.

(13) *Explosive Mine Neutralization Activities Involving Navy Divers.* (i) Number of Lookouts and Observation Platform—(A) Two lookouts (two small boats with one Lookout each, or one Lookout on a small boat and one in a rotary-wing aircraft) when implementing the smaller mitigation zone.

(B) Four lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew shall serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone.

(ii) Mitigation Zone and Requirements—(A) The Navy shall not set time-delay firing devices (0.1–20 lb net explosive weight) to exceed 10 min.

(B) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight, or

(C) 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–20 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges:

(D) Prior to the start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence detonations or fuse initiation.

(E) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease detonations or fuse initiation. All divers placing the charges on mines shall support the Lookouts while performing their regular duties and shall report all marine mammal sightings to their supporting small boat or Range Safety Officer. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, boats shall position themselves near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), shall position themselves on opposite sides of the detonation location (when two boats are used), and shall travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. If used, aircraft shall travel in a circular pattern around the detonation location to the maximum extent practicable.

(F) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence detonations or fuse initiation until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its

course, speed, and movement relative to the detonation site; or the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min. during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices. After completion of an activity using time-delay firing devices, the Navy shall observe for marine mammals for 30 min; if any injured or dead resources are observed, the Navy follow established incident reporting procedures.

(14) *Maritime Security Operations—Anti-Swimmer Grenades.* (i) Number of Lookouts and Observation Platform—One lookout positioned on the small boat conducting the activity.

(ii) Mitigation Zone and Requirements—200 yd around the intended detonation location.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence detonations.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease detonations.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence detonations until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(15) *Line Charge Testing.* (i) Number of Lookouts and Observation Platform—One lookout positioned on a vessel.

(ii) Mitigation Zone and Requirements—900 yd around the intended detonation location.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence detonations.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease detonations.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence detonations until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; or the mitigation zone has been clear from any additional sightings for 30 min.

(16) *Ship Shock Trials.* (i) Number of Lookouts and Observation Platform—(A) A minimum of ten lookouts or trained marine species observers (or a combination thereof) positioned either in an aircraft or on multiple vessels (*i.e.,* a Marine Animal Response Team boat and the test ship).

(B) If aircraft are used, Lookouts or trained marine species observers shall be in an aircraft and on multiple vessels.

(C) If aircraft are not used, a sufficient number of additional Lookouts or trained marine species observers shall be used to provide vessel-based visual observation comparable to that achieved by aerial surveys.

(ii) Mitigation Zone and Requirements—3.5 nmi around the ship hull.

(A) The Navy shall not conduct ship shock trials in the Jacksonville Operating Area during North Atlantic right whale calving season from November 15 through April 15.

(B) The Navy develops detailed ship shock trial monitoring and mitigation plans approximately one-year prior to an event and shall continue to provide these to NMFS for review and approval.

(C) Pre-activity planning shall include selection of one primary and two secondary areas where marine mammal populations are expected to be the lowest during the event, with the primary and secondary locations located more than 2 nmi from the western boundary of the Gulf Stream for events in the Virginia Capes Range Complex or Jacksonville Range Complex.

(D) If it is determined during pre-activity surveys that the primary area is environmentally unsuitable (*e.g.,* observations of marine mammals or presence of concentrations of floating vegetation), the shock trial could be moved to a secondary site in accordance with the detailed mitigation and monitoring plan provided to NMFS.

(E) Prior to the detonation (at the primary shock trial location) in intervals of 5 hrs, 3 hrs, 40 min, and immediately before the detonation, the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not trigger the detonation.

(F) During the activity, the Navy shall observe for marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds; if resource is observed, the Navy shall cease triggering the detonation.

(G) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence the triggering of a detonation until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the ship hull; or the mitigation zone has been clear from any additional sightings for 30 min. After completion of each detonation, the Navy shall observe for marine mammals; if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures and halt any remaining detonations until the Navy can consult with NMFS and review or adapt the mitigation, if necessary. After completion of the ship shock trial, the Navy shall conduct additional observations during the following two days (at a minimum) and up to seven days (at a maximum); if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures.

(17) *Vessel Movement.* The mitigation shall not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring, etc.); or the vessel is operated autonomously.

(i) Number of Lookouts and Observation Platform—One lookout on the vessel that is underway.

(ii) Mitigation Zone and Requirements—(A) 500 yd around whales—When underway, the Navy shall observe for marine mammals; if a whale is observed, the Navy shall maneuver to maintain distance.

(B) 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels)—When underway, the Navy shall observe for marine mammals; if a marine mammal other than a whale, bow-riding dolphin, or hauled-out pinniped is observed, the Navy shall maneuver to maintain distance.

(18) *Towed In-water Devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation shall not be applied if the safety of the towing platform is threatened.

(i) Number of Lookouts and Observation Platform—One lookout positioned on a manned towing platform.

(ii) Mitigation Zone and Requirements—250 yd around marine mammals. When towing an in-water device, the Navy shall observe for marine mammals; if resource is observed, the Navy shall maneuver to maintain distance.

(19) *Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions.* Mitigation applies to activities using a surface target.

(i) Number of Lookouts and Observation Platform—One Lookout positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described for Weapons Firing Noise in paragraph (a)(5)(i) of this section.

(ii) Mitigation Zone and Requirements—200 yd around the intended impact location.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence firing.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease firing.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(20) *Non-Explosive Missiles and Rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) Number of Lookouts and Observation Platform—One Lookout positioned in an aircraft.

(ii) Mitigation Zone and Requirements—900 yd around the intended impact location.

(A) Prior to the start of the activity (*e.g.,* during a fly-over of the mitigation zone), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence firing.

(B) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease firing.

(C) To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence firing until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(21) *Non-Explosive Bombs and Mine Shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) Number of Lookouts and Observation Platform—One Lookout positioned in an aircraft.

(ii) Mitigation Zone and Requirements—1,000 yd around the intended target.

(A) Prior to the start of the activity (*e.g.,* when arriving on station), the Navy shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence bomb deployment or mine laying. During approach of the target or intended minefield location, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease bomb deployment or mine laying. To allow a sighted marine mammal to leave the mitigation zone, the Navy shall not recommence bomb deployment or mine laying until one of the recommencement conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(B) [Reserved]

(b) *Mitigation Areas.* In addition to procedural mitigation, the Navy shall implement mitigation measures within mitigation areas to avoid potential impacts on marine mammals.

(1) *Mitigation Areas off the Northeastern United States* for sonar, explosives, and physical disturbance and strikes.

(i) Mitigation Area Requirements—(A) Northeast North Atlantic Right Whale Mitigation Areas (year-round):

(*1*) The Navy shall minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar to the maximum extent practicable.

(*2*) The Navy shall not use Improved Extended Echo Ranging sonobuoys (within 3 nmi of the mitigation area), explosive and non-explosive bombs, in-water detonations, and explosive torpedoes.

(*3*) For activities using non-explosive torpedoes, the Navy shall conduct activities during daylight hours in Beaufort sea state 3 or less. The Navy shall use three Lookouts (one positioned on a vessel and two in an aircraft during dedicated aerial surveys) to observe the vicinity of the activity. An additional Lookout shall be positioned on the submarine, when surfaced. Immediately prior to the start of the activity, Lookouts shall observe for floating vegetation and marine mammals; if the resource is observed, the activity shall not commence. During the activity, Lookouts shall observe for marine mammals; if observed, the activity shall cease. To allow a sighted marine mammal to leave the area, the Navy shall not recommence the activity until one of the recommencement conditions has been met: The animal is observed exiting the vicinity of the activity; the animal is thought to have exited the vicinity of the activity based on a determination of its course, speed, and movement relative to the activity location; or the area has been clear from any additional sightings for 30 min. During transits and normal firing, ships shall maintain a speed of no more than 10 knots. During submarine target firing, ships shall maintain speeds of no more than 18 knots. During vessel target firing, ship speeds may exceed 18 knots for brief periods of time (*e.g.,* 10–15 min).

(*4*) For all activities, before vessel transits, the Navy shall conduct a web query or email inquiry to the National Oceanographic and Atmospheric Administration Northeast Fisheries Science Center's North Atlantic Right Whale Sighting Advisory System to obtain the latest North Atlantic right whale sighting information. Vessels shall use the obtained sightings information to reduce potential interactions with North Atlantic right whales during transits. Vessels shall implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting

reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and when operating at night or during periods of reduced visibility.

(B) Gulf of Maine Planning Awareness Mitigation Area (year-round):

(*1*) The Navy shall not plan major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises), and shall not conduct more than 200 hrs of hull-mounted mid-frequency active sonar per year.

(*2*) If the Navy needs to conduct major training exercises or more than 200 hrs of hull-mounted mid-frequency active sonar per year for national security, it shall provide NMFS with advance notification and include the information in any associated training or testing activities or monitoring reports.

(C) Northeast Planning Awareness Mitigation Areas (year-round):

(*1*) The Navy shall avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable.

(*2*) The Navy shall not conduct more than four major training exercises per year (all or a portion of the exercise).

(*3*) If the Navy needs to conduct additional major training exercises for national security, it shall provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

(ii) [Reserved]

(2) *Mitigation Areas off the Mid-Atlantic and Southeastern United States* for sonar, explosives, and physical disturbance and strikes.

(i) Mitigation Area Requirements—(A) Southeast North Atlantic Right Whale Mitigation Area (November 15 through April 15):

(*1*) The Navy shall not conduct: Low-frequency active sonar (except as noted below), mid-frequency active sonar (except as noted below), high-frequency active sonar, missile and rocket activities (explosive and non-explosive), small-, medium-, and large-caliber gunnery activities, Improved Extended Echo Ranging sonobuoy activities, explosive and non-explosive bombing activities, in-water detonations, and explosive torpedo activities.

(*2*) To the maximum extent practicable, the Navy shall minimize the use of: Helicopter dipping sonar, low-frequency active sonar and hull-mounted mid-frequency active sonar used for navigation training, and low-frequency active sonar and hull-mounted mid-frequency active sonar used for object detection exercises.

(*3*) Before transiting or conducting training or testing activities, the Navy shall initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville shall advise vessels of all reported whale sightings in the vicinity to help vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander Submarine Force, Atlantic shall coordinate any submarine operations that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Vessels shall use the obtained sightings information to reduce potential interactions with North Atlantic right whales during transits. Vessels shall implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past 12 hrs, or when operating at night or during periods of poor visibility. To the maximum extent practicable, vessels shall minimize north-south transits.

(B) Mid-Atlantic Planning Awareness Mitigation Areas (year-round):

(*1*) The Navy shall avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable.

(*2*) The Navy shall not conduct more than four major training exercises per year (all or a portion of the exercise).

(*3*) If the Navy needs to conduct additional major training exercises for national security, it shall provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

(3) *Mitigation Areas in the Gulf of Mexico for sonar.* (i) Mitigation Area Requirements—(A) Gulf of Mexico Planning Awareness Mitigation Areas (year-round):

(*1*) The Navy shall avoid planning major training exercises (*i.e.,* Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) involving the use of active sonar to the maximum extent practicable.

(*2*) The Navy shall not conduct any major training exercises in the Gulf of Mexico Planning Awareness Mitigation Areas under the Proposed Activity.

(*3*) If the Navy needs to conduct additional major training exercises in these areas for national security, it shall provide NMFS with advance notification and include the information in any associated training activity or monitoring reports.

(B) [Reserved]

§ 218.85 Requirements for monitoring and reporting.

(a) The Navy must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.80 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in this subpart.

(b) The Navy must conduct all monitoring and required reporting under the LOAs, including abiding by the AFTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects available at *www.navymarinespeciesmonitoring.us.*

(c) Notification of injured, live stranded, or dead marine mammals. The Navy shall abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected.

(d) Annual AFTT Study Area marine species monitoring report. The Navy shall submit an annual report of the AFTT Study Area monitoring describing the implementation and results from the previous calendar year. Data collection methods shall be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process to the Director, Office of Protected Resources, NMFS. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the Integrated Comprehensive Monitoring Program. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) Annual AFTT Study Area training and testing reports. Each year, the Navy shall submit a preliminary report (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy shall submit a detailed report within 3 months after the anniversary of the date of issuance of each LOA the Director, Office of Protected Resources, NMFS. The annual reports shall contain information on

Major Training Exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used, as described in paragraph (e)(3) of this section. The analysis in the detailed report shall be based on the accumulation of data from the current year's report and data collected from previous the report. The detailed reports shall contain information identified in paragraphs (e)(1) through (5) of this section.

(1) MTEs—This section shall contain the following information for MTEs conducted in the AFTT Study Area:

(i) Exercise Information (for each MTE):

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, etc., participating in exercise.

(G) Total hours of observation by lookouts.

(H) Total hours of all active sonar source operation.

(I) Total hours of each active sonar source bin.

(J) Wave height (high, low, and average during exercise).

(ii) Individual marine mammal sighting information for each sighting in each exercise when mitigation occurred:

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor.

(E) Indication of specific type of platform observation made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal is <200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd from sonar source.

(K) Mitigation implementation. Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.

(L) If source in use is hull-mounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel).

(M) Observed behavior. Lookouts shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.) and if any calves present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) SINKEXs. This section shall include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by lookouts before, during, and after exercise.

(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, etc., participating in exercise.

(H) Wave height in feet (high, low, and average during exercise).

(J) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting) for each sighting where mitigation was implemented:

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale, dolphin, or pinniped).

(C) Number of individuals.

(D) Initial detection sensor.

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations—200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd (or target spot if not yet detonated).

(J) Observed behavior. Lookouts shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction and if any calves present.

(K) Resulting mitigation implementation. Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) Summary of sources used. This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources (pile driving and air gun activities);

(ii) Total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(4) Geographic information presentation. The reports shall present an annual (and seasonal, where practical) depiction of training and testing events and bin usage (as well as pile driving activities) geographically across the AFTT Study Area.

(5) Sonar exercise notification. The Navy shall submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) Five-year close-out comprehensive training and testing report. This report shall be included as part of the 2023 annual training and testing report. This report shall provide the annual totals for each sound source bin with a comparison to the annual allowance and the five-year total for each sound source bin with a comparison to the five-year allowance. Additionally, if there were any changes to the sound source allowance, this report shall include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the EIS and final rule determinations. The report shall be submitted three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS shall submit comments on the draft close-out report, if any, within three months of receipt. The report shall be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the

draft if NMFS does not provide comments.

§ 218.86 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations in this subpart, the Navy must apply for and obtain Letters of Authorization (LOAs) in accordance with § 216.106 of this subpart, conducting the activity identified in § 218.80(c).

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations in this subpart.

(c) If an LOA(s) expires prior to the expiration date of these regulations in this subpart, the Navy may apply for and obtain a renewal of the LOA(s).

(d) In the event of projected changes to the activity or to mitigation, monitoring, reporting (excluding changes made pursuant to the adaptive management provision of § 218.87(c)(1)) required by an LOA, the Navy must apply for and obtain a modification of LOAs as described in § 218.87.

(e) Each LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species of marine mammals, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) shall be based on a determination that the level of taking shall be consistent with the findings made for the total taking allowable under these regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) shall be published in the **Federal Register** within 30 days of a determination.

§ 218.87 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 and 218.86 of this subchapter for the activity identified in § 218.80(c) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) under these regulations in this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this subchapter and § 218.86 for the activity identified in § 218.80(c) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in this subpart.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 218.86, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 218.88–218.89 [Reserved]

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Support the Re-Launch of the Exchange on the Pillar Trading Platform; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82819; File No. SR–NYSENAT–2018–02]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Support the Re-Launch of the Exchange on the Pillar Trading Platform

March 7, 2018.

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 February 21, 2018, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') 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 NYSE National. 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 the following rules and rule changes to support the re-launch of the Exchange on the Pillar trading platform: (1) Amendments to Article V, Sections 5.01 and 5.8 of the Fourth Amended and Restated Bylaws of NYSE National (''Bylaws''); (2) new rules based on the rules of the Exchange's affiliates relating to (a) trading securities on an unlisted trading privileges basis (Rules 5 and 8), (b) trading on the Pillar trading platform (Rules 1 and 7), (c) disciplinary rules (Rule 10), and (d) administration of the Exchange (Rules 3, 12, and 13); (3) rule changes that renumber current Exchange rules relating to (a) membership (Rule 2), (b) order audit trail requirements (Rule 6), and (c) business conduct, books and records, supervision, extensions of credit, and trading practices (Rule 11); and (4) deletion of Chapters I–XVI and the rules contained therein. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. [sic] Background

On February 1, 2017, the Exchange ceased trading operations.[4] The Exchange proposes to re-launch trading operations on Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American''), and New York Stock Exchange LLC (''NYSE'').[5] Subject to rule approvals, the Exchange anticipates re-launching trading operations on Pillar in the second quarter of 2018.

In the Spring of 2016, NYSE Arca's cash equities market was the first trading system to migrate to Pillar.[6] NYSE American's cash equities market transitioned to Pillar on July 24, 2017.[7] NYSE has filed proposed rule changes to launch trading on Pillar.[8] In each case, NYSE Arca, NYSE American, and NYSE have proposed trading rules that are substantially similar and that are based on the rule numbering framework of NYSE Arca. As described in the rule filings for NYSE American and NYSE, those exchanges proposed specified differences to certain trading rules as compared to NYSE Arca to differentiate their respective trading models. For example, NYSE American has a delay mechanism and does not offer specified order types [9] and NYSE has proposed a parity allocation model.[10]

With Pillar, the Exchange proposes to re-launch trading in all Tape A, Tape B,

[4] *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04) (''Termination Filing''). On January 31, 2017, Intercontinental Exchange, Inc. (''ICE''), through its wholly-owned subsidiary NYSE Group, acquired all of the outstanding capital stock of the Exchange (the ''Acquisition''). *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16). Prior to the Acquisition, the Exchange was named ''National Stock Exchange, Inc.''

[5] *See www.nyse.com/pillar.*

[6] In connection with the NYSE Arca implementation of Pillar, NYSE Arca filed four rule proposals relating to Pillar. *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR–NYSEArca–2015–58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release Nos. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice) and 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (Approval Order of NYSE Arca Pillar IV Filing, adopting rules for Auctions). NYSE Arca Equities, Inc., which was a wholly-owned subsidiary of NYSE Arca, has been merged with and into NYSE Arca and as a result, former NYSE Arca Equities rules are now the rules of NYSE Arca. NYSE Arca rules that only apply to its cash equities market have a suffix of ''-E'' in the rule number. *See* Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca–2017–40) (Approval Order).

[7] In connection with the NYSE American implementation of Pillar, NYSE American filed several rule changes. *See* Securities Exchange Act Release Nos. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR–NYSEMKT–2016–97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change of framework rules); 81038 (June 28, 2017), 82 FR 31118 (July 5, 2017) (SR–NYSEMKT–2016–103) (Approval Order) (''NYSE American ETP Listing Rules Filing''); 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (SR–NYSEMKT–2017–01) (Approval Order) (''NYSE American Trading Rules Filing''); 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR–NYSEMKT–2017–04) (Approval Order) (''NYSE American Market Maker Filing''); 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR–NYSEMKT–2017–05) (Approval Order) (''NYSE American Delay Mechanism Filing''). NYSE American was previously known as NYSE MKT LLC. *See* Securities Exchange Act Release No. 80748 (May 23, 2017), 82 FR 24764, 24765 (SR–NYSEMKT–2017–20) (Notice of filing and immediate effectiveness of proposed rule change to change the name of NYSE MKT to NYSE American).

[8] *See* Securities Exchange Act Release Nos. Securities Exchange Act Release Nos. [sic] 76803 (December 30, 2015), 81 FR 536 (January 6, 2016) (SR–NYSE–2015–67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change); 80214 (March 10, 2017), 82 FR 14050 (March 16, 2017) (SR–NYSE–2016–44) (Approval Order) (''NYSE ETP Listing Rules Filing''); 81225 (July 27, 2017), 82 FR 36033 (August 2, 2017) (SR–NYSE–2017–35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change); and 81310 (August 3, 2017), 82 FR 37257 (August 9, 2017) (SR–NYSE–2017–36) (Notice of Filing) (''NYSE Trading Rules Filing'').

[9] *See* NYSE American Delay Mechanism Filing, *supra,* note 7.

[10] *See* NYSE Trading Rules Filing, *supra* note 8.

and Tape C securities on an unlisted trading privileges (''UTP'') basis on a fully automated price-time priority allocation model. As proposed, the Exchange's trading rules would be based on the rules and trading model of the cash equities platform of NYSE Arca, which operates as a fully automated price-time priority allocation exchange, without any substantive differences. Accordingly, the Exchange proposes rules relating to orders and modifiers, ranking and display of orders, execution and routing of orders, and all other trading functionality that are based on the rules of NYSE Arca. In addition, in specified circumstances, described in more detail below, the Exchange proposes rules based on NYSE American as well, which was a more recent exchange to transition to the Pillar trading platform. In short, the Exchange is not proposing any new or novel rules for how trading would operate on the Exchange.

However, unlike its affiliated exchanges, the Exchange would not be a listing venue. Because the Exchange would trade securities on a UTP basis only, the Exchange proposes to operate in the same manner that NYSE Arca operates with respect to securities that trade on a UTP basis on that exchange. For example, the Exchange would not operate any auctions and therefore would not propose rules to provide for auction functionality on the Exchange. However, the Exchange would make available order types that already exist on NYSE Arca and NYSE American for securities that trade on a UTP basis and that route directly to the primary listing market, including orders designated to participate in an auction on the primary listing market. In addition, because the Exchange would not be a listing venue, the Exchange would not provide for either ''lead'' or ''designated'' market makers, which are available on NYSE Arca and NYSE American, respectively, for securities listed on those exchanges only. As with NYSE Arca and NYSE American, proposed Exchange rules would provide that ETP Holders may register as a market maker in securities that trade on a UTP basis on the Exchange. And as with NYSE Arca and NYSE American, Exchange rules would not require a market maker for a security to trade on a UTP basis on the Exchange. Similar to NYSE American, the Exchange would not operate a retail liquidity program.

While the trading rules for the Exchange's re-launch would be based on the rules of its affiliated exchanges, the Exchange proposes to retain its existing rules relating to membership and ETP Holder conduct. As described in more detail below, the Exchange proposes to renumber such rules and make minor modifications to certain rules. However, the Exchange is not proposing any new rules; all such rules would be either existing Exchange rules that have been renumbered or updated rules based on an existing rule of another exchange.

Because the Exchange is not proposing new or different rules to qualify as a member of the Exchange, for the re-launch, the Exchange proposes to reinstate ETP Holder status [11] using the existing process described in Interpretation and Policies .01 to current Rule 2.5, which sets forth the expedited process for reinstatement as an ETP Holder and to register associated persons when the Exchange re-launched operations in 2015.[12] Pursuant to that rule, approved ETP Holders that were in good standing as of the close of business on May 30, 2014, when the Exchange previously ceased trading operations, had their ETP Holder status reinstated and associated persons registered pursuant to that expedited process.

Because the Exchange proposes to use an established process to reinstate ETP Holder status, the Exchange is not proposing any substantive differences to this rule. The Exchange proposes to amend Interpretation and Policies .01 to Rule 2.5 to replace the date of May 30, 2014, with the date of February 1, 2017, which was when the Exchange last terminated ETP Holder status. This proposed rule change would therefore provide for the reinstatement of ETP Holders whose status was terminated on February 1, 2017 in the exact same manner that the Exchange reinstated ETP Holders whose status had previously been terminated on May 30, 2014.

In short, for the re-launch of Exchange operations, the trading experience for reinstated ETP Holders on the Exchange would be identical to how trading functions on NYSE Arca for securities trading on a UTP basis. The Exchange proposes to differentiate itself from its affiliated exchanges through a different pricing model, which the Exchange will establish in a separate proposed rule change.[13]

[11] When the Exchange ceased operations, the Exchange terminated the ETP status of all ETP Holders as of the close of business on February 1, 2017. *See* Termination Filing, *supra* note 4.

[12] *See* Securities Exchange Act Release No. 75098 (June 3, 2015), 80 FR 32644 (June 9, 2015) (Notice of filing and immediate effectiveness of proposed rule change to establish expedited process to reinstate ETP Holder status).

[13] The Exchange also proposes to file separate proposed rule changes to establish market data products that will be available for the Exchange and related fees.

2. Summary of Proposed Rule Changes

In preparation for the re-launch, the Exchange adopted the rule numbering framework of the NYSE Arca rules, which are organized in 14 Rules.[14] This framework replaces the Exchange's current rule numbering framework.

With this filing, and as described in greater detail below, the Exchange proposes to expand on the Framework Filing by making the following changes to its rulebook:

- Adding new rules based on the rules of the Exchange's affiliates relating to:
- Trading securities on an unlisted trading privileges basis (Rules 5 and 8)
- trading on the Pillar trading platform (Rules 1 and 7)
- disciplinary rules (Rule 10)
- administration of the Exchange (Rules 3, 12, and 13)
- Moving and renumbering current rules set forth in Chapters II, III, IV, V, VI and XII to the new framework:
- ETP Holder [15] membership (Rule 2)
- order audit trail requirements (Rule 6)
- rules of fair practice, books and records, supervision, extensions of credit, and trading practices (Rule 11)
- Because Rules 4 and 9 would not include any rules, designating those rules as ''Reserved''

In addition, the Exchange proposes to amend Article V, Section 5.01 and 5.8 of the Bylaws.

Because the current rulebook would be replaced with both new and renumbered rules under the new framework, the Exchange proposes to delete current Chapters I–XVI and the rules contained therein.

The following summarizes the proposed rule changes and Part 3, below, provides additional detail regarding the specific proposed rule changes.

a. Bylaws

The Exchange proposes to amend Article V, Sections 5.01 and 5.8 of the Bylaws to conform the Exchange's name for its existing ''Appeals Committee'' to ''Committee for Review.'' The proposed change would more closely align the Bylaws of the Exchange with the governing documents of its affiliates, NYSE, NYSE American, and NYSE Arca, which all have ''committees for

[14] *See* Securities Exchange Act Release No. 81782 (September 29, 2017), 82 FR 81782 (October 5, 2017) (SR–NYSENat–2017–04) (Notice of Filing and Immediate Effectiveness) (''Framework Filing'').

[15] The Exchange proposes to define the term ''ETP Holder'' in Rule 1.1 to mean an Exchange-approved holder of an ETP. This proposed rule is based on current Rule 1.5(E)(2).

review,'' rather than appeals committees.

b. Definitions

Rule 1 would set forth definitions that would be used in Exchange rules. As described below, except for membership and conduct rules, the Exchange's proposed definitions are based on the rules for the NYSE Arca or NYSE American cash equities markets, or both. Accordingly, the definitions in proposed Rule 1.1 are based on definitions set forth in NYSE Arca Rule 1.1 and NYSE American Rule 1.1E, as applicable. The definitions set forth in proposed Rule 1.1 would also include current definitions set forth in Chapter I that relate to membership.

c. Membership Rules

To facilitate the expedited process to reinstate ETP Holders for the re-launch of trading operations, the Exchange proposes to retain its existing rules relating to membership and the registration of associated persons, which are currently set forth in Chapter II of the Exchange's rulebook. Consistent with the Framework Filing, the Exchange proposes to move the membership rules to Rule 2, but would retain the current individual rule numbers. As described in greater detail below, the Exchange proposes amendments to certain of those membership rules.

d. Unlisted Trading Privileges Rules

Proposed Rules 5 and 8 would provide for rules to trade all Tape A, Tape B, and Tape C securities, including Exchange Traded Products, on a UTP basis.[16] Because NYSE American is the latest affiliate of the Exchange to add rules for trading securities on a UTP basis on the Pillar trading platform, the Exchange is proposing rules that are based on the rules of NYSE American with only non-substantive and technical differences, as described in greater detail below. As described in NYSE American ETP Listing Rules Filing, the NYSE American rules are based on NYSE Rules 5P and 8P, which in turn are modeled on NYSE Arca Rules 5–E and 8–E.[17] The NYSE American and NYSE rules are differentiated from the NYSE Arca rules because they are intended for trading on a UTP basis only. Those rules therefore include a preamble explaining that such rules are for trading on a UTP basis only and not for listing purposes, even though individual NYSE American and NYSE rules reference listing requirements. The Exchange proposes to follow this established and approved process for its proposed Rules 5 and 8 without any differences. Accordingly, proposed Rules 5 and 8 are based on the approved rules of NYSE American and NYSE, including proposed preambles to such rules explaining that such rules would govern trading on a UTP basis only and would not govern the listing of securities, even though individual rules may include references to listing requirements. In addition, proposed Rules 5 and 8 are based on the approved rules of NYSE, which cross reference options-related rules of NYSE Arca.

e. Consolidated Audit Trail and Order Audit Trail Rules

Rule 6 would set forth rules relating to (i) compliance with the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan''),[18] which are currently set forth in Chapter XIV (the ''Compliance Rules''), (ii) new Rule 6.6900 to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members (''Fee Dispute Rule''); and (iii) new rules based on NYSE Arca Order Audit Trail System (''OATS'') rules relating to order audit trail system requirements. None of these are novel rules and are either renumbered Exchange rules (the Compliance Rules) or new rules based on the approved rules of other exchanges (the Fee Dispute Rule and OATS rules).

f. Trading Rules

Rule 7 would establish rules for trading on the Exchange. As noted above, the Exchange will re-launch on the same trading platform as NYSE Arca's cash equities trading platform, and proposes trading rules based on the rules of NYSE Arca. Rule 7 would include rules based on NYSE Arca Rule 7–E, including general provisions relating to trading, market makers, trading on the Exchange, operation of the routing broker, and the Plan to Implement a Tick Size Pilot Program. Rule 7 would therefore specify all aspects of trading on the Exchange, including the orders and modifiers that would be available and how orders would be ranked, displayed, and executed.

Because the Exchange will not be a listing venue, the Exchange does not propose to have either lead or designated market makers assigned to securities trading on the Exchange. The Exchange therefore does not propose a rule based on NYSE Arca Rule 7.24–E (Designated Market Maker Performance Standards). In addition, because the Exchange would not operate auctions, the Exchange does not propose a rule based on NYSE Arca Rule 7.35–E (Auctions).

g. Disciplinary Rules

Rule 10 would set forth the Exchange's rules relating to investigation, discipline, sanction, and other procedural rules that are modeled on the rules of the Exchange's affiliate NYSE American, which in turn, are modeled on the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

h. Rules of Fair Practice, Books and Records, Supervision, Extensions of Credit, and Trading Practice Rules

The Exchange proposes to retain its existing rules relating to rules of fair practice, books and records, supervision, extensions of credit, and trading practices, which are set forth in Chapters III, IV, V, VI, and XII, and move and renumber them to Rule 11. The Exchange believes that retaining existing rules relating to rules of fair practice, books and records, supervision, extensions of credit, and trading practices would facilitate the expedited process for ETP Holders and their associated persons to be reinstated as members because such ETP Holders would not be required to change their internal procedures to be reinstated as ETP Holders of the Exchange. However, because the Exchange has established a new numbering framework, the Exchange proposes to renumber these existing rules under Rule 11, but with sub-numbering that is the same as the existing Exchange rule numbers for such rules. Accordingly, these rules would all begin as ''Rule 11'', but then would have

[16] As described below, the term ''Exchange Traded Product'' will be defined in Rule 1.1 and would include Equity Linked Notes (''ELNs''), Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.

[17] *See* NYSE American ETP Listing Rules Filing, *supra* note 7 and NYSE ETP Listing Rules Filing, *supra* note 8.

[18] The CAT NMS Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant of the Plan is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.

a sub-number assigned that is identical to the existing rule number. For example, Rule 3.1 would be renumbered as Rule 11.3.1.

The Exchange proposes to rename Rule 11 as ''Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practice Rules.'' Because Rules 4 and 9 will not include any rules, the Exchange proposes to delete the current titles associated with those rules and designate them as ''Reserved.''

i. Organizational, Administration, Business Conduct, Books and Records and Supervisory Rules

In addition to the above categories of rules, the Exchange proposes rules based on NYSE Arca Rules 3 (Organization and Administration), 12 (Arbitration), and 13 (Liability of Directors and the Exchange).

3. Proposed Rule Changes

Proposed Changes to the Bylaws

The Exchange has an Appeals Committee, which presides over appeals related to disciplinary and adverse action determinations in accordance with the Exchange rules.[19] The Exchange proposes to change the name of the committee, from ''Appeals Committee'' to ''Committee for Review.'' In order to make the change, the Exchange proposes to replace ''Appeals Committee'' with ''Committee for Review'' in Article V, Sections 5.01 and 5.8 of the Bylaws, as well as in the table of contents of the Bylaws. The change would be non-substantive, as the makeup and function of the committee would not change.

The proposed change would conform the Exchange's name for the Appeals Committee to that of its affiliates, NYSE, NYSE American, and NYSE Arca, which all have committees for review, rather than appeals committees.[20] The change would thereby more closely align the Bylaws of the Exchange with the governing documents of its national securities exchange affiliates.

In addition, ''Fourth'' would be replaced with ''Fifth'' on the cover page heading, the table of contents, and first page of the Bylaws.

No other changes are proposed to the Bylaws.

Rule 0—Regulation of the Exchange and ETP Holders

As described in the Framework Filing, Rule 0 establishes the regulation of the Exchange and ETP Holders. As proposed, Rule 0 would provide that:

The Exchange and FINRA are parties to a Regulatory Services Agreement (''RSA'') pursuant to which FINRA has agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. Exchange Rules that refer to Exchange staff and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. Notwithstanding the fact that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

This proposed rule is based on NYSE Arca Rule 0 without any substantive differences. This Exchange does not currently have a rule that addresses the same topics as proposed Rule 0 and therefore this would be a new Exchange rule.

Rule 1—Definitions

As described in the Framework Filing, Rule 1 would establish definitions applicable to trading on the Exchange's Pillar trading platform. Proposed Rule 1.1 includes definitions that are based on NYSE Arca Rule 1.1 definitions, NYSE American Rule 1.1E definitions, and definitions currently set forth in Rule 1.5 in Chapter I of the Exchange's rulebook. Because definitions would be specified in Rule 1.1, the Exchange proposes to delete Chapter I of the current rulebook.

Proposed Rule 1.1 would provide that as used in Exchange rules, unless the context requires otherwise, the terms in proposed Rule 1.1 would have the meanings indicated. This rule is based on NYSE American Rule 1.1E. Throughout proposed Rule 1.1, where applicable, the Exchange proposes non-substantive differences as compared to the NYSE Arca rules to use the term ''Exchange'' instead of the term ''NYSE Arca Marketplace.'' In addition, the Exchange proposes sub-paragraph numbering for Rule 1.1 that aligns to the alphabetical ordering of the proposed definitions. The Exchange proposes the following definitions:

• Proposed Rule 1.1(a) would define the terms ''Authorized Trader'' or ''AT'' to mean a person who may submit orders to the Exchange's Trading Facilities on behalf of his or her ETP Holder. This proposed rule is based on NYSE American Rule 1.1E(g) without any differences.

• Proposed Rule 1.1(b) would define the term ''Away Market'' to mean any exchange, alternative trading system (''ATS'') or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange. The Exchange will designate from time to time those ATSs or other broker-dealers that qualify as Away Markets. This proposed rule is based on NYSE Arca Rule 1.1(f) and NYSE American Rule 1.1E(ff) without any substantive differences.

• Proposed Rule 1.1(c) would define the term ''BBO'' to mean the best bid or offer that is a protected quotation on the Exchange and that the term ''BB'' means the best bid on the Exchange and the term ''BO'' means the best offer on the Exchange. This proposed rule is based on NYSE Arca Rule 1.1(g) and NYSE American Rule 1.1E(h).

• Proposed Rule 1.1(d) would define the term ''Board and Board of Directors'' to mean the Board of Directors of NYSE National, Inc. This proposed rule is based on NYSE Arca Rule 1.1(h).

• Proposed Rule 1.1(e) would define the term ''Core Trading Hours'' to mean the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time. This proposed rule is based on NYSE Arca Rule 1.1(j) and NYSE American Rule 1.1E(j).

• Proposed Rule 1.1(f) would define the terms ''effective national market system plan'' and ''regular trading hours'' to have the meanings set forth in Rule 600(b) of Regulation NMS under the Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(l) and NYSE American Rule 1.1E(hhh).

• Proposed Rule 1.1(g) would define the term ''Eligible Security'' to mean any equity security (i) traded on the Exchange pursuant to a grant of unlisted trading privileges under Section 12(f) of the Exchange Act and (ii) specified by the Exchange to be traded on the Exchange or other facility, as the case may be. This proposed rule is based on NYSE American Rule 1.1E(l) with a non-substantive difference not to reference securities listed on the Exchange.

• Proposed Rule 1.1(h) would define the term ''ETP'' to refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. This proposed rule is based on current NYSE

[19] *See* Securities Exchange Release No. 79684 (December 23, 2016), 81 FR 96552 (December 30, 2016) (SR–NSX–2016–16, at 96557 (proposal). *See also* Securities Exchange Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16) (approval).

[20] *See* the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC, Article II, Section 2.03(h)(iii); Eleventh Amended and Restated Operating Agreement of NYSE American LLC, Article II, Section 2.03(h)(iii); Amended and Restated NYSE Arca, Inc. Bylaws, Article IV, Section 4.01(a).

National Rule 1.5(E)(1), which has been renumbered as Rule 1.1(h).

• Proposed Rule 1.1(i) would define the term ''ETP Holder'' to mean the Exchange-approved holder of an ETP. This proposed rule is based on current NYSE National Rule 1.5(E)(2), which has been renumbered as Rule 1.1(i).

• Proposed Rule 1.1(j) would define the term ''Exchange'' to mean NYSE National, Inc. This proposed rule is based on NYSE American Rule 1.1E(k).

• Proposed Rule 1.1(k) would define the term ''Exchange Act'' to mean the Securities Exchange Act of 1934, as amended. This proposed rule is based on NYSE Arca Rule 1.1(q).

• Proposed Rule 1.1(l) would define the term ''Exchange Book'' to mean the Exchange's electronic file of orders. This proposed rule is based on NYSE American Rule 1.1E(a).

• Proposed Rule 1.1(m) would define the term ''Exchange Traded Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b-4(e) under the Exchange Act and would define the term ''UTP Exchange Traded Product'' to mean an Exchange Traded Product that trades on the Exchange pursuant to unlisted trading privileges. This proposed rule is based on NYSE American Rule 1.1E(bbb).

• Proposed Rule 1.1(n) would define the term ''FINRA'' to mean the Financial Industry Regulatory Authority, Inc. This proposed rule is based on NYSE Arca Rule 1.1(r).

• Proposed Rule 1.1(o) would define the terms ''General Authorized Trader'' or ''GAT'' to mean an authorized trader who performs only non-market making activities on behalf of an ETP Holder. This proposed rule is based on NYSE Arca Rule 1.1(u) and NYSE American Rule 1.1E(p).

• Proposed Rule 1.1(p) would define the term ''Good Standing'' to mean an ETP Holder who is not in violation of any of its agreements with the Exchange or any of the provisions of the Rules or Bylaws of the Exchange, and who has maintained all of the conditions for approval of the ETP. This proposed rule is based on NYSE Arca Rule 1.1(v) with one substantive difference to exclude references to OTP, OTP Holder or OTP Firm from the proposed rule as NYSE National would not trade any options and therefore would not have OTPs, OTP Holders or OTP Firms on the Exchange.

• Proposed Rule 1.1(q) would define the term ''Marketable'' to mean, for a Limit Order, an order that can be immediately executed or routed and that Market Orders are always considered marketable. This proposed rule is based on NYSE Arca Rule 1.1(y) and NYSE American Rule 1.1E(u).

• Proposed Rule 1.1(r) would define the term ''Market Maker'' to mean an ETP Holder that acts as a Market Maker pursuant to Rule 7. This proposed rule is based on NYSE Arca Rule 1.1(z) and NYSE American Rule 1.1E(v).

• Proposed Rule 1.1(s) would define the terms ''Market Maker Authorized Trader'' or ''MMAT'' to mean an Authorized Trader who performs market making activities pursuant to Rule 7 on behalf of a Market Maker. This proposed rule is based on NYSE Arca Rule 1.1(aa) and NYSE American Rule 1.1E(w).

• Proposed Rule 1.1(t) would define the term ''Market Participant'' to include electronic communications networks (''ECN''), dealer-specialists registered with a national securities exchange, and market makers registered with a national securities association. This proposed rule is based on NYSE Arca Rule 1.1(bb).

• Proposed Rule 1.1(u) would define the term ''Nasdaq'' to mean The Nasdaq Stock Market LLC. This proposed rule is based on NYSE Arca Rule 1.1(cc).

• Proposed Rule 1.1(v) would define the terms ''NBBO, Best Protected Bid, Best Protected Offer, and Protected Best Bid and Offer (PBBO)''. The term ''NBBO'' would mean the national best bid or offer. The terms ''NBB'' would mean the national best bid and ''NBO'' would mean the national best offer. The terms ''Best Protected Bid'' or ''PBB'' would mean the highest Protected Bid, and ''Best Protected Offer'' or ''PBO'' would mean the lowest Protected Offer, and the term ''Protected Best Bid and Offer'' (''PBBO'') would mean the Best Protected Bid and the Best Protected Offer. This proposed rule is based on NYSE Arca Rule 1.1(dd) and NYSE American Rule 1.1E(dd).

• Proposed Rule 1.1(w) would define the term ''NMS Stock'' to mean any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. This proposed rule is based on NYSE Arca Rule 1.1(ee) and NYSE American Rule 1.1E(ddd).

• Proposed Rule 1.1(x) would define the term ''NYSE National'' to have the same meaning as the term ''Exchange'' as that term is defined in proposed Rule 1.1. This proposed rule is based on NYSE Arca Rule 1.1(i) [sic], but with reference to ''NYSE National'' instead of ''NYSE Arca.''

• Proposed Rule 1.1(y) would define the term ''NYSE National Marketplace'' to mean the electronic securities communications and trading facility of the Exchange through which orders are processed or are consolidated for execution and/or display. This proposed rule is based on NYSE American Rule 1.1E(e).

• Proposed Rule 1.1(z) would define the term ''Person'' to mean a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee of a trust fund, or any organized group of persons whether incorporated or not. This proposed rule is based on current NYSE National Rule 1.5(P)(1), which has been renumbered as Rule 1.1(z) without any changes.

• Proposed Rule 1.1(aa) would define the terms ''Person Associated with an ETP Holder,'' [sic] Associated Person of an ETP Holder'' or ''Associated Person'' to mean any partner, officer, director, or branch manager of an ETP Holder (or any Person occupying a similar status or performing similar functions), any Person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any Person Associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms. This proposed rule is based on current NYSE National Rule 1.5(P)(2), which has been renumbered as Rule 1.1(aa) with a non-substantive difference to add the short-hand definition of ''Associated Person'' to mean the same thing as ''Person Associated with an ETP Holder.''

• Proposed Rule 1.1(bb) would define the term ''Principal'' to mean any Person Associated with an ETP Holder actively engaged in the management of the ETP Holder's securities business, including supervision, solicitation, conduct of the ETP Holder's business, or the training of Authorized Traders and Persons Associated with an ETP Holder for any of these functions and that such Persons include Sole Proprietors, Officers, Partners, and Directors of Corporations. This proposed rule is based on current NYSE National Rule 1.5(P)(3), which has been renumbered as Rule 1.1(bb) with a non-substantive difference to change ''shall include'' to ''include.''

• Proposed Rule 1.1(cc) would define the term ''Principal—Financial and Operations'' to mean a Person Associated with an ETP Holder whose duties include: Final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are

involved in the actual maintenance of the ETP Holder's books and records from which such reports are derived; supervision and/or performance of the ETP Holder's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the ETP Holder's back office operations; or any other matter involving the financial and operational management of the ETP Holder. This proposed rule is based on current NYSE National Rule 1.5(P)(4), which has been renumbered as Rule 1.1(cc) without any changes.

• Proposed Rule 1.1(dd) would define the term ''Protected Bid'' or ''Protected Offer'' to mean a quotation in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The term ''Protected Quotation'' would mean a quotation that is a Protected Bid or Protected Offer. For purposes of the foregoing definitions, the terms ''Automated Trading Center,'' ''Automated Quotation,'' ''Manual Quotation,'' ''Best Bid,'' and ''Best Offer,'' would have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Securities Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(ss) and NYSE American Rule 1.1E(eee) without any substantive differences.

• Proposed Rule 1.1(ee) would define the term ''Security'' and ''Securities'' to mean any security as defined in Rule 3(a)(10) under the Exchange Act, provided, that for purposes of Rule 7, such term would mean any NMS stock. This proposed rule is based on NYSE Arca Rule 1.1(vv) and NYSE American Rule 1.1E(rr).

• Proposed Rule 1.1(ff) would define the term ''Securities Trader'' to mean any Person engaged in the purchase or sale of securities or other similar instruments for the account of an ETP Holder with which such Person is associated, as an employee or otherwise, and who does not transact any business with the public. This proposed rule is based on current NYSE National Rule 1.5(S)(1), which has been renumbered as Rule 1.1(ff) without any changes.

• Proposed Rule 1.1(gg) would define the term ''Securities Trader Principal'' to mean a Person who has become qualified and registered as a Securities Trader and passes the General Securities Principal qualification examination. Each Principal with responsibility over securities trading activities on the Exchange shall become qualified and registered as a Securities Trader Principal. This proposed rule is based on current NYSE National Rule 1.5(S)(2), which has been renumbered as Rule 1.1(gg) without any changes.

• Proposed Rule 1.1(hh) would define the term ''Self-Regulatory Organization'' and ''SRO'' to have the same meaning as set forth in the provisions of the Exchange Act relating to national securities exchanges. This proposed rule is based on NYSE Arca Rule 1.1(ww) and NYSE American Rule 1.1E(ss) without any substantive differences.

• Proposed Rule 1.1(ii) would define the term ''Trade-Through'' to mean the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. This proposed rule is based on NYSE Arca Rule 1.1(bbb) and NYSE American Rule 1.1E(fff) without any substantive differences.

• Proposed Rule 1.1(jj) would define the term ''Trading Center'' to mean, for purposes of Rule 7, a national securities exchange or a national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. For purposes of this definition, the terms ''SRO trading facility,'' ''alternative trading system,'' ''exchange market maker'' and ''OTC market maker'' would have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(ccc) without any substantive differences.

• Proposed Rule 1.1(kk) would define the term ''Trading Facilities'' to mean any and all electronic or automatic trading systems provided by the Exchange to ETP Holders. This proposed rule is based on NYSE American Rule 1.1E(xx) without any differences.

• Proposed Rule 1.1(ll) would define the term ''UTP Security'' to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. This proposed rule is based on NYSE Arca Rule 1.1(iii) and NYSE American Rule 1.1E(ii) without any substantive differences.

• Proposed Rule 1.1(mm) would define the term ''UTP Listing Market'' to mean the primary listing market for a UTP Security. This proposed rule is based on NYSE Arca Rule 1.1(ggg) and NYSE American Rule 1.1E(jj) without any substantive differences.

• Proposed Rule 1.1(nn) would define the term ''UTP Regulatory Halt'' to mean a trade suspension, halt, or pause called by the UTP Listing Market in a UTP Security that requires all market centers to halt trading in that security. This proposed rule is based on NYSE Arca Rule 1.1(hhh) and NYSE American Rule 1.1E(kk) without any substantive differences.

Rule 2—ETP Holders of the Exchange

The Exchange proposes to retain its existing rules relating to membership, which are currently set forth in Chapter II. Consistent with the Framework Filing, the Exchange proposes to move those rules, as amended, to new Rule 2. For consistency and clarity, the Exchange proposes to retain the same individual rule numbers. When moving the rules, the Exchange proposes non-substantive differences to (i) use a different sub-paragraph numbering format; [21] (ii) use the term ''Commentary'' instead of ''Interpretation and Policies;'' and (iii) update internal rule cross references to replace references to the term ''Chapter'' with the term ''Rule.'' [22]

Subject to these non-substantive differences, the Exchange proposes to move Rules 2.1 (Rights, Privileges and Duties of ETP Holders), 2.2 (Obligations of ETP Holders and the Exchange), 2.3 (ETP Holder Eligibility), 2.4 (Restrictions), 2.5 (Application Procedures for an ETP Holder), 2.6 (Revocation of an ETP or an Association with an ETP Holder), 2.7 (Voluntary Termination of Rights as an ETP Holder), 2.8 (Transfer or Sale of an ETP), and 2.9 (Dues, Assessments and Other Charges) to Rule 2 without any additional differences.

In addition to the non-substantive differences described above, the Exchange proposes to amend Commentary .01 to Rule 2.5 to facilitate the efficient reinstatement of ETP Holders by replacing the date ''May 30, 2014'' with the date ''February 1, 2017,'' which was when the Exchange ceased operations and terminated ETP Holder status. This amendment will allow the use of the existing expedited process—without any substantive changes—to facilitate the reinstatement, subject to

[21] Current Exchange rules use an ''(a)(i)(A)(1)'' sub-paragraph numbering convention and the Exchange proposes to use an ''(a)(1)(A)(i)'' sub-paragraph numbering convention.

[22] *See* proposed Rules 2.5(c) (replacing ''Chapter'' with ''Rule'') and 2.5(d) and (e)(2) (replacing ''Chapter X'' with ''Rule 10'').

certain conditions, of former ETP Holders of the Exchange and to register Associated Persons. The Exchange proposes non-substantive differences to update the rule cross references in Commentary .01 from Rule 2.4 to Rule 2.2.[23]

The Exchange proposes to delete the following rules currently set forth in Chapter II and not move them to Rule 2:

• Rule 2.10 (No Affiliation between Exchange and any ETP Holder). Proposed Rule 3.9, described in greater detail below, would establish the permitted relationships between ETP Holders and Exchange affiliates. Accordingly, current Rule 2.10 is not necessary. The Exchange proposes to designate Rule 2.10 as ''Reserved.''

• Rule 2.11 (NSX Securities LLC). The Exchange will no longer use NSX Securities LLC as a routing broker and is now affiliated with Archipelago Securities LLC. Proposed Rule 7.45, described in greater detail below and which is based on NYSE Arca Rule 7.45–E, would establish rules for both the inbound and outbound routing of orders. The Exchange proposes to designate Rule 2.11 as ''Reserved.''

• Rule 2.12 (Back-Up Order Routing Services). By its terms, current Rule 2.12 expired on September 30, 2008. Moreover, proposed Rule 7.45 would address all routing services on behalf of the Exchange. The Exchange proposes to designate Rule 2.12 as ''Reserved.''

The Exchange proposes that Rule 2.13 (Exchange Backup Systems and Mandatory Testing) would address mandatory participation in the testing of backup systems. To maintain consistency across all exchanges operated by NYSE Group, the Exchange proposes that Rule 2.13 would be based on NYSE Arca Rule 2.27 instead of current Rule 2.13 (Mandatory Participation in Testing of Backup Systems), with the following minor substantive differences to reflect the differences between the Exchange and NYSE Arca. First, because the Exchange does not have any OTP Holders, proposed Rule 2.13 would not reference OTP Holders. Second, because the Exchange would not have lead market makers, proposed Rule 2.13 would not include text based on Rule 2.27(c). The Exchange would delete current Rule 2.13 in its entirety.

The Exchange also proposes new Rule 2.18 (Activity Assessment Fees) to be included in Rule 2, which is based on NYSE Arca Rule 2.18 and NYSE American Rule 2.17E. Proposed Rule 2.18 would provide authority for the Exchange to impose fees, assessments, and other charges, for example, in connection with securities transaction fees required under Section 31 of the Act.[24] The Exchange proposes to delete current Rule 16.1, which similarly addresses the Exchange's authority to prescribe dues, fees, assessments and other charges.

To maintain rule numbering consistency, the Exchange proposes to add Rules 2.14 through and including Rule 2.17 and designate each rule ''Reserved.''

Because Rule 2 would set forth rules on membership, the Exchange proposes to delete the rules in Chapter II in their entirety. In addition, because Rule 2 would include rules authorizing the Exchange to prescribe dues, fees, assessments, and other charges, the Exchange proposes to delete the rules in Chapter XVI in their entirety.

Rule 3—Organization and Administration

The Exchange proposes new Rule 3 titled ''Organization and Administration,'' which would include specified rules set forth in NYSE Arca Rule 3 and NYSE Arca Rule 13.1.

To maintain the same rule numbers as NYSE Arca, proposed Rules 3.1 through 3.7 would be designated as ''Reserved''.[25]

Proposed Rule 3.8 (Liability for Payment) provides that an ETP Holder failing to pay any assessments, dues or other charges to the Exchange for thirty days after the same shall become payable, may be suspended by the Exchange in accordance with Rule 10.9555, except that failure to pay any fine levied in connection with a disciplinary action would be governed by Rule 10.8320. The proposed Rule is based on NYSE Arca Rule 3.8 (Liability for Payment) with non-substantive differences to reference the applicable disciplinary rules on the Exchange, described in greater detail below.

Proposed Rule 3.9 (Certain Relationships) would preclude an ETP Holder from being affiliated with NYSE Group, Inc., unless the Commission otherwise approves. The proposed Rule further provides that any failure by an ETP Holder to comply with Rule 3.9 would subject it to the disciplinary actions prescribed by Rule 10.9555, which provides for non-summary suspensions and other actions. The proposed Rule is based on NYSE Arca Rule 3.10 (Certain Relationships), with non-substantive differences to reference the applicable disciplinary rule on the Exchange, described in greater detail below. As discussed above, proposed Rule 3.9 obviates the need for current Rule 2.10 to be maintained.

Proposed Rule 3.10 (Notice of Expulsion or Suspension) would require an ETP Holder to provide prompt written notification to the Exchange whenever such ETP Holder is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, or [sic] fails to perform contracts or becomes insolvent. The proposed Rule would further require an ETP Holder to give prompt written notification to the Exchange with respect to the expulsion or suspension of any ETP Holder or any other Associated Person of such ETP Holder by any SRO. The proposed Rule is based on NYSE Arca Rule 13.1 without any differences.[26]

Proposed Rule 3.11 (Fingerprint-Based Background Checks of Exchange Employees and Others) would establish the Exchange's requirements for fingerprint-based background checks of Exchange employees and others. The proposed rule is based on NYSE Arca Rule 3.11 with non-substantive differences to use the term ''will'' instead of ''shall'' and number the Commentary as ''.01'' instead of ''.10.''

Rule 5—Securities Traded and Rule 8—Trading of Certain Exchange Traded Products

Rules 5 and 8 would set forth the Exchange's rules to: (1) Allow the Exchange to trade, pursuant to UTP, any NMS Stock listed on another national

[23] *See* Securities Exchange Act Release No. 78676 (August 25, 2016), 81 FR 60083 (August 31, 2016) (SR–NSX–2016–07) (Notice of filing of amendments to Chapter II, including moving rule text relating to requirements for Associated Persons from Rule 2.4 to Rule 2.2).

[24] The Exchange does not propose rule text based on Commentary .01 to NYSE Arca 2.18, which has expired on its own terms.

[25] NYSE Arca Rules 3.1 (Overview), 3.2 (Exchange Committees), 3.3 (Board Committees) relate to board committees, which are described in the Exchange's Fourth Amended and Restated By-Laws, which is available here: *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Inc_Fourth_Amended_and_Restated_Bylaws.pdf*. Proposed Rules 3.4 and 3.5 would be designated as ''Reserved'' like the analogous NYSE Arca rules. NYSE Arca Rule 3.6 authorizes the exchange to enter into surveillance agreements with domestic and foreign SROs, although it does not cover domestic agencies and foreign regulators. As discussed below, proposed Rule 8210(b) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof, a foreign regulator, or a domestic or foreign SRO. The authority to adopt and prescribe fines in NYSE Arca Rule 3.7 (Dues, Fees and Charges) would be encompassed in proposed Rule 2.9 (Dues, Assessments and Other Charges).

[26] As discussed below, proposed Rule 10.9555 would govern suspensions, cancellations, bars, limitations and prohibitions on access to the Exchange's services for failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange.

securities exchange, and (2) establish rules for the trading pursuant to UTP of certain Exchange Traded Products. Since NYSE American was the most recent exchange in the NYSE Group to add rules for the trading pursuant to UTP of Exchange Traded Products, the Exchange proposes rules that are based on current NYSE American Rules 5E and 8E.[27]

As noted above, because the Exchange will not be a listing venue, the Exchange proposes to include introductory language to both Rules 5 and 8 that would provide that these rules would apply only to the trading pursuant to UTP of Exchange Traded Products, and would not apply to the listing of Exchange Traded Products on the Exchange. The Exchange is proposing this language to clarify that the rules incorporated in Rules 5 and 8 should not be interpreted to be either initial or continued listing requirements of the Exchange, but rather, requirements that pertain solely to the trading of Exchange Traded Products pursuant to UTP on the Pillar platform. Accordingly, references to securities listed on the Exchange in proposed Rule 5 and 8 are not designed to be listing standards. Rather, similar to NYSE American Rules 5 and 8 and NYSE Rules 5P and 8P, proposed Rules 5 and 8 are intended only to address trading of securities on a UTP basis. The Exchange therefore proposes rules that are virtually identical to established and approved rules of NYSE American and NYSE that are for the same purpose.

To further clarify this point, proposed Rule 5.1(a)(1) would provide that the Exchange would not list any Exchange Traded Products unless it filed a proposed rule change under Section 19(b)(2)[28] [sic] under the Act. Therefore, the provisions of proposed Rules 5 and 8 described below, which permit the listing of Exchange Traded Products, would not be effective until the Exchange files a proposed rule change to amend its rules to comply with Rules 10A–3 and 10C–1 under the Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. This change would require the Exchange to add rules relating to the independence of compensation committees and their advisors [sic].[29]

In addition, the Exchange proposes the following non-substantive differences in its proposed rules as compared to the NYSE American Rules 5E and 8E that would be applied throughout Rules 5 and 8 (collectively, the ''General Definitional Term Changes''):

- Because the Exchange uses the term ''Commentary'' to refer to commentaries to its Rules, the Exchange proposes to substitute this term where ''Supplementary Material'' is used in the rules of NYSE American.
- Because the Exchange uses the defined term ''Exchange Act'' to refer to the Securities Exchange Act of 1934, as amended, the Exchange proposes to substitute this defined term where ''Securities Exchange Act of 1934,'' ''Securities Act of 1934,'' ''Securities Exchange Act,'' or ''1934 Act'' is used in the rules of NYSE American.
- Because the Exchange does not need to distinguish these proposed rules from other rules with the same numbering on the Exchange, the Exchange will not denote these proposed rules with the letter ''E'' at the end of each rule.
- Because the Exchange's rules regarding the production of books and records would be described in proposed Rule 11.4.1[30] the Exchange proposes to refer to Rule 11.4.1 wherever NYSE American Rule 440-Equities is referenced in the rules of NYSE American.
- Because the Exchange proposes to define the term ''Exchange Traded Product'' in Rule 1.1, described above, to use this term instead of ''Derivative Securities Product.''

Because Rules 5 and 8 would address all rules relating to trading securities on a UTP basis, the Exchange proposes to delete the rules in Chapter XV in their entirety.

Rule 5—Securities Traded

The Exchange proposes that Rule 5 would include rules based on NYSE American Rule 5E. Rule 5 would establish the Exchange's authority to extend UTP to all Tape A, B, and C securities. These proposed rules would also permit the Exchange to trade pursuant to UTP the following: ELNs, Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, Multifactor Index-Linked Securities, and Trust Certificates.

Proposed Rule 5.1(a)

Proposed Rule 5.1(a)(1) would provide that the Exchange may extend UTP to any security that is an NMS Stock (as defined in Rule 600 to Regulation NMS under the Exchange Act) that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act.[31] This proposed text is identical to NYSE American Rule 5.1E(a), NYSE Rule 5.1(a), and Rules 14.1 of both Cboe BYX Exchange, Inc. and Cboe EDGA Exchange, Inc. (''EDGA''). The proposed rule is also substantially similar to NYSE Arca Rule 5.1–E(a).[32]

Proposed Rule 5.1(a)(2) would establish rules for trading of UTP Exchange Traded Products, which are defined in Rule 1.1 (described above). Specifically, the requirements in subparagraphs (A)–(F) of proposed Rule 5.1(a)(2) would apply to UTP Exchange Traded Products traded on the Exchange. Proposed Rule 5.1(a)(2) and its sub-paragraphs are based on NYSE American Rule 5.1E(a)(2) and its sub-paragraphs and NYSE Rule 5.1(a)(2) and its subparagraphs with a non-substantive difference to use the defined term of ''UTP Exchange Traded Product,'' which is defined in Rule 1.1.

Under proposed Rule 5.1(a)(2)(A), the Exchange would file a Form 19b–4(e) with the Commission with respect to each Exchange Traded Product[33] the

[27] *See* NYSE American ETP Listing Rules Filing, *supra* note 7. The proposed rules are also based on NYSE Rules 5P and 8P. *See* NYSE ETP Listing Rules Filing, *supra* note 8. Both the NYSE American and NYSE rules are modeled on NYSE Arca Rules 5–E and 8–E.

[28] 15 U.S.C. 78s(b)(2).

[29] On June 20, 2012, the Commission adopted Rule 10C–1 to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Rule 10C–1 under the Act directs each national securities exchange to prohibit the listing of any equity security of an issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. *See,* CFR 240.10C–1; Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) and Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012).

[30] In addition to the existing obligations under the Exchange's rules regarding the production of books and records, proposed Rule 11.4.1 provides restrictions on ETP Holder activities pertaining to books and records.

[31] 15 U.S.C. 78l(f). *See also* 17 CFR 242.600.

[32] *See* NYSE Arca Rule 5.1–E(a)(1) and Securities Exchange Act Release No. 67066 (May 29, 2012), 77 FR 33010 (June 4, 2012) (SR–NYSEArca–2012–46). *See also* Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR–BATS–2008–004); Nasdaq PHLX LLC (''Phlx'') Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR–Phlx–2008–34); and Nasdaq ISE, LLC (''ISE'') Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR–ISE–2007–99).

[33] Although Rule 19b–4(e) of the Act defines any type of option, warrant, hybrid securities product or any other security, other than a single equity

Continued

Exchange trades pursuant to UTP within five days after commencement of trading.

Proposed Rule 5.1(a)(2)(B) would provide that the Exchange would distribute an information circular prior to the commencement of trading in an Exchange Traded Product that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange's rules that will apply to the Exchange Traded Product, including Rules 8.4 and 8.5,[34] and (c) information about the dissemination of value of the underlying assets or indices.

Under proposed Rule 5.1(a)(2)(D), the Exchange would halt trading in a UTP Exchange Traded Product as provided for in proposed Rule 7.18. The Exchange proposes different rule text from NYSE American Rule 5.1(a)(2)(D) to streamline its rules and eliminate duplication in requirements relating to the halting of trading of UTP Exchange Traded Products, which are addressed in proposed Rule 7.18, described below.

Proposed Rule 5.1(a)(2)(F) provides that the Exchange's surveillance procedures for Exchange Traded Products traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

Proposed Rules 5.1(a)(2)(C) and (E) would establish the following requirements for ETP Holders that have customers that trade UTP Exchange Traded Products:

• *Prospectus Delivery Requirements.* Proposed Rule 5.1(a)(2)(C)(i) would remind ETP Holders that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (the ''Securities Act''), unless the Exchange Traded Product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, as amended (the ''1940 Act''), and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. ETP Holders would also be required to provide a prospectus to a customer requesting a prospectus.[35]

• *Written Description of Terms and Conditions.* Proposed Rule 5.1(a)(2)(C)(ii) would require ETP Holders to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products.

• *Market Maker Restrictions.* Proposed Rule 5.1(a)(E) would establish certain restrictions for any ETP Holder registered as a market maker in an Exchange Traded Product listed on the exchange that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, ''Reference Assets''). Specifically, such an ETP Holder must file with the Exchange and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered market maker may have or over which it may exercise investment discretion.[36] If an account in which an ETP Holder acting as a registered market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, has not been reported to the Exchange as required by this Rule, an ETP Holder acting as registered market maker in the Exchange Traded Product would be [sic] permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Finally, a market maker could not use any material nonpublic information in connection with trading a related instrument.

Proposed Rule 5.1(b)

As noted above, the terms ''Exchange Traded Product'' and ''UTP Exchange Traded Product'' would be defined in Rule 1.1. The Exchange proposes to set forth additional definitions that would be relevant to the rules for the trading pursuant to UTP of the Exchange Traded Products in proposed Rule 5.1(b). Proposed Rule 5.1(b) is based on NYSE American Rule 5.1E(b). To maintain consistency in rule references between the Exchange's proposed rules and NYSE American's rules, the Exchange proposes to Reserve the same subparagraphs in the definitions of proposed Rule 5.1(b) as those that are Reserved in the subparagraphs of NYSE American Rule 5.1E(b).[37]

Proposed Rule 5.2(j)(2)–(j)(7)

The Exchange proposes to add Rules 5.2(j)(2)–(j)(7), which would be substantially identical to NYSE American Rules 5.2E(j)(2)–(j)(7) and substantially similar to NYSE Rules 5.2(j)(2)–(j)(7) and NYSE Arca Rules 5.2–E(j)(2)–(j)(7). These proposed rules would permit the Exchange to trade pursuant to UTP the following:

• ELNs that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(2);

• Investment Company Units that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(3);

• Index-Linked Exchangeable Notes that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(4);

• Equity Gold Shares that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(5);

• Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(6); and

• Trust Certificates that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(7).

The text of these proposed rules is identical to NYSE American Rules 5.2E(j)(2)–5.2(j)(7), other than certain non-substantive and technical differences explained below.

option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument, as a ''new derivative securities product,'' the Exchange prefers to refer to these types of products that it will be trading as ''exchange traded products,'' so as not to confuse investors with a term that can be deemed to imply such products are futures or options related.

[34] *See* proposed Rules 8.4 (Account Approval) and 8.5 (Suitability).

[35] Proposed Rule 5.1(a)(2)(C)(iii).

[36] The proposed rule would also, more specifically, require a market maker to file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which related instruments are traded (1) in which the market maker holds an interest, (2) over which it has investment discretion, or (3) in which it shares in the profits and/or losses. In addition, a market maker would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by the proposed rule.

[37] The Exchange is proposing to designate paragraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(17) and (b)(19) of proposed Rule 5.1(b) as ''Reserved'' because they are Reserved in NYSE American Rule 5.1E(b).

The Exchange proposes to Reserve paragraphs 5.2(a)–(i) [38] and (j)(1),[39] to maintain the same rule numbers as the NYSE American rules with which it conforms.

Proposed Rule 5.2(j)(2) (ELNs)

The Exchange is proposing Rule 5.2(j)(2) to provide rules for the trading pursuant to UTP of ELNs, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(2).[40]

Proposed Rule 5.2(j)(3) (Investment Company Units)

The Exchange proposes Rule 5.2(j)(3) to establish rules for the trading pursuant to UTP of investment company units, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(3).[41]

Proposed Rule 5.2(j)(4) (Index-Linked Exchangeable Notes)

The Exchange proposes Rule 5.2(j)(4) to establish rules for the trading pursuant to UTP of index-linked exchangeable notes, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive differences between this proposed rule and NYSE American Rule 5.2E(j)(4): [42]

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(4), an index-linked exchangeable note and its issuer must meet the criteria in NYSE Arca Rule 5.2–E(j)(1) (Other Securities), except that the minimum public distribution will be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations then there is no minimum public distribution and number of holders.

Because neither NYSE American nor the Exchange have and are not proposing a rule for ''Other Securities'' comparable to NYSE Arca Rule 5.2–E(j)(1), the Exchange, like NYSE American, proposes to reference NYSE Arca Rule 5.2–E(j)(1) in subparagraphs (a) and (c) of proposed Rule 5.2(j)(4) in establishing the criteria that an issuer and issue must satisfy.[43]

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(4), an index to which an exchangeable note is linked and its underlying securities must meet (i) the procedures and criteria set forth in Supplementary Material .03 to NYSE American Rule 901C; [44] or (ii) the criteria set forth in subsections (C) and (D) of NYSE American Rule 5.2E(j)(2), the index concentration limits set forth in Supplementary Material .03(a)(7) to NYSE American Rule 901C, and Supplementary Material .03(b)(iii) to NYSE American Rule 901C insofar as it relates to Supplementary Material .03(a)(7) to NYSE American Rule 901C. Because the Exchange does not plan to trade options at this time and is not proposing rules for listing of index options contracts, the Exchange is proposing to refer to NYSE Arca Rule 5.13–O in proposed Rule 5.2(j)(4)(d)(i) and (ii), which has the same requirements as NYSE American Rule 901C. The Exchange would apply the criteria set forth in NYSE Arca Rule 5.13–O in determining whether an index underlying an index-linked exchangeable note satisfies the requirements of Rule 5.2(j)(4)(d).[45]

The Exchange proposes to reference NYSE Arca Rule 5.13–O because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 5.2(j)(4), which also references NYSE Arca Rule 5.13–O.[46]

Proposed Rule 5.2(j)(5) (Equity Gold Shares)

The Exchange is proposing Rule 5.2(j)(5) to provide rules for the trading pursuant to UTP of equity gold shares, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(5).[47]

Proposed Rule 5.2(j)(6) (Index-Linked Securities)

The Exchange is proposing Rule 5.2(j)(6) to provide rules for the trading pursuant to UTP of equity index-linked securities, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the

[38] NYSE American adopted rules for the trading pursuant to UTP of ETPs that are substantially identical to the rules of NYSE Arca. *See* NYSE American ETP Listing Rules Filing, *supra* note 7. In order to maintain the same rule numbers as NYSE Arca, NYSE American reserved paragraphs 5.2E(a)–(i) as these rules pertain to specific listing criteria for NYSE Arca and not trading ETPs pursuant to UTP, and NYSE American was not proposing similar rules at the time. Because the Exchange will not be a listing venue, the Exchange similarly proposes to designate these rules as ''Reserved.''

NYSE Arca Rule 5.2–E(a) pertains to applications for admitting securities to list on NYSE Arca and NYSE Arca Rule 5.2–E(b) pertains to NYSE Arca's unique two-tier listing structure.

NYSE Arca Rules 5.2–E(c)–(g) relate to listing standards for securities that are not ETPs, and NYSE American did not propose rule changes related to such securities.

NYSE Arca Rule 5.2–E(h) pertains to Unit Investment Trusts (''UITs''). NYSE American trades UITs pursuant to UTP under proposed Rule 5.2(j)(3) (Investment Company Units) or proposed Rule 8.100 (Portfolio Depository Receipts), and the Exchange is proposing the same.

[39] NYSE American added rules for the trading pursuant to UTP of ETPs that are substantially identical to the rules of NYSE Arca. *See id.* and NYSE American ETP Listing Rules Filing, *supra* note 7. In order to maintain the same rule numbers as NYSE Arca, NYSE American reserved paragraph 5.2E(j)(1) as NYSE Arca Rule 5.2–E(j)(1) pertains to ''Other Securities'' that are not otherwise covered by the requirements contained in the other listing rules of NYSE Arca. As NYSE American added only the rules that were necessary for the exchange to trade ETPs pursuant to UTP, NYSE American did not propose a rule comparable to NYSE Arca Rule 5.2–E(j)(1) at that time. The Exchange similarly does not propose rules comparable to that NYSE Arca rule.

[40] *See* NYSE American Rule 5.2E(j)(2), which is based on NYSE Arca Rule 5.2–E(j)(2). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 50319 (September 7, 2004), 69 FR 55204 (September 13, 2004) (SR–PCX–2004–75); 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR–NYSEArca–2007–98); 58745 (October 7, 2008), 73 FR 60745 (October 14, 2008) (SR–NYSEArca–2008–94).

[41] *See* NYSE American Rule 5.2E(j)(3), which is based on NYSE Arca Rule 5.2–E(j)(3). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) and 40603 (November 3, 1998), 63 FR 59354 (November 3, 1998) (SR–PCX–98–29).

[42] *See* NYSE American Rule 5.2E(j)(4), which is based on NYSE Arca Rule 5.2–E(j)(4). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release No. 49532 (April 7, 2004), 69 FR 19593 (April 13, 2004) (SR–PCX–2004–01).

[43] The Exchange will monitor for any changes to the rules of NYSE Arca, and will amend its rules accordingly to conform to the rules of NYSE Arca. The Exchange notes that it is proposing to cross-reference to the rules of an affiliate of the Exchange, which will facilitate monitoring for changes to such rules. The Exchange also notes that it is proposing to follow the established and approved rules of NYSE, which also reference the rules of NYSE Arca. *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[44] Supplementary Material .03 to NYSE American Rule 901C is substantially identical to NYSE Arca Rule 5.13–O (NYSE Arca Rule 5.13–O is cross-referenced in NYSE Arca Rule 5.2–E(j)(4), on which NYSE American Rule 5.2E(j)(4) was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7, and sets forth criteria for narrow-based and micro narrow-based indexes on which an options contract may be listed without filing a proposed rule change under Section 19(b) of the Exchange Act.

[45] *See supra* note 43.

[46] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[47] *See* NYSE American Rule 5.2E(j)(5), which is based on NYSE Arca Rule 5.2–E(j)(5). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117).

Exchange is proposing the following non-substantive changes between this proposed rule and NYSE American Rule 5.2E(j)(6): [48]

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(6), both the issue and issuer of an index-linked security must meet the criteria in NYSE Arca Rule 5.2–E(j)(1) (Other Securities), with certain specified exceptions. Because neither NYSE American nor the Exchange have and are not proposing a rule for ''Other Securities'' comparable to NYSE Arca Rule 5.2–E(j)(1), the Exchange, like NYSE American, proposes to reference NYSE Arca Rule 5.1–E(j)(1) in proposed Rule 5.2(j)(6)(A)(a) establishing the criteria that an issue and issuer must satisfy.[49]
- The listing standards for Equity Index-Linked Securities in NYSE American Rule 5.2E(j)(6) reference NYSE American Rule 915 in describing the criteria for securities that compose 90% of an index's numerical value and at least 80% of the total number of components.

Because the Exchange does not plan to trade options at this time and is not proposing rules for establishing the criteria for underlying securities of put and call options contracts described in NYSE American Rule 915,[50] the Exchange is proposing to refer to NYSE Arca Rule 5.3–O in paragraph (B)(I)(1)(b)(iv) of proposed Rule 5.2(j)(6), to establish the initial listing criteria that an index must meet to trade pursuant to UTP. The Exchange would apply the criteria set forth in NYSE Arca Rule 5.3–O in determining whether an index's numerical value meets the then current criteria for standardized option trading.[51]

The Exchange proposes to reference NYSE Arca Rule 5.3–O because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 5.2(j)(6), which also references NYSE Arca Rule 5.3–O.[52]

Proposed Rule 5.2(j)(7) (Trust Certificates)

The Exchange is proposing Rule 5.2(j)(7) to provide rules for the trading pursuant to UTP of trust certificates, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(7).[53]

Rule 8—Trading of Certain Exchange Traded Products

The Exchange proposes that the rules set forth in Rule 8 would be based on Sections 1 and 2 of NYSE American Rule 8E, NYSE Rule 8P, and NYSE Arca Rule 8–E. These proposed rules would permit the Exchange to trade pursuant to UTP the following: Currency and Index Warrants, Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.[54]

The Exchange proposes to designate Rule 8.100(g) as Reserved to maintain the same rule numbers as the NYSE American rules with which it conforms.

The text of proposed Rule 8 is based on Sections 1 and 2 of NYSE American Rule 8E, with only specified non-substantive and technical differences explained below and the General Definitional Term Changes described above. In addition, as described above, proposed Rule 8 would apply only to the trading pursuant to UTP of Exchange Traded Products on the Exchange would not apply to the listing of Exchange Traded Products on the Exchange.

Proposed Rules 8.1–8.13—Currency and Index Warrants

The Exchange is proposing Rules 8.1–8.13 to provide rules for the trading pursuant to UTP (including sales-practice rules such as those relating to suitability and supervision of accounts) of currency and index warrants.[55] Proposed Rules 8.1–8.13 are based on NYSE American rules 8.1E–8.13E. The Exchange is proposing the following non-substantive differences between these proposed rules and NYSE American Rules 8.1E–8.13E (Currency and Index Warrants):

Proposed Rule 8.1 (General)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.1E.

Proposed Rule 8.2 (Definitions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.2E.

Proposed Rule 8.3 (Listing of Currency and Index Warrants)

Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.3E.

Proposed Rule 8.4 (Account Approval)

The account approval rules of NYSE American Rule 8.4E reference NYSE American Rule 921 [56] in describing the criteria that must be met for opening up a customer account for options trading. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to the opening of accounts that are approved for options trading, the Exchange proposes to require an ETP Holder to ensure its account is approved for options trading pursuant to NYSE Arca Rule 9.18–E(b).[57]

The Exchange proposes to reference NYSE Arca Rule 9.18–E(b) because the Exchange does not have options trading

[48] *See* NYSE American Rule 5.2E(j)(6), which is based on NYSE Arca Rule 5.2–E(j)(6). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 54231 (July 27, 2006), 71 FR 44339 (August 4, 2006) (SR–NYSEArca–2006–19); 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) (SR–NYSEArca&2008–136); and 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63).

[49] *See supra* note 43.

[50] NYSE American Rule 915 is substantially identical to NYSE Arca Rule 5.3–O (NYSE Arca Rule 5.3–O is cross-referenced in NYSE Arca Rule 5.2–E(j)(6), on which NYSE American Rule 5.2E(j)(6) was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes the criteria for underlying securities of put and call option contracts listed on the exchange.

[51] *See supra* note 43.

[52] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[53] *See* NYSE American Rule 5.2E(j)(7), which is based on NYSE Arca Rule 5.2–E(j)(7). *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca-2008–123) and 58920 (November 7, 2008), 73 FR 68479 (November 18, 2008) (SR–NYSEArca–2008–123).

[54] The Exchange is only proposing listing and trading rules necessary to trade ETPs pursuant to UTP. Accordingly, the Exchange, like NYSE American and NYSE LLC, is not proposing a rule comparable to NYSE Arca Rule 8.100–E(g).

[55] NYSE American Rules 8.1E–8.13E, which are based on NYSE Arca Rules 8.1–E–8.13–E, all pertain to the listing and trading requirements (including sales-practice rules such as those relating to suitability and supervision of accounts) for Currency and Index Warrants. *See* Section 1 of NYSE American Rule 8E; *see also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) and 59886 (May 7, 2009), 74 FR 22779 (May 14, 2009) (SR–NYSEArca–2009–39).

[56] NYSE American Rule 921 is substantially similar to NYSE Arca Rule 9.18–E(b) (NYSE Arca Rule 9.18–E(b) is cross-referenced in NYSE Arca Rule 8.4–E, on which NYSE American Rule 8.4E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes criteria that must be met to open up a customer account for options trading.

[57] *See supra* note 43.

rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.4 and NYSE Arca Rule 8.4–E, which also reference NYSE Arca Rule 9.18–E(b).[58]

Proposed Rule 8.5 (Suitability)

The account suitability rules of NYSE American Rule 8.5E reference NYSE American Rule 923[59] in describing rules that apply to recommendations made in stock index, currency index and currency warrants. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to account suitability for options trading described in NYSE American Rule 923, the Exchange proposes to cross-reference NYSE Arca Rule 9.18–E(c*)* in proposed Rule 8.5. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18–E(c) in determining account suitability.[60]

The Exchange proposes to reference NYSE Arca Rule 9.18–E(c) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.5 and NYSE Arca Rule 8.5–E, which also reference NYSE Arca Rule 9.18–E(c).[61]

Proposed Rule 8.6 (Discretionary Accounts)

The rules of NYSE American Rule 8.6E state that NYSE American Rule 408-Equities[62] will not apply to customer accounts insofar as they may relate to discretion to trade in stock index, currency index and currency warrants, and that NYSE American Rule 924[63] will apply to such discretionary accounts instead. Because the Exchange does not plan to trade options at this time and is not proposing a rule specific to the Exchange's discretionary accounts for equity trading as described in NYSE American Rule 408-Equitites, nor a rule that pertains to exercising discretion for options trading described in NYSE American Rule 924, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18–E(e) in proposed Rule 8.6. The Exchange would apply the criteria set forth in this rule in determining whether an ETP Holder appropriately exercised discretion.[64]

The Exchange proposes to reference NYSE Arca Rule 9.18–E(e) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.6 and NYSE Arca Rule 8.6–E, which also reference NYSE Arca Rule 9.18–E(e).[65]

Proposed Rule 8.7 (Supervision of Accounts)

The account supervision rules of NYSE American Rule 8.7E reference NYSE American Rule 922[66] in describing rules that apply to the supervision of customer accounts in which transactions in stock index, currency index or currency warrants are effected. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to the supervision of customer accounts for options trading described in NYSE American Rule 922, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18–E(d) in proposed Rule 8.7. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18–E(d)in supervising such accounts.[67]

The Exchange proposes to reference NYSE Arca Rule 9.18–E(d) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.7 and NYSE Arca Rule 8.7–E, which also reference NYSE Arca Rule 9.18–E(d).[68]

Proposed Rule 8.8 (Customer Complaints)

The customer complaint rules of NYSE American Rule 8.8E reference NYSE American Rule 932[69] in describing rules that apply to customer complaints received regarding stock index, currency index or currency warrants. Because the Exchange does not plan to trade options at this time and is not proposing to add rules for doing a public business in options as described in NYSE American Rule 932, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18–E(l) in proposed Rule 8.8. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18–E(l) to customer complaints.[70]

The Exchange proposes to reference NYSE Arca Rule 9.18–E(l) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.8 and NYSE Arca Rule 8.8–E, which also reference NYSE Arca Rule 9.18–E(l).[71]

Proposed Rule 8.9 (Prior Approval of Certain Communications to Customers)

The rules pertaining to communications to customers regarding stock index, currency index and currency warrants described in NYSE American 8.9E reference NYSE American Rule 991.[72] Because the Exchange does not plan to trade options at this time and is not proposing to add rules for advertisements, market letters and sales literature relating to options as described in NYSE American Rule 991, the Exchange proposes to cross-reference to the Commentaries to NYSE Arca Rule 9.28–E in proposed Rule 8.9. The Exchange would apply the criteria set forth in the Commentaries to NYSE

[58] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[59] Rule 923 is substantially similar to NYSE Arca Rule 9.18–E(c) (NYSE Arca Rule 9.18–E(c) is cross-referenced in NYSE Arca Rule 8.5–E, on which NYSE American Rule 8.5E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes suitability rules that pertain to recommendations in stock index, currency index and currency warrants.

[60] *See supra* note 42 [sic].

[61] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[62] NYSE American Rule 408-Equities is substantially similar to NYSE Arca Rule 9.6–E(a) (NYSE Arca Rule 9.6–E(a) is cross-referenced in NYSE Arca Rule 8.6–E, on which NYSE American Rule 8.6E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and pertains to the rules of the exchange with regard to discretionary power in customer accounts for equity trading.

[63] NYSE American Rule 924 is substantially similar to NYSE Arca Rule 9.18–E(e) (NYSE Arca Rule 9.18–E(e) is cross-referenced in NYSE Arca Rule 8.6–E, on which NYSE American Rule 8.6E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes rules pertaining to discretion as to customer accounts for options trading.

[64] *See supra* note 43.

[65] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[66] NYSE American Rule 922 is substantially similar to NYSE Arca Rule 9.18–E(d) (NYSE Arca Rule 9.18–E(d) is cross-referenced in NYSE Arca Rule 8.7–E, on which NYSE American Rule 8.7E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes account supervision rules that apply to the supervision of customer accounts in which transactions in stock index, currency index and currency warrants are effected.

[67] *See supra* note 43.

[68] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[69] NYSE American Rule 932 is substantially similar to NYSE Arca Rule 9.18–E(l) (NYSE Arca Rule 9.18–E(l) is cross-referenced in NYSE Arca Rule 8.8–E, on which NYSE American Rule 8.8E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes rules that apply to customer complaints received regarding stock index, currency index or currency warrants.

[70] *See supra* note 43.

[71] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[72] NYSE American Rule 991 is substantially similar to NYSE Arca Rule 9.28–E (NYSE Arca Rule 9.28–E is cross-referenced in NYSE Arca Rule 8.9–E, on which NYSE American Rule 8.9E was originally based; *see* NYSE American ETP Listing Rules Filing, *supra* note 7), and establishes rules regarding advertisements, sales literature and educational material issued to any customer or member of the public pertaining to stock index, currency index or currency warrants.

Arca Rule 9.28–E to prior approvals of such communications to customers.[73]

The Exchange proposes to reference to the Commentaries to NYSE Arca Rule 9.28–E because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.9 and NYSE Arca Rule 8.9–E, which also reference Commentaries to NYSE Arca Rule 9.28–E.[74]

Proposed Rule 8.10 (Position Limits)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.10E.

Proposed Rule 8.11 (Exercise Limits)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.11E.

Proposed Rule 8.12 (Trading Halts or Suspensions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.12E.

Proposed Rule 8.13 (Reporting of Warrant Positions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.13E.

Proposed Rules 8.100—8.700

The Exchange is proposing:

• Rule 8.100 to provide rules for the trading pursuant to UTP of portfolio depositary receipts. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.100E.[75]

• Rule 8.200 to provide rules for the trading pursuant to UTP of trust issued receipts. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.200E.[76]

• Rule 8.201 to provide rules for the trading pursuant to UTP of commodity-based trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.201E.[77]

• Rule 8.202 to provide rules for the trading pursuant to UTP of currency trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.202E.[78]

• Rule 8.203 to provide rules for the trading pursuant to UTP of commodity index trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.203E.[79]

• Rule 8.204 to provide rules for the trading pursuant to UTP of commodity futures trust shares, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.204E.[80]

• Rule 8.300 to provide rules for the trading pursuant to UTP of partnership units. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.300E-Equities.[81]

• Rule 8.400 to provide rules for the trading pursuant to UTP of paired trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.400E.[82]

• Rule 8.500 to provide rules for the trading pursuant to UTP of trust units. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.500E.[83]

• Rule 8.600 to provide rules for the trading pursuant to UTP of managed fund shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.600E.[84]

• Rule 8.700 to provide rules for the trading pursuant to UTP of managed trust securities. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.700E.[85]

Rule 6—Consolidated Audit Trail and Order Audit Trail System

Proposed Rule 6.6800 Series (Compliance Rules)

As noted above, the Exchange proposes to renumber its existing

[73] *See supra* note 43.

[74] *See* NYSE ETP Listing Rules Filing, *supra* note 8.

[75] *See* NYSE American Rule 8.100E, which is based on NYSE Arca Rule 8.100–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (SR–PCX–97–35); 39188 (October 2, 1997), 62 FR 53373 (October 14, 1997) (SR–PCX–97–35); and 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14).

[76] *See* NYSE American Rule 8.200E, which is based on NYSE Arca Rule 8.200–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73) and 44182 (April 16, 2001), 66 FR 21798 (April 16, 2001) (SR–PCX–2001–01).

[77] *See* NYSE American Rule 8.201E, which is based on NYSE Arca Rule 8.201–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR–PCX–2004–132).

[78] *See* NYSE American Rule 8.202E, which is based on NYSE Arca Rule 8.202–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 60065 (June 8, 2009), 74 FR 28310 (June 15, 2009) (SR–NYSEArca–2009–47) and 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR–PCX–2005–123).

[79] *See* NYSE American Rule 8.203E, which is based on NYSE Arca Rule 8.203–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR–NYSEArca–2006–12).

[80] *See* NYSE American Rule 8.204E, which is based on NYSE Arca Rule 8.204–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR–NYSEArca–2008–09) and 57636 (April 8, 2008), 73 FR 20344 (April 15, 2008) (SR–NYSEArca–2008–09).

[81] *See* NYSE American Rule 8.300E, which is based on NYSE Arca Rule 8.300–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (January 2, 2006) (SR–NYSEArca–2006–11).

[82] *See* NYSE American Rule 8.400E, which is based on NYSE Arca Rule 8.400–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75) and 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR–NYSEArca–2008–63).

[83] *See* NYSE American Rule 8.500E, which is based on NYSE Arca Rule 8.500–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 57059 (December 28, 2007), 73 FR 909 (January 4, 2008) (SR–NYSEArca–2006–76) and 63129 (October 19, 2010), 75 FR 65539 (October 25, 2010) (SR–NYSEArca–2010–91).

[84] *See,* NYSE American Rule 8.600E, which is based on NYSE Arca Rule 8.600–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008) (SR–NYSEArca–2008–25) and 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25).

[85] *See,* NYSE American Rule 8.700E, which is based on NYSE Arca Rule 8.700–E. *See also* NYSE American ETP Listing Rules Filing, *supra* note 7 *and* Securities Exchange Act Release Nos. 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR–NYSEArca–2009–30) and 59835 (April 28, 2009), 74 FR 21041 (May 6, 2009) (SR–NYSEArca–2009–30).

Compliance Rules relating to the CAT NMS Plan under Rule 6 without any substantive changes. The Compliance Rules require Industry Members to comply with the provisions of the CAT NMS Plan.[86] The Compliance Rule includes twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

In moving the Compliance Rules to Rule 6, the Exchange proposes to renumber Rules 14.1 through 14.12 as proposed Rules 6.6800 through 6.6895, which is based in part on the NYSE Arca rule numbering for its Compliance Rules, but not make any substantive changes to those rules. The Exchange proposes non-substantive differences to the Compliance Rules to use a different sub-paragraph numbering format.[87] The proposed sub-numbering for the Compliance Rules (*i.e.,* 6800–6895) mirrors the rule-numbering framework for the CAT NMS Plan Compliance Rules on FINRA, NYSE, and NYSE American and includes a sub-section rule heading of ''Rule 6.6800 Consolidated Audit Trail Compliance Rule.''

Proposed Rule 6.6900 (Consolidated Audit Trail—Fee Dispute Resolution)

The Exchange proposes Rule 6.6900 to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members. Section 11.5 of the CAT NMS Plan requires participants to that plan to adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or Subcommittee on such matters will be binding on Industry Members, without prejudice to the right of any Industry Member to seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum. The Commission has approved industry-wide rules that set forth such fee dispute procedures.[88] At the time when CAT NMS Plan Participants adopted the Fee Dispute Rule, the Exchange had ceased operations and therefore did not adopt the rule.

Proposed Rule 6.6900 would set forth the Exchange's proposed procedures to resolve disputes initiated by an Industry Member with respect to CAT fees and is based on NYSE Arca Rule 11.6900 specifically, and the rules of other exchanges generally, without any substantive differences.[89] Proposed Rule 6.6900(a) would set forth definitions used for purposes of the rule and proposed Rule 6.6900(b) would set forth the ''Fee Dispute Resolution Procedures under the CAT NMS Plan.'' The proposed sub-numbering for the CAT NMS Plan Fee Dispute Rule (*i.e.,* 6900) mirrors the rule-numbering framework for the CAT NMS Plan Fee Dispute Rule on FINRA, NYSE, and NYSE American.

Proposed Rule 6.7400 (Order Audit Trail System)

The Exchange proposes OATS rules based on NYSE Arca Rules 6.7400–E Series, which in turn are based on the FINRA Rules 7400 Series. The proposed NYSE National Rule 6.7400 Series would consist of proposed Rules 6.7410 through 6.7470, which are based on NYSE Arca Rules 6.7410–E through 6.7470–E without any substantive differences. The Exchange proposes non-substantive differences throughout the Rule 6.7400 Series to refer to the Exchange instead of NYSE Arca and to use the defined term ''Associated Person.''

- Proposed Rule 6.7140 (Definitions) would set forth definitions used for purposes of the Rule 6.7400 Series and is based on NYSE Arca Rule 6.7410–E without any substantive differences.
- Proposed Rule 6.7420 (Applicability) would specify that the requirements of the Rule 6.7400 Series are applicable to all ETP Holders and their associated persons and to all NMS Stocks that trade on the Exchange, and is based on NYSE Arca Rule 6.720–E without any differences.
- Proposed Rule 6.7430 (Synchronization of ETP Holder Business Clocks) would require ETP Holders to synchronize business clocks used for purposes of recording the date and time of specified events, and is based on NYSE Arca Rule 6.7430 without any differences.
- Proposed Rule 6.7440 (Recording of Order Information) would require ETP Holders to comply with FINRA Rule 7440 as if such rule were part of the Exchange's rules and is based on NYSE Arca Rule 6.7440–E without any substantive differences.
- Proposed Rule 6.7450 (Order Data Transmission Requirements) would require ETP Holders to comply with FINRA Rule 7450 as if such rule were part of the Exchange's rules and is based on NYSE Arca Rule 6.7450–E without any substantive differences.
- Proposed Rule 6.7460 (Violation of Order Audit Trail System Rules) would provide that failure of an ETP Holder or associated person to comply with the requirements of proposed Rules 6.7410 through 6.7460 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade. This proposed rule is based on NYSE Arca Rule 6.7460–E with a non-substantive difference to cross reference proposed Rule 11.3.1 instead of NYSE Arca Rule 9.2010.
- Proposed Rule 6.7470 (Exemption to the Order Recording and Data Transmission Requirements) would provide for how an ETP Holder may apply for an exemption from the Rule 6.7400 Series and is based on NYSE Arca Rule 6.7470–E without any differences.

At the time the Exchange ceased operations, it did not require its ETP Holders to maintain order information pursuant to an order tracking system and therefore, did not have the OATS rules or similar rules in its rulebook. The Exchange does not believe that requiring Exchange ETP Holders to comply with the OATS requirements in connection with the re-launch of trading will impose an undue burden on such ETP Holders or its associated persons. Once the Exchange restarts operation, ETP Holders that are also FINRA members (''Dual Members'') would already be subject to FINRA's OATS requirements. Similarly, because NYSE Arca, NYSE, and NYSE American each also have rules based on the FINRA OATS requirements, Exchange ETP Holders that are not members of FINRA, but are members of NYSE Arca, NYSE, or NYSE American, will already be

[86] Unless otherwise specified, capitalized terms used are defined as set forth herein, the CAT Compliance Rule Series or in the CAT NMS Plan.

[87] Current Exchange rules use an ''(a)(i)(A)(1)'' sub-paragraph numbering convention and the Exchange proposes to use an ''(a)(1)(A)(i)'' sub-paragraph numbering convention.

[88] *See* Securities Exchange Act Release No. 81500 (August 30, 2017), 82 FR 42143 (September 6, 2017) (SR–BatsBYX–2017–13; SR–BatsBZX–2017–39; SR–BatsEDGA–2017–14; SR–BatsEDGX–2017–24; SR–BOX–2017–19; SR–CBOE–2017–043; SR–IEX–2017–21; SR–ISE–2017–52; SR–MRX–2017–08; SR–MIAX–2017–24; SR–NASDAQ–2017–059; SR–BX–2017–029; SR–GEMX–2017–059; SR–PHLX–2017–47; SR–NYSE–2017–24; SR–NYSEArca–2017–60; SR–NYSEMKT–2017–31) (Order Approving Proposed Rule Changes to Adopt a CAT Fee Dispute Resolution Process) (''Fee Dispute Approval Order'').

[89] The Exchange will file a separate proposed rule change for Consolidated Audit Trail Funding Fees on the Exchange's Fee Schedule.

subject to such OATS requirements.[90] To the extent an Exchange ETP Holder is not also a member of FINRA, one of the Exchange's affiliated exchanges, or Nasdaq (which also requires compliance with FINRA OATS requirements), the Exchange believes that the OATS requirements for non-FINRA members are not onerous, as order information pursuant to those rules need only be submitted upon request.[91]

The Exchange believes that requiring its members to comply with the OATS rules will further promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under a Regulatory Services Agreement. The proposed sub-numbering of the OATS Rules (*i.e.,* 7410–7470) mirrors the rule numbers for the OATS rules on FINRA, NYSE, and NYSE American.

Because Rule 6 would include the Compliance Rules, the Fee Dispute Rule, and the OATS rules, the Exchange proposes to delete the word ''System'' from the title of Rule 6. The Exchange further proposes to delete the rules in Chapter XIV in their entirety.

Rule 7—Equities Trading

As noted above, the Exchange proposes trading rules based on the cash equities rules of NYSE Arca and, in some cases specified below, NYSE American. Accordingly, Proposed Rule 7 would include rules based on NYSE Arca Rule 7–E or NYSE American 7E, or both, including general provisions relating to trading, market makers, trading on the Exchange, operation of the routing broker, and the Plan to Implement a Tick Size Pilot Program. Proposed Rule 7 would therefore specify all aspects of trading on the Exchange, including the orders and modifiers that would be available and how orders would be ranked, displayed, and executed. Similar to NYSE American, the Exchange proposes the following non-substantive differences throughout Rule 7:

- To use the term ''Exchange'' instead of ''NYSE Arca Marketplace;''
- to use the term ''Exchange Act,'' which is a proposed defined term;
- to use the term ''Exchange Book'' instead of ''NYSE Arca Book;''
- to use the term ''will'' instead of ''shall;''
- to use the term ''ETP Holders'' instead of ''Users;'' and
- to use the capitalized term ''Associated Person.''

In addition, because the Exchange will be using Pillar phase II protocols, the Exchange will not include rule text based on NYSE Arca's order behavior using Pillar phase I protocols, as described in NYSE Arca Rules 7.11–E, 7.31–E, and 7.34–E.

Section 1 of Rule 7 would specify the General Provisions relating to trading on the Pillar trading platform. The Exchange proposes the following rules:

- Proposed Rule 7.1 (Hours of Business) would specify that the Exchange would be open for the transaction of business on every business day. The proposed rule also sets forth when the President may take specified actions, such as halting or suspending trading in some or all securities on the Exchange. The proposed rule is based on NYSE Arca Rule 7.1–E and NYSE American Rule 7.1E without any differences.
- Proposed Rule 7.2 (Holidays) would establish the holidays when the Exchange would not be open for business. The proposed rule is based on NYSE American Rule 7.2E (which has updated rule text as compared to NYSE Arca Rule 7.2–E regarding when that exchange would be open for business if a holiday falls on a Sunday) without any differences.
- Proposed Rule 7.3 (Commissions) would establish that ETP Holders may not charge fixed commissions and must indicate whether acting as a broker or as principal. The proposed rule is based on NYSE Arca Rule 7.3–E and NYSE American Rule 7.3E with a non-substantive difference to reference ''Associated Persons,'' which is a defined term on the Exchange, instead of the phrase ''Allied Persons, partners, approved persons or stockholder associates'' in paragraph (c) of proposed Rule 7.3.
- Proposed Rule 7.4 (Ex-Dividend or Ex-Right Dates) would establish the ex-dividend and ex-rights dates for stocks traded regular way. The proposed rule is based on NYSE Arca Rule 7.4–E and NYSE American Rule 7.4E without any differences.
- Proposed Rule 7.5 (Trading Units) would establish the unit of trading in stocks, including ''round lot,'' ''odd lot,'' and ''mixed lot.'' The proposed rule is based on NYSE Arca Rule 7.5–E and NYSE American Rule 7.5E without any differences.
- Proposed Rule 7.6 (Trading Differentials) would establish the minimum price variation for quoting and entry of orders for securities priced at $1.00 or more and for securities priced at less than $1.00. The proposed rule is based on NYSE Arca Rule 7.6–E and NYSE American Rule 7.6E without any substantive differences.
- Proposed Rule 7.7 (Transmission of Bids or Offers) would establish that all bids and offers on the Exchange would be anonymous unless otherwise specified by the ETP Holder. The proposed rule is based on NYSE Arca Rule 7.7–E and NYSE American Rule 7.7E without any differences.
- Proposed Rule 7.8 (Bid or Offer Deemed Regular Way) would establish that all bids and offers would be considered to be ''regular way.'' This proposed rule text is based on NYSE Arca Rule 7.8–E and NYSE American Rule 7.8E.
- Proposed Rule 7.9 (Execution Price Binding) would establish that, notwithstanding Exchange rules on clearly erroneous executions, the price at which an order is executed is binding notwithstanding that an erroneous report is rendered. This proposed rule text is based on NYSE Arca Rule 7.9–E and NYSE American Rule 7.9E without any differences.
- Proposed Rule 7.10 (Clearly Erroneous Executions) would set forth the Exchange's rules on clearly erroneous executions. The proposed rule is based on NYSE Arca Rule 7.10–E and NYSE American Rule 7.10E with one substantive difference: because the Exchange would not be conducting any auctions, the Exchange does not propose text based on NYSE Arca Rule 7.10–E(a) and NYSE American Rule 7.10E(a) that provides that executions as a result of a Trading Halt Auction are not eligible for a request to review as clearly erroneous under paragraph (b) of such rule.
- Proposed Rule 7.11 (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) would specify how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'').[92] The proposed rule is based on NYSE Arca Rule 7.11–E and NYSE American Rule 7.11E with the following substantive differences. First, proposed Rule 7.11(a)(6) is based on NYSE American Rule 7.11E(a)(6) and NYSE Arca Rule 7.11–E(a)(7).[93] Next, because the

[90] The Exchange's affiliates, NYSE, NYSE Arca, and NYSE American, all have substantially similar requirements and the proposed rules are similar to the rules adopted by the Exchange's affiliates. *See* NYSE Rules 7410 through 7470; NYSE Arca Rule 6.7410–E through 6.7470–E.; and NYSE American Rule 7410—Equities through 7470—Equities. *See also* Nasdaq Rule 7400A Series.

[91] *See* proposed Rule 6.7450–E(b). The Exchange is aware of only one former Exchange ETP Holder that is not also a member of FINRA, NYSE Arca, NYSE American, NYSE, or Nasdaq.

[92] *See* Securities Exchange Act Release No. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (Order approving thirteenth amendment to the LULD Plan).

[93] As noted above, the Exchange will be on Pillar phase II protocols and therefore will not include

Exchange will not be a listing exchange, the Exchange will not include rule text based on NYSE Arca Rule 7.11–E(a)(8) (relating to triggering a Straddle State under the LULD Plan), (a)(9) (relating to calculating Price Bands after NYSE Arca opens or re-opens an Exchange-listed security), or (b)(1) (relating to notifying the single plan processor if NYSE Arca is not able to reopen trading at the end of a Trading Pause due to a systems or technology issue). Finally, the Exchange proposes that Rule 7.11(b) would provide that if a primary listing market issues a Trading Pause, the Exchange would resume trading as provided for in proposed Rule 7.18, which is based on NYSE Arca Rule 7.11–E(b)(2).

• Proposed Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility) would establish rules on halts in trading due to extraordinary market volatility and related reopening of trading. The proposed rule is based on NYSE Arca Rule 7.12–E and NYSE American Rule 7.12E without any substantive differences.

• Proposed Rule 7.13 (Trading Suspensions) would establish authority for the Chair or the President of the Exchange to suspend trading in any and all securities that trade on the Exchange if such suspension would be in the public interest. This proposed rule is based on NYSE Arca Rule 7.13–E and NYSE American Rule 7.13E without any substantive differences. Because this proposed rule covers the same subject matter as current Rule 12.11, as discussed below, the Exchange does not propose to move Rule 12.11 to Rule 11 and would delete Rule 12.11.

• Proposed Rule 7.14 (Clearance and Settlement) would establish the requirements regarding an ETP Holder's arrangements for clearing. Because all post-trade functions on the Exchange's Pillar trading platform would follow the NYSE Arca procedures for post-trade processing, the Exchange proposes rules that are based on NYSE Arca rules [sic] clearing rules. Accordingly, the proposed rule is based on NYSE Arca Rule 7.14–E and NYSE American Rule 7.14E without any substantive differences.

• Proposed Rule 7.15 (Stock Option Transactions) would establish requirements for Market Makers relating to pool dealing and having an interest in an option that is not issued by the Options Clearing Corporation. The proposed rule is based on NYSE Arca Rule 7.15–E and NYSE American Rule 7.15E without any substantive differences.

• Proposed Rule 7.16 (Short Sales) would establish requirements relating to short sales. The proposed rule is based on NYSE Arca Rule 7.16–E with the following substantive differences. Because the Exchange would not be a listing venue, the Exchange would not be evaluating whether the short sale price test restrictions of Rule 201 of Regulation SHO have been triggered. Accordingly, the Exchange does not propose rule text based on NYSE Arca Rule 7.16–E(f)(3) or NYSE American Rule 7.16E(f)(3) and would designate that sub-paragraph as ''Reserved.'' For similar reasons, the Exchange proposes not to include rule text based on NYSE Arca Rule 7.16–E(f)(4)(A) and (B) or NYSE American Rule 7.16E(f)(4)(A) and (B).

• Proposed Rule 7.17 (Firm Orders and Quotes) would establish requirements that all orders and quotes must be firm. This proposed rule is based on NYSE Arca Rule 7.17–E without any differences.

• Proposed Rule 7.18 (Halts) would establish rules relating to trading halts of securities traded pursuant to UTP on the Exchange's Pillar platform. This proposed rule is based on NYSE Arca Rule 7.18–E(a), (b), and (d) and NYSE American Rule 7.18E(a), (b), and (d). Proposed Rule 7.18(c) would be based on NYSE American Rule 7.18E(d) and would use the Exchange-defined terms of ''Exchange Traded Product'' and ''UTP Exchange Traded Product.'' Because the Exchange will not be a listing venue, the Exchange does not proposed rule text based on NYSE Arca Rule 7.18–E(c) or NYSE American Rule 7.18E(c). In addition, the Exchange proposes to use the term ''reopening auction'' instead of ''Trading Halt Auction'' in proposed Rule 7.18(b).

Section 2 of proposed Rule 7 proposes rules for market makers on the Exchange. Specifically, for all securities that would trade on the Exchange, an ETP Holder could register as a Market Maker and be subject to obligations similar to the obligations of a Market Maker on NYSE Arca. The Exchange proposes the following rules, based on cash equities NYSE Arca and NYSE American rules of the same number with non-substantive differences:

• Proposed Rule 7.20 (Registration of Market Makers) would establish the registration requirements for market makers on the Exchange. This proposed rule is based on NYSE American Rule 7.20E without any substantive differences. The Exchange proposes non-substantive differences to cross reference the Rule 10.9500 and 10.9200 Series in proposed Rule 7.20(c) and (e), respectively.

• Proposed Rule 7.21 (Obligations of Market Maker Authorized Traders) would set forth the requirements that MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. The proposed rule would also specify the registration requirements for MMAT and the procedures for suspension and withdrawal of registration. This proposed rule is based on NYSE Arca Rule 7.21–E and NYSE American Rule 7.21E without any substantive differences.

• Proposed Rule 7.22 (Registration of Market Makers in a Security) would set forth the process for Market Makers to become registered in a security and the factors the Exchange may consider in approving the registration of a Market Maker in a security. The proposed rule would also describe both the termination of a Market Maker's registration in a security by the Exchange and voluntary termination by a Market Maker. This proposed rule is based on NYSE Arca Rule 7.22–E and NYSE American Rule 7.22E without any substantive differences. The Exchange proposes non-substantive differences to cross reference proposed Rule 10.9200 and 10.9500 Series in proposed Rule 7.22(e) and (g), respectively.

• Proposed Rule 7.23 (Obligations of Market Makers) would set forth the obligation of all Market Makers to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange and would delineate the specific responsibilities and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and certain pricing obligations Market Makers are required to adhere to. This proposed rule is based on NYSE Arca Rule 7.23–E and NYSE American Rule 7.23E without any substantive differences. The Exchange proposes a non-substantive difference to cross reference proposed Rule 10.9200 Series in proposed Rule 7.23(c).

• Proposed Rule 7.28 (NMS Market Access) would implement the Exchange's obligations under Rule 610 of Regulation NMS and is based on NYSE Arca Rule 7.28–E without any differences.[94]

Section 3 of proposed Rule 7 would establish the Exchange's trading rules. Among other things, these rules would establish the orders and modifiers that would be available on the Exchange (proposed Rule 7.31), would describe

rule text from NYSE Arca regarding functionality based on Pillar phase I protocols.

[94] Rules 7.24, 7.25, 7.26, and 7.27 would be designated as ''Reserved.''

order display and ranking (proposed Rule 7.36), and would describe how the Exchange would ensure that orders would not trade through either the PBBO (for Limit Orders) or NBBO (for Market Orders and Inside Limit Orders) and when orders would route (proposed Rules 7.37 and 7.34).

As noted above, the Exchange will not conduct any auctions, and therefore does not propose a rule based on NYSE Arca Rule 7.35–E or NYSE American Rule 7.35E. In addition, because the Exchange would not offer a retail liquidity program, the Exchange does not propose a rule based on NYSE Arca Rule 7.44–E and proposed Rules 7.36, 7.37, and 7.38 would not include cross references to Rule 7.44.

• Proposed Rule 7.29 (Access) would provide that the Exchange would be available for entry and cancellation of orders by ETP Holders with authorized access. To obtain authorized access to the Exchange, each ETP Holder would be required to enter into a User Agreement. Proposed Rule 7.29 is based on NYSE Arca Rule 7.29–E(a) and NYSE American Rule 7.29E, without any substantive differences. The Exchange does not propose to include rule text based on NYSE Arca Rule 7.29–E(b) because the Exchange would not offer sponsored access.

• Proposed Rule 7.30 (Authorized Traders) would provide for requirements relating to Authorized Traders and is based on NYSE Arca Rule 7.30–E and NYSE American Rule 7.30E without any differences.

• Proposed Rule 7.31 (Orders and Modifiers) would specify the orders and modifiers that would be available on the Exchange. The Exchange proposes to offer the same types of orders and modifiers that are available on NYSE Arca, with specified substantive differences. Accordingly, proposed Rule 7.31 is based on NYSE Arca Rule 7.31–E with the following substantive differences.

First, in proposed Rule 7.31(a)(2)(B), in describing the Limit Order Price Protection, the Exchange proposes to provide that a Limit Order entered before the Core Trading Session that is designated for the Core Trading Session only will become subject to Limit Order Price Protection once it becomes eligible to trade. The Exchange proposes this difference because the Exchange would not be conducting any auctions on the Exchange.

Second, the Exchange proposes that, similar to NYSE Arca, it would accept Auction-Only Orders (*e.g.,* Limit-on-Open Order (''LOO Order''), Market-on-Open Order (''MOO Order''), Limit-on-Close Order (''LOC Order''), and Market-on-Close Order (''MOC Order''). However, because the Exchange would not be conducting auctions, it proposes to define an Auction-Only Order as a Limit or Market Order that is only to be routed pursuant to proposed Rule 7.34. Accordingly, on arrival, such orders would be routed to the primary listing market and would not be entered on the Exchange Book. The Exchange proposes to accept four types of Auction-Only Orders that would be routed to the primary listing market: MOO, LOO, MOC, and LOC Orders. As described in proposed Rules 7.31(f) and 7.34, such orders would be subject to the rule requirements of the respective primary listing exchange to which they are routed. In addition, because the Exchange would only accept and route Auction-Only Orders, it would not include rule text based on the second sentences of NYSE Arca Rules 7.31(c)(1) and (2) and would refer to such orders being traded in ''an opening or re-opening auction'' or ''a closing auction,'' rather than state that such orders would be traded during ''the Core Open Auction or a Trading Halt Auction'' or ''the Closing Auction,'' which are defined terms in the NYSE Arca rules.

Third, because the Exchange would not be a listing venue, the Exchange does not propose to include rule text that provides that ''[a] Primary Only Order instruction on a security listed on the Exchange will be ignored'' in proposed Rule 7.31(f)(1). Fourth, at this time, the Exchange is not proposing to offer a Discretionary Pegged Order and, therefore, proposes to designate Rule 7.31(h)(3) as ''Reserved'' and will not include a reference to Discretionary Pegged Orders in proposed Rule 7.34.

Finally, similar to NYSE American Rule 7.31E(e)(1), the Exchange proposes to refer to the order described in this rule text as a ''Limit Non-Routable Order.''

• Proposed Rule 7.32 (Order Entry) would establish requirements for order entry size. The proposed rule is based on NYSE Arca Rule 7.32–E and NYSE American Rule 7.32E without any substantive differences.

• Proposed Rule 7.33 (Capacity Codes) would establish requirements for capacity code information that ETP Holders must include with every order. The proposed rule is based on NYSE Arca Rule 7.33–E and NYSE American Rule 7.33E without any substantive differences.

• Proposed Rule 7.34 (Trading Sessions) would specify trading sessions on the Exchange. Similar to NYSE Arca, the Exchange proposes that on the Pillar trading platform, it would have Early, Core, and Late Trading Sessions. However, the Exchange proposes that the Early Trading Session would begin at 7:00 a.m. Eastern Time, which is when the NYSE American Early Trading Session begins.[95] Otherwise, the Exchange proposes Rule 7.34 based on NYSE Arca Rule 7.34–E with the following substantive differences to reflect that it would not operate any auctions:

• To designate Rule 7.34–E(c)(1)(B) as ''Reserved;''

• In proposed Rule 7.34(c)(1)(C), to refer to orders being rejected ''if entered before the Core Trading Session'' instead of orders being rejected ''if entered before the Auction Processing Period for the Core Open Auction;''

• In proposed Rules 7.34(c)(1)(D), (c)(2)(A), and (c)(2)(B), to not include phrases referring to ''securities that are not eligible for an auction on the Exchange'' or ''securities that are not eligible to [sic] the Core Open Auction'' from NYSE Arca Rules 7.34–E(c)(1)(D), (c)(2)(A), and (c)(2)(B); and

• In proposed Rule 7.34(c)(2)(C), to refer to orders being rejected ''if entered before the Late Trading Session'' instead of being rejected ''if entered before the Auction Processing Period for the Closing Auction.''

• Proposed Rule 7.36 (Order Ranking and Display) would establish requirements for how orders would be ranked and displayed at the Exchange. The proposed rule is based on NYSE Arca Rule 7.36–E and NYSE American Rule 7.36E without any substantive differences.

• Proposed Rule 7.37 (Order Execution and Routing) would establish requirements for how orders would execute and route at the Exchange, the data feeds that the Exchange would use, and Exchange requirements under the Order Protection Rule and the prohibition on locking and crossing quotations in NMS Stocks. This proposed rule is based on NYSE Arca Rule 7.37–E without any substantive differences. The Exchange proposes a non-substantive difference to proposed Rule 7.37(e) to reflect the amended names of exchanges in the chart listing market centers.

• Proposed Rule 7.38 (Odd and Mixed Lot) would establish requirements relating to odd lot and mixed lot trading on the Exchange. The proposed rule is based on NYSE Arca Rule 7.38–E without any substantive differences.[96]

[95] *See* NYSE American Rule 7.34E(a)(1).

[96] The Exchange does not propose a rule based on either NYSE Arca Rule 7.39–E (concerning adjustment of open orders, which relates to good-til-cancelled orders, which would not be available

• Proposed Rule 7.40 (Trade Execution and Reporting) would establish the Exchange's obligation to report trades to an appropriate consolidated transaction reporting system. The proposed rule is based on NYSE Arca Rule 7.40–E and NYSE American Rule 7.40E without any substantive differences.

• Proposed Rule 7.41 (Clearance and Settlement) would establish requirements that all trades be processed for clearance and settlement on a locked-in and anonymous basis. The proposed rule is based on NYSE American Rule 7.41E without any differences.

Section 4 of proposed Rule 7 would establish the Operation of a Routing Broker. Specifically, proposed Rule 7.45 (Operation of a Routing Broker) would establish the outbound and inbound function of the Exchange's routing broker and the cancellation of orders and the Exchange's error account. The proposed rule is based on NYSE Arca Rule 7.45–E and NYSE American Rule 7.45E without any substantive differences. As noted above, the Exchange's affiliation with Archipelago Securities LLC would be addressed in proposed Rule 7.45. The Exchange therefore proposes to delete current Rule 2.10 [sic].

Section 5 of proposed Rule 7 would establish requirements relating to the Plan to Implement a Tick Size Pilot Program. Proposed Rule 7.46 (Tick Size Pilot Plan) would specify such requirements. The proposed rule is based on NYSE Arca Rule 7.46–E with a proposed substantive difference not to include cross references to a Retail Liquidity Program as the Exchange would not adopt the Retail Liquidity Program on Pillar. The Exchange also proposes to designate proposed Rules 7.46(f)(4) as ''Reserved'' because the Exchange would not support Retail Price Improvement Orders on Pillar.

Section 6 of proposed Rule 7 would establish requirements for contracts in securities.

• Proposed Rule 7.60 (Definitions and General Provisions) would establish definitions used for purposes of Section 6 of Rule 7 and is based on NYSE Arca Rule 7.60–E without any differences.

• Proposed Rule 7.61 would provide for requirements relating to ETP contracts of the Exchange and that such contracts are binding. This proposed rule is based on NYSE Arca Rule 7.61–E without any differences.

• Proposed Rule 7.62 (Delivery of Securities) would establish requirements relating to the book entry settlement of transactions. This proposed rule text is based on NYSE Arca Rule 7.62–E(b). Because the Exchange is not a listing venue, the Exchange does not propose rule text based on NYSE Arca Rule 7.62–E(a) or (c) as these rules relate to requirements for securities listing on an exchange.

Because Rule 7 would set forth all rules relating to trading on the Exchange, the Exchange proposes to delete the rules in Chapter XI in their entirety. In addition, because Rule 7 would set forth rules relating to comparison and settlement, the Exchange proposes to delete the rules in Chapter XIII (Miscellaneous Provisions) in their entirety. Finally, because the Exchange would use its affiliate, Archipelago Securities LLC, as its routing broker, the Exchange also proposes to delete Rule 2.11 (NSX Securities, LLC).

Rule 10—Disciplinary Proceedings, Other Hearings and Appeals

To facilitate the re-launch of trading on the Exchange and further facilitate rule harmonization among SROs, the Exchange proposes Rule 10.8000 and Rule 10.9000 Series based on NYSE American Rule 8000 and Rule 9000 Series of the Office Rules, with certain modifications, as described below.[97] NYSE American Rule 8000 and Rule 9000 Series are disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of the NYSE and FINRA.[98]

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 and 10.9000 Series are based on the individual rules of the counterpart NYSE American Rule 8000 and 9000 Series without any differences, except that the Exchange:

• Would use the term ''ETP Holder'' rather than ''member and member organization'' or ''member organization or ATP Holder'' as is used by NYSE American, consistent with the Exchange's other proposed rules;

• would use the term ''Associated Person'' or ''Person Associated with an ETP Holder,'' which are defined terms on the Exchange, rather than the term ''covered person;''

• would not utilize Floor-Based Panelists referenced in NYSE American Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange will not have a trading floor;

• would not adopt NYSE American Rules 8001 and 9001, which describe the effective date of the NYSE American rules;

• would not retain the text of NYSE American's legacy minor rules; and

• proposes non-substantive grammatical differences in specified rules, described below, which do not change the meaning of the proposed rule text as compared to the NYSE American version of the same rule.

Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions. Proposed Rule 10.8100 (General Provisions) would include the following:

• Proposed Rule 10.8120 (Definitions) would provide that unless otherwise provided, terms used in the Rule 10.8000 Series would have the meaning as defined in applicable Exchange rules and that the terms ''Adjudicator'' and ''Exchange'' [sic] would have the meaning in proposed Rule 10.9120. The Exchange proposes non-substantive grammatical differences for paragraphs (a) and (b) as compared to NYSE American Rule 8120(a) and (b).

• Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of jurisdiction provisions that are the same as NYSE American Rule 8130, except for a non-substantive grammatical difference in paragraph (b) to add the word ''who'' and the cross-reference in paragraph (b)(1) that would be conformed to the Exchange's rules. Under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against an ETP Holder or Associated Person for two years after such ETP Holder's or Associated Person's status is terminated.

Proposed Rule 10.8200 (Investigations) would set forth the following rules: [99]

• Proposed Rule 10.8210 (Provisions of Information and Testimony and

on the Exchange) or NYSE American Rule 7.39E (concerning an off-hours trading facility, which would not be offered on the Exchange) and will designate Rule 7.39 as ''Reserved.''

[97] The Exchange notes that all but one of its ETP Holders before it ceased trading operations in February 2017 were members of FINRA, and as such were subject to FINRA's Rule 8000 Series and Rule 9000 Series. As a result, virtually all former ETP Holders were already subject to the proposed rules described herein.

[98] Securities Exchange Act Release Nos. [sic] 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice''). *See also* Securities Exchange Act Release Nos. [sic] 78959 (September 28, 2016), 81 FR 68481 (October 4, 2016) (SR–NYSEMKT–2016–71) (Notice). The NYSE American disciplinary rules were implemented on April 15, 2016. *See* NYSE American Information Memorandum 16–02 (March 14, 2016).

[99] NYSE American Rules 8212, 8213, and 8312 are marked as ''Reserved.'' To maintain consistency with NYSE American's rule numbering, the Exchange proposes to designate proposed Rules 10.8212, 10.8213, and 10.8312 as ''Reserved.''

Inspection and Copying of Books) would set forth procedures for the provision of information and testimony and inspection and copying books by the Exchange. In addition to describing requirements relating to the process for such inspection and copying, this proposed rule would provide authority for the Exchange to enter into regulatory cooperation agreements with other SROs and regulators (proposed Rule 10.8210(b)). The Exchange proposes non-substantive grammatical differences from NYSE American Rule 8210 in subsection (g) and Commentary .01.

• Proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) would set forth the procedures for electronic blue sheets [sic].

Proposed Rule 10.8300 (Sanctions) would set forth the following rules:

• Proposed Rule 10.8310 (Sanctions for Violations of the Rules) would set forth the range of sanctions that could be imposed in connection with disciplinary actions under the proposed rule change.

• Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide that if the Commission or the Exchange imposed a suspension, revocation, cancellation or bar on an Associated Person, an ETP Holder may not permit such person to remain associated, and, in the case of a suspension, may not make any remuneration that results from any securities transaction.

• Proposed Rule 10.8313 (Release of Disciplinary Complaints, Decisions and Other Information) would provide that the Exchange would publish all final disciplinary decisions issued under the proposed Rule 9000 [sic] Series, other than minor rule violations, on its website.

• Proposed Rule 10.8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay) would govern payment of fines and other monetary sanctions or costs and provide for a summary action for an ETP Holder's failure to pay.[100] The Exchange proposes a non-substantive grammatical difference from NYSE American Rule 8320 in paragraph (b)(1).

• Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined ETP Holder or Associated Person may be assessed the costs of a proceeding, which are determined by the Adjudicator.

Proposed Rule 10.9000 Series

Proposed Rule 10.9000 Series sets forth the Exchange's proposed Code of Procedure.

Proposed Rule 10.9100 Series (Application and Purpose)

Proposed Rule 10.9100 Series (Application and Purpose) would set forth the following rules:

• Proposed Rule 10.9110 (Application) would state the types of proceedings to which the proposed Rule 10.9000 Series would apply (each of which is described below) and the rights, duties, and obligations of ETP Holders and Associated Persons, and would set forth the defined terms and cross-references. The Exchange proposes a non-substantive grammatical difference from NYSE American Rule 9110 in paragraph (c).

• Proposed Rule 10.9120 (Definitions) would set forth definitions that would be applicable to the Rule 10.9000 Series. The definitions are based on definitions set forth in NYSE American Rule 9120, except that the Exchange would not define the terms ''Board of Directors,'' ''covered person,'' ''Exchange, and ''Floor-Based Panelist'' in proposed Rule 10.9120 and would designate paragraphs (b), (g), (n), and (q) as ''Reserved.'' The terms ''Board of Directors'' and ''Exchange'' would already be defined in proposed Rule 1.1, and therefore the Exchange does not need to separately define these terms in proposed Rule 10.9120. The Exchange does not believe that it needs to define the term ''covered person'' because the Exchange already has a defined term of ''Person Associated with an ETP Holder'' or ''Associated Person,'' and use of that term would address all persons subject to Exchange jurisdiction under proposed Rule 10 Series. The term ''Interested Staff'' in paragraph (t) contains a non-substantive grammatical difference from the NYSE American version and the definition of ''Party'' in paragraph (w)(2) includes ''or Associated Person'' after ''ETP Holder.'' Finally, the Exchange would not include the term ''Floor-Based Panelist'' because the Exchange would not have a trading floor.

Proposed Rule 10.9130 (Service; Filing of Papers)

Proposed Rule 10.9130, setting forth proposed Rules 10.9131 through 10.9138, would govern the service of a complaint or other procedural documents under the Rules.

Proposed Rule 10.9131 would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 would describe the methods of service and the procedures for service. Proposed Rule 10.9135 would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 would establish the computation of time.

Proposed Rule 10.9140 (Proceedings)

Proposed Rules 10.9140, setting forth proposed Rules 10.9141 through 10.9148, would govern the conduct of disciplinary proceedings.

Proposed Rule 10.9141 would govern appearances in a proceeding, notice of appearances, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or be represented by a bar-admitted U.S. attorney. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Proposed Rule 10.9142 would require an attorney or representative to file a motion to withdraw.

Proposed Rule 10.9143 would set forth requirements relating to ex parte communications with an Adjudicator or Exchange employee involved in a proceeding. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9143 in paragraphs (c) and (e)(3).

Proposed Rule 10.9144 would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers.

Proposed Rule 10.9145 would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series.

Proposed Rule 10.9146 would govern motions a Party may make and requirements for responses and formatting. The Exchange proposes non-substantive grammatical differences

[100] The Exchange does not propose to adopt NYSE American Rule 8320(d), which addresses transition from its legacy disciplinary rules. The Exchange does not currently have any pending disciplinary actions under its current disciplinary rules, and therefore does not need to retain those rules for a transition period.

from NYSE American Rule 9146 in paragraph (b)(2).

Proposed Rule 10.9147 would provide that Adjudicators may rule on procedural matters.

Finally, proposed Rule 10.9148 would generally prohibit interlocutory review, except as provided in proposed Rule 10.9280 for contemptuous conduct.

Proposed Rule 10.9150 (Exclusion From Rule 10.9000 Series Proceeding)

Proposed Rule 10.9150 would provide that a representative can be excluded by an Adjudicator for improper or unethical conduct. The Exchange proposes a non-substantive difference to refer to ''improper conduct'' in paragraph (a) rather than limiting term of ''improper professional conduct,'' which is in NYSE American Rule 9150.

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Board, or a Director. Proposed Rules 9160(b) [sic], (c), and (d) are designated as ''Reserved'' to maintain consistency with NYSE American's rule numbering.

Proposed Rules 10.9200 Series (Disciplinary Proceedings)

Proposed Rule 10.9200 would cover disciplinary proceedings.

Proposed Rule 10.9210 (Complaint and Answer) would set forth the following rules:

- Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization of the Chief Regulatory Officer (''CRO'') to issue a complaint against an ETP Holder or Associated Person, thereby commencing a disciplinary proceeding.
- Proposed Rule 10.9212 (Complaint Issuance—Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. Unlike NYSE American Rule 9212, because the Exchange would not have a floor, the proposed rule would not provide for Enforcement to select one Floor-Based Panelist.
- Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer.
- Proposed Rule 10.9214 (Consolidation or Severance of Disciplinary Proceedings) would permit the Chief Hearing Officer to sever or consolidate two or more disciplinary proceedings under certain circumstances and permit a Party to move for such action under certain circumstances. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9214 in paragraphs (b) and (e).
- Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, defenses, amendments, default, and timing.
- Proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent (''AWC'') procedures by which a Respondent, prior to the issuance of a complaint, may execute a letter accepting a finding of violation, consenting to the imposition of sanction(s), and agreeing to waive such Respondent's right to a hearing, appeal, and certain other procedures.[101] It also would establish procedures for executing a minor rule violation plan letter. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9216 in paragraph (a).

Together with proposed Rule 10.9216(b), proposed Rule 10.9217 would be the Exchange's Minor Rule Violation Plan (''MRVP'') and would set forth the list of rules under which an ETP Holder or Associated Person may be subject to a fine under a MRVP as described in proposed Rule 10.9216(b).

The Exchange proposes to adopt the list of rules and associated fine levels for minor rule violations set forth in NYSE American Rule 9217, which sets forth NYSE American's MRVP. As noted above, the Exchange does not propose rule text based on the legacy trading rules contained in NYSE American Rule 9217(c), which are unique to NYSE American. The Exchange further would not include rule text based on NYSE American Rule 9217(e), which sets forth NYSE American's legacy MRVP and includes fines for options-related rules, which are not applicable on the Exchange. Finally, the Exchange does not propose rule text based on NYSE American's Rule 9217 ''List of Reports Required to be Filed with the Exchange by ATP Holders and Filing Deadlines'' as these relate to fines charged for failure to timely file financial reports by ETP Holders designated to the Exchange. Because the Exchange is not currently a designated examining authority (''DEA'') for any ETP Holders, these fines would be inapplicable to the Exchange.

Proposed Rule 10.9217(a) titled ''Trading Rule Violations'' would set forth the following eligible trading rule violations:

- Short Sale Rules (Rule 7.16).
- Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).
- Failure to comply with Authorized Trader requirements (Rule 7.30).
- Acting as a Market Maker in a security without being registered as such as required by Rule 7.20(a).

Proposed Rule 10.9217(b), titled ''Record Keeping and Other Minor Rule Violations,'' would set forth minor rule violations relating to recordkeeping. The proposed substantive rule violations are based on NYSE American Rule 9217(b) with non-substantive differences to cross-reference the applicable Exchange rule, as follows: [102]

- Failure to comply with the employee registration or other requirements of Rule 2.2.
- Failure to comply with the books and records requirements of Rule 11.4.1.
- Failure to comply with the requirements for preventing the misuse of material nonpublic information as set forth in Rule 11.5.5 and its Commentaries.

Proposed Rule 10.9217(c) is based on NYSE American Rule 9217(d) without any substantive differences and would set forth the fine schedule that would be applicable to the Exchange's MRVP. Proposed Rule 10.9217(c)(1) would set

[101] Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

[102] *See* NYSE American Rule 9217(a) (NYSE American Rules 7.16, 7.20, 7.23, 7.30). Proposed Rules 7.16 (Short Sales), 7.20 (Registration of Market Makers) and 7.23 (Obligations of Market Makers) are based on the NYSE American Rules (which were in turn based on analogous NYSE Arca rules) with the same numbers without any substantive differences. *See also* NYSE American Rule 9217(b) (NYSE American Rules 2.21E, 2.24E and 6.3E). Proposed NYSE National Rule 11.5.5 is based on NYSE American Rule 6.3E without any substantive differences. Proposed NYSE National Rules 2.2 (Obligations of ETP Holders and the Exchange) and 11.4.1 (Books and Records Requirements) address the same subject matter as NYSE American Rules 2.21E and 2.24E. Finally, proposed Rule 9217(a) [sic] would not incorporate an eligible rule based on NYSE American Rule 6.15E prohibiting prearranged trades, which the Exchange is not adopting.

forth the fine levels for trading rule violations as follows:

- Violations of Rule 7.16 would be eligible for a $500 first level fine, a $1,000 second level fine, and a $2,500 third level fine;
- Violations of Rule 7.23(a)(1) would be eligible for a $250 first level fine, a $500 second level fine, and a $1,000 third level fine;
- Violations of Rule 7.30 would be eligible for a $1,000 first level fine, a $2,500 second level fine, and a $3,500 third level fine; and
- Violations of Rule 7.20(a) would be eligible for a $250 first level fine, a $500 second level fine, and a $1,000 third level fine.

Proposed Rule 10.9217(c)(2) would set forth the fine levels for the record keeping and other minor rule violations as follows:

- Violations of Rule 11.5.5 would be eligible for a $2,000 first level fine, a $4,000 second level fine, and a $5,000 third level fine; [103]
- Violations of Rule 11.4.1 would be eligible for a $2,000 first level fine, a $4,000 second level fine, and a $5,000 third level fine; and
- Violations of Rule 2 would be eligible for a $1,000 first level fine, a $2,500 second level fine, and a $3,500 third level fine.[104]

Proposed Rule 10.9220 (Request for Hearing; Extensions of Time, Postponements, Adjournments)

Proposed Rules 10.9221 through 10.9222 would describe how a Respondent can request a hearing, the notice of a hearing, and timing considerations. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing.

Proposed Rule 10.9230 (Appointment of Hearing Panel, Extended Hearing Panel)

Proposed Rule 10.9230 would set forth proposed Rules 10.9231 through 10.9235, which would establish how Hearing Panels, Extended Hearing Panels, Replacement Hearing Officers, Panelists, and Replacement Panelists are appointed and their composition and criteria for selection.

- Proposed Rule 10.9231 would set forth the role of the Chief Hearing Officer to appoint a Hearing Panel or an Extended Hearing Panel.
- Proposed Rule 10.9232 would set forth the criteria for the selection of Panelists and Replacement Panelists. Because the Exchange would not have a Floor, the Exchange proposes a difference from NYSE American Rule 9232 by not referring to ''Floor-based Panelists.'' The proposed rule would also replace the term ''hearing board'' with the terms ''Business Conduct Committee'' or ''BCC'' to reflect the Exchange's terminology as compared to NYSE American regarding who may be a Panelist.
- Proposed Rules 10.9233 and 10.9234 would establish the processes for recusal and disqualification of Hearing Officers, Hearing Panels, or Extended Hearing Panels.
- Proposed Rule 10.9235 would set forth the Hearing Officer's duties and authority in detail.

Proposed Rule 10.9240 (Pre-hearing Conference and Hearing [sic])

Proposed Rules 10.9241 through 10.9242 would establish the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions.

Proposed Rule 10.9250 (Discovery)

Proposed Rule 10.9250 would set forth proposed Rules 10.9251 through 10.9253, which would address discovery, including the requirements and limitations relating to the inspection and copy of documents in the possession of Interested Staff, requests for information and limitations on such requests, and the production of witness statements and any harmless error relating to the production of such witness statements.

Proposed Rule 10.9251 would set forth requirements relating to inspection and copying of documents prepared or obtained by Interested Staff in connection with an investigation [sic].

Under proposed Rule 10.9252, a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, *e.g.* [sic], that the information sought is relevant, material, and non-cumulative.

Under proposed Rule 10.9253, a Respondent could file a motion to obtain certain witness statements.

Proposed Rule 10.9260 (Hearing and Decision)

Proposed Rule 10.9260 would set forth proposed Rules 10.9261 through 10.9269, which would relate to hearings and decisions.

- Proposed Rule 10.9261 would generally require the Parties to submit a list [sic] of documentary evidence and witnesses no later than 10 days before the hearing.
- Proposed Rule 10.9262 would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing.
- Proposed Rule 10.9263 would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and permit a Party to object to the admission of evidence; excluded evidence would be part of the record.
- Proposed Rule 10.9264 would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion.
- Proposed Rule 10.9265 would require that the hearing be recorded by a court reporter, that a transcript be prepared and made available for purchase, and that a Party be permitted to seek a correction of the transcript from the Hearing Officer.
- Proposed Rule 10.9266 would authorize the Hearing Officer to require a post-hearing brief or proposed finding of facts and conclusions of law and would outline the form and timing for such submissions.
- Proposed Rule 10.9267 would detail the required contents of the hearing record and the treatment of any supplemental documents attached to the record.
- Proposed Rule 10.9268 would set forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review.
- Finally, proposed Rule 10.9269 would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision.[105]

Proposed Rule 10.9270 (Settlement Procedure)

Proposed Rule 10.9270 would provide for a settlement procedure for a Respondent who has been notified that

[103] The proposed rule would adopt NYSE American's maximum $5,000 fine for minor rule violations. The Exchange's current maximum fine for minor rule violations is $2,500. *See* Rule 8.15(a).

[104] The Exchange proposes to add a footnote 1 providing that, in addition to the specified fines, the Exchange may require a violator to remit all fees that it should have paid to the Exchange pursuant to Rule 2.2 [sic]. The proposed footnote would be identical to footnote 1 in NYSE American Rule 9217(d)(2).

[105] Under the proposed rule change, if a respondent admits the charges or they are not in dispute, the parties could utilize the AWC procedure under proposed Rule 10.9216.

a proceeding has been instituted against him or her. The proposed rule would set forth requirements relating to both contested and uncontested offers of settlement.

Proposed Rule 10.9280 (Contemptuous Conduct)

Proposed Rule 10.9280 would set forth sanctions for contemptuous conduct by a Party or attorney or other representative, which may include exclusion from a hearing or conference, and sets forth a process for reviewing such exclusions.

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders)

Proposed Rule 10.9291 would set forth the requirements for issuing a permanent cease and desist order under proposed Rules 10.9268, 10.9269, or 10.9270.

Proposed Rule 10.9300 Series (Review of Disciplinary Proceedings by Exchange Board of Directors)

Proposed Rule 10.9300 includes proposed Rule 10.9310, which would set forth the Exchange's Board review process, including the process for a request for review of any determination or penalty and review by the Exchange's Board.[106]

Proposed Rule 10.9500 Series (Other Proceedings)

The proposed Rule 10.9500 Series would set forth all other proceedings under the Exchange Rules [sic].

Proposed Rule 10.9520 (Eligibility Proceedings) would set forth proposed Rules 10.9521 through 10.9527, which would govern eligibility proceedings for persons subject to statutory disqualifications that are not FINRA members.

Proposed Rule 10.9521 would add certain definitions relating to eligibility proceedings, including ''Application,'' ''disqualified ETP Holder,'' ''disqualified person,'' and ''sponsoring ETP Holder.'' Proposed Rule 10.9522 would govern the initiation of an eligibility proceeding by the Exchange and the obligation for an ETP Holder to file an application to initiate an eligibility proceeding if it has been subject to certain disqualifications. Proposed Rule 10.9523 would allow the Department of Member Regulation to recommend a supervisory plan to which the disqualified ETP Holder, sponsoring ETP Holder, and/or disqualified person, as the case may be, may consent and by doing so, waive the right to hearing or appeal if the plan is accepted and the right to claim bias or prejudgment, or prohibited ex parte communications. If such a supervisory plan were rejected, proposed Rule 10.9524 would allow a request for review by the applicant to the Board. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE American's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated ''Reserved.''

Proposed Rule 10.9550 (Expedited Proceedings)

Proposed Rule 10.9550 would set forth proposed Rule 10.9552 through 10.9560 and would govern expedited proceedings.

- Proposed Rule 10.9551 would be marked ''Reserved'' because the Exchange has not adopted a rule analogous to NYSE American Rules 2210—Equities (Communications with the Public).
- Proposed Rule 10.9552 would establish procedures and consequences in the event that an ETP Holder or Associated Person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current.
- Proposed Rule 10.9554 [107] would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution.
- Proposed Rule 10.9555 would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange.
- Proposed Rule 10.9556 would provide procedures and consequences for a failure to comply with temporary and permanent cease and desist orders issued under proposed Rules 10.9200, 10.9300 or 10.9800 Series.
- Proposed Rule 10.9557 would allow the Exchange to issue a notice directing an ETP Holder to comply with the net capital provisions of Exchange Act Rule 15c3–1.[108] As noted above, the Exchange is not currently the DEA for any ETP Holders, but proposes this rule should it become a DEA.
- Proposed Rule 10.9558 would allow the Exchange's CRO or such other senior officer as the CRO may designate to provide written authorization to the Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Exchange Act.
- Proposed Rule 10.9559 would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series.
- Proposed Rule 10.9560 would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or Associated Person from conducting continued disruptive quoting and trading activity on the Exchange in violation of proposed Rule 11.12.11 (discussed below).

Proposed Rule 10.9600 Series (Procedures for Exemptions)

Proposed Rule 10.9600, setting forth proposed Rules 10.9610 through 10.9630, would describe procedures by which an ETP Holder could seek exemptive relief from proposed Rule 10.8211 (Automated Submission of Trading Data [sic]).

Under proposed Rule 10.9610, an ETP Holder seeking exemptive relief would be required to file a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO. Under proposed Rule 10.9620, after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant pursuant to proposed Rules 10.9132 and 10.9134. Proposed Rule 10.9630 would set forth the appeal process for a

[106] The Exchange does not trade options and therefore does not propose to distinguish between appeals panels for equity and options matters as in NYSE American Rule 9310(b).

[107] Proposed Rule 10.9553 would be designated ''Reserved'' to maintain consistency with NYSE American's rule numbering.

[108] *See* 17 CFR 240.15c3–1. The Exchange does not have rules analogous to NYSE American rules 4110—Equities (Capital Compliance), 4120—Equities (Regulatory Notification and Business Curtailment), or 4130—Equities (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties) referenced in NYSE American's version of proposed Rule 9557 [sic].

decision issued under proposed Rule 10.9620.

Proposed Rule 10.9700 Series

Rule 10.9700 would be marked ''Reserved'' to maintain consistency with NYSE American's rule numbering conventions.

Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

Proposed Rule 10.9800, setting forth proposed Rule 10.9810 through 10.9870, would describe procedures for issuing temporary cease and desist orders.

- Proposed Rule 10.9810 would set forth the process for initiating a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act, SEC Rules 10b–5 and 15g–1 through 15g–9, Rule 11.5 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or is based on violations of Section 17(a) of the Securities Act of 1933) or Rule 11.3.1 (*Business Conduct of ETP Holders*).[109]
- Proposed Rule 10.9820 would govern the appointment of a Hearing Officer and Panelists for a temporary cease and desist proceeding.
- Proposed Rule 10.9830 would set forth the procedures for a hearing relating to a temporary cease and desist proceeding.
- Proposed Rule 10.9840 would set forth the process for the Hearing Panel to issue a written decision stating whether a temporary cease and desist order would be imposed.
- Proposed Rule 10.9850 would set forth the process for a Respondent to apply to the Hearing Panel to have a temporary cease and desist order modified, set aside, limited, or suspended.
- Proposed Rule 10.9860 would authorize the initiation of a suspension or cancellation of a Respondent's association or membership under proposed Rule 10.9556 if the Respondent violated a temporary cease and desist order.
- Finally, proposed Rule 10.9870 would provide that temporary cease and desist orders issued under the proposed Rule 9800 [sic] Series would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under this rule series reviewed by the Commission would be governed by Section 19 of the Exchange Act.

Because Rule 10 would set forth all rules relating to discipline, suspension of an ETP Holder, and adverse actions, the Exchange proposes to delete the rules in Chapters VII, VIII and X in their entirety.

Rule 11—Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practice Rules

The Exchange proposes to maintain current NYSE National rules regarding rules of fair practice, books and records, supervision, extensions of credit, and trading practices. These rules are currently found in Chapters III, IV, V, VI, and XII, respectively, of the Exchange's rulebook. The Exchange proposes to relocate these rules to Rule 11 which under the Framework Filing is titled Business Conduct. To reflect the content of Rule 11, the Exchange proposes to rename Rule 11 as ''Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practices.'' In moving the rules, the Exchange proposes non-substantive differences to change references from ''Interpretations and Policies'' to ''Commentary,'' to use a different sub-paragraph numbering format, and to capitalize the term ''Associated Person.'' [110]

Because all such rules would be relocated to Rule 11 and to maintain consistency with the current rulebook, the Exchange proposes that the sub-numbering of each such rule would be the same as the existing rule number. For example, current Rule 3.1 would be renumbered as Rule 11.3.1. By maintaining sub-numbering that aligns with existing rule numbers, ETP Holders that reference such rules in policies and procedures would not need to revise such policies and procedures because the rule requirements would map to the same number. Because the purpose of such sub-numbering is to align with existing rule numbers, the Exchange does not propose to designate any rules as ''Reserved.'' Rather, the Exchange proposes to add sub-headings before each section of Rule 11 to describe which rules would be set forth in each set of sub-numbered rules.

The Exchange proposes to renumber the rules in Chapter III as follows and add a subheading before such rules that provides ''Rules of Fair Practice'':

- Rule 3.1 (Business Conduct of ETP Holders) would be renumbered as Rule 11.3.1 without any changes.
- Rule 3.2 (Violations Prohibited) would be renumbered as Rule 11.3.2 without any substantive changes.
- Rule 3.3 (Use of Fraudulent Devices) would be renumbered as Rule 11.3.3 without any changes.
- Rule 3.4 (False Statements) would be renumbered as Rule 11.3.4 without any changes.
- Rule 3.5 (Advertising Practices) would be renumbered as Rule 11.3.5 without any substantive changes.
- Rule 3.6 (Fair Dealing with Customers) would be renumbered as Rule 11.3.6 without any substantive changes.
- Rule 3.7 (Recommendations to Customers) would be renumbered as Rule 11.3.7. The Exchange proposes one substantive amendment to delete the Interpretation and Policy .01 because it references a rule that would not be included in the Exchange's proposed rulebook.
- Rule 3.8 (The Prompt Receipt and Delivery of Securities) would be renumbered as Rule 11.3.8 without any substantive changes.
- Rule 3.9 (Charges for Services Performed) would be renumbered as Rule 11.3.9 without any changes.
- Rule 3.10 (Use of Information) would be renumbered as Rule 11.3.10 without any changes.
- Rule 3.11 (Publication of Transactions and Quotations) would be renumbered as Rule 11.3.11 without any changes.
- Rule 3.12 (Offers at Stated Prices) would be renumbered as Rule 11.3.12 without any changes.
- Rule 3.13 (Payment Designed to Influence Market Prices, Other than Paid Advertising) would be renumbered as Rule 11.3.13 without any changes.
- Rule 3.14 (Disclosure on Confirmations) would be renumbered as Rule 11.3.14 without any changes.
- Rule 3.15 (Disclosure of Control)—would be renumbered as Rule 11.3.15 without any changes.
- Rule 3.16 (Discretionary Accounts) would be renumbered as Rule 11.3.16 without any substantive changes.
- Rule 3.17 (Customer's Securities or Funds) would be renumbered as Rule 11.3.17 without any changes.
- Rule 3.18 (Prohibition Against Guarantees) would be renumbered as Rule 11.3.18 without any changes.
- Rule 3.19 (Sharing in Accounts; Extent Permissible) would be renumbered as Rule 11.3.19 without any changes.
- Rule 3.20 (Installment or Partial Payment Sales) would be renumbered as Rule 11.3.20 without any substantive changes.
- Rule 3.21 (Telephone Solicitation) would be renumbered as Rule 11.3.21 without any substantive changes.

The Exchange proposes to renumber the rules in Chapter IV as follows and

[109] The Exchange does not have analogous rules to NYSE American rules 476(a)(5) or Rule 2020—Equities referenced in NYSE American's version of proposed Rule 10.9810.

[110] Current Exchange rules use an ''(a)(i)(A)(1)'' sub-paragraph numbering convention and the Exchange proposes to use an ''(a)(1)(A)(i)'' sub-paragraph numbering convention.

add a subheading before such rules that provides ''Books and Records'':

• Rule 4.1 (Requirements) would be renumbered as Rule 11.4.1 without any changes.

• Rule 4.2 (Furnishing of Records) would be renumbered as Rule 11.4.2 without any substantive changes.

• Rule 4.3 (Record of Written Complaints) would be renumbered as Rule 11.4.3 without any changes.

• Rule 4.4 (Disclosure of Financial Condition) would be renumbered as Rule 11.4.4 without any changes.

The Exchange proposes to replace current Rule 5.5, as described below, and renumber the rules in Chapter V as follows and add a subheading before such rules that provides ''Supervision'':

• Rule 5.1 (Written Procedures) would be renumbered as Rule 11.5.1 without any changes.

• Rule 5.2 (Responsibility of ETP Holders) would be renumbered as Rule 11.5.2 without any changes.

• Rule 5.3 (Records) would be renumbered as Rule 11.5.3 without any changes.

• Rule 5.4 (Review of Activities and Annual Inspection) would be renumbered as Rule 11.5.4 without any changes.

• Rule 5.5 (Chinese Wall Procedures) would be replaced with proposed Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Rule 11.3 and NYSE American Rule 6.3E. The proposed rule would provide for a principles-based approach to prevent the misuse of material non-public information. Because the Exchange would not trade options, the Exchange proposes that Commentary .01 to proposed Rule 11.5.5 would be based on Commentary .01 to NYSE American Rule 6.3E only. The Exchange's proposed Rule 5.5 would also include a non-substantive difference from the NYSE Arca and NYSE American rules on which it is based by not including rule text based on Commentary .02 to NYSE Arca Rule 11.3 or Commentary .02 to NYSE American Rule 6.3 because the Exchange already has a rule defining the term ''associated person.'' Finally, Commentary .04 to proposed Rule 11.5.5 would have a non-substantive differences compared to NYSE Arca Rule 11.3 and NYSE American Rule 6.3E because it would refer to ETP Holders acting as a registered market maker in UTP Exchange Traded Products, rather than refer to securities listed on the Exchange under Rules 5 and 8. Proposed Rule 11.5.5 would require every ETP Holder to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such ETP Holders. For purposes of this requirement, the misuse of material, non-public information would include, without limitation, to [sic] the following:

(a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivatives securities while in possession of material, non-public information concerning that issuer; or

(b) trading in a security or related options or other derivatives securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or

(c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

• Rule 5.6 (Anti-Money Laundering Compliance Program) would be renumbered as Rule 11.5.6 without any substantive changes.

• Rule 5.7 (Annual Certification of Compliance and Supervisory Processes) would be renumbered as Rule 11.5.7 without any substantive changes.

The Exchange proposes renumber the rules in Chapter VI as follows and add a subheading before such rules that provides ''Extensions of Credit'':

• Rule 6.1 (Extensions of Credit—Prohibitions and Exemptions) would be renumbered as Rule 11.6.1 without any substantive changes.

• Rule 6.2 (Day Trading Margin) would be renumbered as Rule 11.6.2 without any substantive changes. The Exchange proposes to update internal cross references in the rule to Rule 11.6.1(c) instead of Rule 4.2(c), which rule no longer exists.

The Exchange proposes to replace current Rule 12.6, as described below, and proposes to renumber the rules in Chapter XII as follows and add a subheading before such rules that provides ''Trading Practices'':

• Rule 12.1 (Market Manipulation) would be renumbered as Rule 11.12.1 without any changes.

• Rule 12.2 (Fictitious Transactions) would be renumbered as Rule 11.12.2 without any substantive changes.

• Rule 12.3 (Excessive Sales by an ETP Holder) would be renumbered as Rule 11.12.3 without any changes.

• Rule 12.4 (Manipulative Transactions) would be renumbered as Rule 11.12.4 without any changes.

• Rule 12.5 (Dissemination of False Information) would be renumbered as Rule 11.12.5 without any changes.

• Current Rule 12.6 (Customer Priority) would be replaced with proposed Rule 11.12.6 (Prohibition of Trading Ahead of Customer Orders), which is based on NYSE Arca Rule 9.5320, NYSE American 5320- Equities, and NYSE Rule 5320. These rules are based on FINRA Rule 5320. The Exchange believes that replacing current Rule 12.6 with a rule based on the rules of FINRA, NYSE Arca, NYSE American, and NYSE would promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations on behalf of the Exchange under a regulatory services agreement.

• Rule 12.7 (Joint Activity) would be renumbered as Rule 11.12.7 without any changes.

• Rule 12.8 (Influencing the Consolidated Tape) would be renumbered as Rule 11.12.8 without any changes.

• Rule 12.9 (Options) would be renumbered as Rule 11.12.9 without any changes.

• Rule 12.10 (Best Execution) would be renumbered as Rule 11.12.10 without any substantive changes. The Exchange proposes to update the internal reference in the rule from Exchange Act Rule 11Ac1–4, which was the Order Display Rule, to Rule 604 of Regulation NMS, which is the current Order Display Rule.

• The Exchange does not propose to retain current Rules 12.11 or Rule 12.12. Rule 12.11, relating to trading suspensions, would be superseded by proposed Rule 7.13, which would provide authority for the Board or Exchange President to suspend trading in securities traded on the Exchange. Rule 12.12 relating to publication of transactions and changes, would be superseded by proposed Rule 7.40, as described above.

Because the current rules would be renumbered, the Exchange proposes to delete Chapters III, IV, V, VI, and XII of the current rulebook.

Finally, the Exchange proposes new Rule 11.12.11 based on NYSE American Rule 5220—Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, that defines and prohibits two types of disruptive quoting and trading activity on the Exchange. The Exchange proposes to include this rule under Rule 11.12 sub-numbering because it is a trading practices rule.

Proposed Rule 11.12.11(a) would prohibit ETP Holders and Persons Associated with an ETP Holder from

engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 11.12.11(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes that, with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

Proposed Rule 11.12.11(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 11.12.11(b)(1)(A)-(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described in the NYSE American notice and with the rules of other SROs.[111]

Rule 12—Arbitration

The Exchange proposes new Rule 12 (Arbitration) to replace rules set forth in Chapter IX relating to arbitration. Proposed Rule 12 is based on NYSE Rule 600A and those portions of NYSE Arca Rule 12 that are based on NYSE Rule 600A. Because any arbitrations involving ETP Holders and/or Associated Persons would be arbitrated pursuant to the FINRA Code of Arbitration Procedures and the Exchange would not separately run an arbitration program, the Exchange proposes to simplify its rules on arbitration and eliminate legacy, non-operative rules.

Proposed Rule 12(a) would set forth an ETP Holder's duty to arbitrate under the FINRA Code of Arbitration Procedure (i) any dispute, claim or controversy by or among ETP Holders and/or Associated Persons; and (ii) any dispute, claim or controversy between a customer or non-member and an ETP Holder and/or Associated Person arising in connection with the business of such ETP Holder and/or in connection with the activities of an Associated Person. Proposed Rule 12(b) would also provide that if any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's rules or the federal securities laws, the arbitrator may refer the matter to the Exchange for disciplinary investigation. Proposed Rule 12(c) would also provide that any ETP Holder or Associated Person who fails to honor an award of arbitrators appointed in accordance with proposed Rule 12 would be subject to disciplinary proceedings under the Rule 10.8000 or 10.9000 Series, as applicable. Proposed Rule 12(d) would provide that the submission of any matter to arbitration would in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

Because Rule 12 would set forth the Exchange's rules relating to arbitration, the Exchange proposes to delete the rules in Chapter IX in their entirety.

Rule 13—Liability of Directors and Exchange

Proposed Rule 13 titled ''Liability of Directors and Exchange'' would establish requirements governing liability of directors and of the Exchange, including the limits on liability for specified circumstances.[112] The rules set forth in proposed Rule 13 are based on the rules set forth in NYSE Arca Rule 14, with non-substantive differences not to reference ''OTP Holders'' or ''OTP Firms,'' and NYSE American Rule 13E.

Proposed Rule 13.1 (Liability of Directors) is based on NYSE Arca Rule 14.1 without any substantive differences. Proposed Rule 13.2 (Liability of the Exchange) is based on NYSE Arca Rule 14.2 without any substantive differences.

Proposed Rule 13.3 (Legal Proceedings Against Directors, Officers, Employees, or Agents) would establish requirements relating to legal proceedings against directors, officers, employees, agents, or other officials of the Exchange. The proposed rule is based on NYSE Arca Rule 14.3 and NYSE American Rule 13.3E without any substantive differences.

Proposed Rule 13.4 (Exchange's Costs of Defending Legal Proceedings) would establish the circumstances regarding who is responsible for the Exchange's costs in defending a legal proceeding brought against the Exchange. The proposed rule is based on NYSE Arca Rule 14.4 and NYSE American Rule 13.4E without any substantive differences.

4. Section 11(a) of the Act

Section 11(a)(l) of the Act[113] (''Section 11(a)(1)'') prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception to the prohibition applies. Rule 11a2–2(T) under the Act (''Rule 11a2–2(T)''),[114] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(l) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution (although the member may participate in clearing and settling the transaction); (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or its associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

With the proposed re-launch of the Exchange as a fully automated

[111] *See, e.g.,* BZX Rule 12.15; NASDAQ Rule 2170. *See also* Securities Exchange Release No. 80804 (May 30, 2017), 82 FR 25887, 25888–25890 (June 5, 2017) (SR–NYSEMKT–2017–25) (Notice of filing discussing matters involving Biremis Corp. and Hold Brothers On-Line Investment Services, Inc.).

[112] The Exchange proposes to delete the current heading of Rule 13 (''Cancellation, Suspension, and Reinstatement'') established by the Framework Filing as well as ''Rule 14.'' The current heading for Rule 14 (''Liability of Directors and Exchange'') would thus become the heading for proposed Rule 13 and the Exchange would not have a Rule 14 in its rulebook.

[113] 15 U.S.C. 78k(a)(1).

[114] 17 CFR 240.11a2–2(T).

electronic trading model that does not have a trading floor, the Exchange believes that the policy concerns Congress sought to address in Section 11(a)(1)—*i.e.,* the time and place advantage that members on exchange trading floors have over non-members off the floor and the general public—would not be present. Specifically, on the Pillar trading system, buy and sell interest will be matching in a continuous, automated fashion. Liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to the Exchange electronically by ETP Holders from remote locations. The Exchange further believes that ETP Holders entering orders into the Exchange will satisfy the requirements of Rule 11a2–2(T) under the Act, which provides an exception to Section 11(a)'s general prohibition on proprietary trading.

The four conditions imposed by the ''effect versus execute'' rule are designed to put members and non-members of an exchange on the same footing, to the extent practicable, in light of the purpose of Section 11(a). For the reasons set forth below, the Exchange believes the structure and characteristics of its proposed Pillar trading system do not result in disparate treatment of members and non-members and places them on the ''same footing'' as intended by Rule 11a2–2(T).

1. *Off-Floor Transmission.* Rule 11a2–2(T) requires orders for a covered account transaction to be transmitted from off the exchange floor. The Commission has considered this and other requirements of the rule in the context of automated trading and electronic order handling facilities operated by various national securities exchanges in a 1979 Release [115] as well as more applications of Rule 11a2–2(T) in connection with the approval of the registrations of national securities exchanges.[116] In the context of these automated trading systems, the Commission has found that the off-floor transmission requirement is met if an order for a covered account is transmitted from a remote location directly to an exchange's floor by electronic means.[117] Because the Exchange would not have a physical trading floor when it re-launches trading, and like other all electronic exchanges, the Exchange's Pillar trading system would receive orders from ETP Holders electronically through remote terminals or computer-to-computer interfaces, the Exchange therefore believes that its trading system satisfies the off-floor transmission requirement.

2. *Non-Participation in Order Execution.* The ''effect versus execute'' rule further provides that neither the exchange member nor an associated person of such member participate in the execution of its order. This requirement was originally intended to prevent members from using their own brokers on an exchange floor to influence or guide the execution of their orders.[118] The rule, however, does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted, provided such cancellations or modifications are transmitted from off an exchange floor.[119] In the 1979 Release discussing both the Pacific Stock Exchange's COM EX system and the Philadelphia Stock Exchange's PACE system, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems, and although the execution is automatic, the design of such systems ensures that members do not possess any special or unique trading advantages in handling orders after transmission to the systems.[120] The Exchange's Pillar trading system would at no time following the submission of an order allow an ETP Holder or an associated person of such member to acquire control or influence over the result or timing of an order's execution. The execution of an ETP Holder's order would be determined solely by what quotes and orders are present in the system at the time the member submits the order and the order priority based on Exchange rules. Therefore, the Exchange believes the non-participation requirement would be met through the submission and execution of orders in the Exchange's Pillar trading system.

3. *Execution Through an Unaffiliated Member.* Although Rule 11a2–2(T) contemplates having an order executed by an exchange member, unaffiliated with the member initiating the order, the Commission has recognized the requirement is satisfied where automated exchange facilities are used as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. In the 1979 Release, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). Because the design of the Exchange's Pillar trading system ensures that no ETP Holder has any special or unique trading advantages over nonmembers in the handling of its orders after transmitting its orders to the Exchange, the Exchange believes that its Pillar trading system would satisfy this requirement.

4. *Non-Retention of Compensation for Discretionary Accounts.* Finally, Rule 11a2–2(T) states, in the case of a transaction effected for the account for which the initiating member or its associated person exercises investment discretion, in general, the member or its associated person may not retain compensation for effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to both Section 11(a) of the Exchange Act and Rule 11a2–2(T). The Exchange will advise its membership through the issuance of a Regulatory Bulletin that those ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exemption in Rule 11a2–2(T) from the prohibition in Section 11(a) of the Exchange Act.

In conclusion, the Exchange believes that its Pillar trading system would

[115] *See* Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the lntermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System (''COM EX''), and the Phlx's Automated Communications and Execution System (''PACE'')) (''1979 Release'').

[116] Securities Exchange Act Release Nos. 53128 (January 13, 2006) 71 FR 3550 (January 23, 2006) (File No. 10–13 1) (order approving Nasdaq Exchange registration); 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008) (order approving BATS Exchange registration); 61152 (December 10, 2009) 74 FR 66699 (December 16, 2009) (order approving C2 exchange registration); and 78101 (June 17, 2016), 81 FR 41142, 41164 (June 23, 2016) (order approving Investors Exchange LLC registration).

[117] *See, e.g.,* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange (''ArcaEx'') as electronic trading facility of the Pacific Exchange (''PCX'') (''Arca Ex Order'')); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[118] *Id.* 1978 Release, *supra* note 117.

[119] *Id.*

[120] 1979 Release, *supra* note 115.

satisfy the four requirements of Rule 11a2–2(T) as well as the general policy objectives of Section 11(a). The Exchange's proposed Pillar trading system would place all users, members and non-members, on the ''same footing'' with respect to transactions on the Exchange for covered accounts as intended by Rule 11a2–2(T). As such, no Exchange ETP Holder would be able to engage in proprietary trading in a manner inconsistent with Section 11(a).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[121] in general, and furthers the objectives of Section 6(b)(5),[122] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Generally, the Exchange believes that the proposed rules would support the re-launch of the Exchange as a fully automated cash equities trading market with a price-time priority model that is based on the rules of its affiliated exchanges, NYSE Arca and NYSE American. The Exchange is not proposing any new or novel rules. The proposed rule changes relating to trading would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on the approved rules of other exchanges.

In addition, the Exchange proposes to renumber its current rules relating to its ETP Holders, including the membership process described in Chapter II of the current rulebook, rules set forth in Chapters III, IV, V, VI, and XII of the current rulebook, and the CAT NMS Plan Compliance Rules, currently set forth in Chapter XIV of the rulebook. The Exchange believes that retaining such rules would remove impediments to and perfect the mechanism of a free and open market and a national market system because ETP Holders would not be required to change their internal procedures to be reinstated as ETP Holders of the Exchange, thus supporting the efficient re-launch of the Exchange. The Exchange further believes that renumbering such rules would remove impediments to and perfect the mechanism of a national market system because using the rule numbering framework that is based on the rules of NYSE Arca and NYSE American would promote transparency in Exchange rules by using consistent rule numbers with the rules of its affiliated exchanges that are also operating on the Pillar trading platform. The Exchange further believes that for proposed Rule 11, retaining sub-numbering for rules that are in the current rulebook would remove impediments to and perfect the mechanism of a free and open market for ETP Holders that have internal procedures that reference current Exchange rules; the proposed rule numbering would minimize the changes required by an ETP Holder to such policies and procedures.

Proposed Changes to the Bylaws

The Exchange believes that amending the Bylaws to change the name of the Appeals Committee to the Committee for Review would remove impediments to and perfect the mechanism of a free and open market by aligning the name used for the Exchange's committee that presides over appeals with the name used by the Exchange's national securities exchanges for their committees that play a similar role, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Bylaws and, specifically, the role of the Committee for Review.

In addition, the Exchange believes that the proposed changes to the Bylaws to change the name of the Appeals Committee to the Committee for Review would contribute to the orderly operation of the Exchange by aligning the name used for the Exchange's committee that presides over appeals with the name used by the Exchange's national securities exchanges for their committees that play a similar role, and therefore would be consistent with Section 6(b)(1) of the Act.[123] The change to the Bylaws would be non-substantive, as the makeup and function of the Appeals Committee would not change.

Proposed Rules Based on the Rules of the Exchange's Affiliates

Regulation of the Exchange (Rule 0) and Definitions (Rule 1)

The Exchange believes that proposed Rule 0 would 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 because it would specify the role of FINRA, pursuant to a Regulatory Services Agreement, to perform certain regulatory functions of the Exchange on behalf of the Exchange.

The Exchange further believes that proposed Rule 1 would 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 because the proposed definitions are terms that would be used in the additional rules proposed by the Exchange. Proposed Rule 1 would therefore promote transparency in Exchange rules by providing for definitional terms that would be used throughout the rulebook.

Administration of the Exchange (Rule 3)

The Exchange believes that proposed Rule 3 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules relating to the organization and administration of the Exchange that are based on the approved rules of NYSE Arca, including rules relating to liability for non-payment of assessments, dues, or other charges (proposed Rule 3.8), Exchange relationships with ETP Holders (proposed Rule 3.9), requirements to notify the Exchange of expulsion or suspension (proposed Rule 3.10), and requirements for fingerprint-based background checks of Exchange employees (proposed Rule 3.11).

Trading Securities on an Unlisted Trading Privileges Basis (Rules 5 and 8)

The Exchange believes that proposed Rules 5 and 8 would 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 by providing for the trading of securities, including UTP Exchange Traded Products, on the Exchange pursuant to UTP, subject to consistent and reasonable standards. Accordingly, the proposed rule change would contribute to the protection of investors and the public interest because it may provide a better trading environment for investors and, generally, encourage greater competition between markets.

The proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting rules that will lead ultimately to the trading pursuant to UTP of the proposed products on the Exchange, just

[121] 15 U.S.C. 78f(b).

[122] 15 U.S.C. 78f(b)(5).

[123] 15 U.S.C. 78f(b)(1).

as they are currently traded on other exchanges. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges, and more specifically, NYSE American Rules 5E and 8E, NYSE Rules 5P and 8P, and NYSE Arca Rules 5 and 8. The Exchange believes that by conforming its rules and allowing trading opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

The proposed change is not designed to address any competitive issue, but rather to adopt new rules that are word-for-word identical to the rules of NYSE American, NYSE, and NYSE Arca (other than with respect to certain non-substantive and technical amendments described above), to support the Exchange's new Pillar trading platform. The Exchange believes that the proposed rule change would promote consistent use of terminology to support the Pillar trading platform on both the Exchange and its affiliates, NYSE American, NYSE, and NYSE Arca, thus making the Exchange's rules easier to navigate.

The Exchange believes the proposed rule change also supports the principals of Section 11A(a)(1) [124] of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets. The proposed rule change also supports the principles of Section 12(f) of the Act, which govern the trading of securities pursuant to a grant of unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange believes that the proposed rule change is consistent with these principles. By providing for the trading of securities on the Exchange on a UTP basis, the Exchange believes its proposal will lead to the addition of liquidity to the broader market for these securities and to increased competition among the existing group of liquidity providers. The Exchange also believes that, by so doing, the proposed rule change would encourage the additional utilization of, and interaction with, the exchange market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for securities traded pursuant to UTP.

The Exchange further believes that enhancing liquidity by trading securities on a UTP basis would help raise investors' confidence in the fairness of the market, generally, and their transactions in particular. As such, the general UTP trading rule would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in securities on the Exchange.

Order Audit Trail Rules (Proposed Rule 6)

The Exchange believes that moving the CAT NMS Plan Compliance Rules, currently set forth in Chapter XIV, to proposed Rule 6.6800 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate all of the Exchange's order audit trail requirements in a single Rule, without any substantive differences to the Compliance Rules, and because it would follow the same rule-numbering convention as its affiliated exchanges and FINRA.

The Exchange believes that proposed Rule 6.6900 relating to Consolidated Audit Trail—Fee Dispute Resolution would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would harmonize the Exchange's rules with the approved rules of other exchanges relating to fee dispute resolution under the CAT NMS Plan.[125] The proposed CAT Fee Dispute Resolution Rule would therefore implement, interpret or clarify Section 11.5 of the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan.

Finally, the Exchange believes that the proposed Rule 6.7400 Series, relating to Order Audit Trail System, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule series is based on the approved rules of NYSE Arca, which are based on FINRA's OATS rules. The Exchange further believes that the proposed OATS rules would promote just and equitable principles of trade as such rules would further promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under a Regulatory Services Agreement. The Exchange does not believe that adding the OATS rules to the Exchange would impose a burden on Exchange ETP Holders because with the exception of one Exchange ETP Holder, all former Exchange ETP Holders were members of either FINRA, NYSE Arca, or Nasdaq, and thus are already subject to OATS requirements under the rules of those SROs. The one ETP Holder that is not currently a member of FINRA, one of the Exchange's affiliates, or Nasdaq would not be subject to ongoing reporting requirements under the proposed OATS rules, and therefore it would not be onerous for such ETP Holder to comply if OATS information were requested in the course of a regulatory inquiry.

Equities Trading Rules (Proposed Rule 7)

The Exchange believes that proposed Rule 7 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules relating to trading on the Exchange, including post-trade requirements, that would support the re-launch of Exchange trading as a fully automated trading market with a price-time priority trading model. The proposed rules are based on the rules of NYSE Arca and NYSE American, as applicable, and include rules governing orders and modifiers, ranking and display, execution and routing, trading sessions, and market makers. The Exchange believes that because it would not be a listing venue, it would be consistent with the protection of investors and the public interest not to include rules relating to auctions or lead or designated market makers. Other than substantive differences to the proposed rules relating to the difference that the Exchange would not operate auctions, the Exchange is not proposing any novel rules in proposed Rule 7.

Disciplinary Rules (Proposed Rule 10)

The Exchange believes that the proposed Rule 10 Series would provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the

[124] 15 U.S.C. 78k–1(a)(1).

[125] *See* Fee Dispute Approval Order, *supra* note 88.

Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as NYSE American's rule text. The proposed rule change would enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program once the Exchange relaunches, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange further believes that the proposed processes for settling disciplinary matters both before and after the issuance of a complaint are fair and reasonable and provides adequate procedural protections to all parties in addition to promoting efficiency.

The Exchange believes that adopting its affiliates' appellate procedures, which provide for one level of review rather than two levels of review, would be fair and efficient and create consistency with its affiliates' practices. The proposed rule change would offer the members of Board, other than the CEO, the opportunity to call a case for review. This will provide the Board with authority to exercise appropriate oversight over disciplinary action taken by the Exchange and FINRA on the Exchange's behalf.

The Exchange notes that adopting the list of minor rule violations and associated fine levels based on the rules of its affiliate would promote fairness and consistency in the marketplace by harmonizing minor rule plan fines across affiliated exchanges for the same conduct. The Exchange further believes that adoption of its affiliates' minor rule violations is consistent with Section 6(b)(6) of the Act,[126] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Arbitration (Proposed Rule 12)

The Exchange believes that proposed Rule 12 relating to arbitration would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would update the Exchange's rules governing arbitration to reflect that any such arbitrations would be processed by FINRA pursuant to the FINRA Code of Arbitration Procedures. The proposed rule is not novel as it is based on NYSE Rule 600A and NYSE Arca Rule 12. In addition, the proposed rule change would delete obsolete arbitration procedures that are not supported by the Exchange. The Exchange believes the proposed rule change fosters uniformity and consistency in arbitration proceedings and, as a result, would enhance the administration and operation of the arbitration process, thereby protecting investors and the public interest. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and members.

Liability of Directors and Exchange (Proposed Rule 13)

The Exchange believes that proposed Rule 13 would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules governing liability of directors, liability of exchange, legal proceedings against Exchange directors, officers, employees, or agents, and Exchange's costs of defending legal proceedings with the approved rules of its affiliated exchanges NYSE Arca and NYSE American. The Exchange believes that the proposed rules would further promote just and equitable principles of trade by providing for consistent methodology relating to liability for trading on affiliated exchanges that would be using the same trading platform. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and ETP Holders.

Proposed Renumbering of Rules in Chapters II, III, IV, V, VI, and XII

The Exchange believes that renumbering rules currently set forth in Chapters II to Rule 2 and rules currently set forth in Chapters III, IV, V, VI, and XII to Rule 11 would remove impediments to and perfect the mechanism of a free and open market because the proposed rule set would maintain existing rules relating to ETP Holders. The Exchange believes that relocating existing rules set forth in Chapters II, III, IV, V, VI, and XII to proposed Rules 2 and 11 would remove impediments to and perfect the mechanism of a free and open market and a national market system because using the rule numbering framework that is based on the rules of NYSE Arca would promote transparency in Exchange rules by using consistent rule numbers with the equities market of NYSE Arca, which is the first market that migrated to the Pillar trading platform. In addition, the Exchange believes that the proposed sub-numbers for rules set forth in Rule 11, which are identical to the current rule numbers for such rules, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing current ETP Holders, who are familiar with the current rulebook, with rule numbers that are consistent with the current rulebook for rules that are not changing.

The Exchange further believes that updating Exchange rules as follows would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs:

- The Exchange believes that the proposed amendment to Rule 2.5 to update proposed Commentary .01 to add the date February 1, 2017 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate the efficient reinstatement of Exchange ETP Holders that are in good standing pursuant to the Exchange's existing rules, which would support the re-launch of trading on the Exchange.
- The Exchange believes that proposed Rule 2.13 (Exchange Backup Systems and Mandatory Testing) would remove impediments to and perfect the mechanism of a free and open market because it would maintain consistency across all exchanges operated by NYSE Group regarding mandatory participation in the testing of backup systems. The proposed rule is based on NYSE Arca Rule 2.27 and is not novel.
- The Exchange believes that proposed Rule 2.18 (Activity Assessment Fee) furthers the objectives of Section 6(b)(4) of the Act,[127] 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. Specifically, proposed Rule 2.18 does not establish a new fee. Rather, the proposed rule is based on existing provisions of current 16.1 relating to ''Regulatory Transaction

[126] 15 U.S.C. 78f(b)(6).

[127] 15 U.S.C. 78f(b)(4).

Fees'' without any substantive differences. The Exchange proposes to move the rule text to Rule 2.18 to use rule numbering for Pillar that is consistent with the Framework Filing, with non-substantive differences to use Pillar terminology, and not move obsolete rule text.

• The Exchange believes that proposed Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Rule 11.3 and NYSE American Rule 6.3E and would replace current Rule 5.5, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing for a principles-based approach to prevent the misuse of material non-public information. The proposed rule change would therefore harmonize the Exchange's rules with those of its affiliated exchanges.

• The Exchange believes that proposed Rule 11.12.6 (Prohibition of Trading Ahead of Customer Orders), which is based on NYSE Arca Rule 9.5320, NYSE American 5320—Equities, and NYSE Rule 5320, and would replace current Rule 12.6 would remove impediments to and perfect the mechanism of a free and open market and a national market system and is designed to prevent fraudulent and manipulative acts and practices because it would promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations on behalf of the Exchange under a regulatory services agreement.

• The Exchange believes that proposed Rule 11.12.11 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220—Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs, including its affiliated exchanges. In addition, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by providing the Exchange with authority to prohibit specified disruptive quoting and trading activity on the Exchange. More specifically, the Exchange believes that the proposed rule is consistent with the public interest and the protection of investors and otherwise furthers the purposes of the Act because the proposal strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed. For the same reasons, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[128] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

Section 11(a) of the Act

For reasons described above, the Exchange believes that the proposal for the Exchange to operate on a fully automated trading market without a Floor is consistent with Section 11(a) of the Act and Rule 11a2–2(T) thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide for rules to support the re-launch of trading on the Exchange on the Pillar trading platform and to renumber current rules relating to ETP Holders consistent with the Framework Filing, but also maintaining current rule numbers as part of a sub-numbering scheme for rules that are not changing. The Exchange operates in a highly competitive environment in which its unaffiliated exchanges competitors operate multiple affiliated exchanges that operate under common rules. By proposing rules based on the rules of its affiliated exchanges, the Exchange believes that it will be able to compete on a more level playing field with its exchange competitors that similarly trade NMS Stocks on fully automated trading models. In addition, by basing its rules on those of its affiliated exchanges, the Exchange will provide its ETP Holders with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms.

In addition, the Exchange does not believe that the proposed rule change will impose any burden on competition on its ETP Holders that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange proposes to retain rules governing ETP Holder conduct and therefore such ETP Holders would not need to update internal procedures in connection with the re-launch of the Exchange. To the extent the Exchange has proposed non-trading rules based on those of its affiliates, *e.g.,* OATS rules, disciplinary rules, and certain conduct rules, the Exchange believes that because all but one of its former ETP Holders are already members of FINRA, an affiliated exchange, or Nasdaq, Exchange ETP Holders are already familiar with such rules in connection with their membership on those SROs. Moreover, these proposed rules would provide for greater harmonization among SROs of the rules for investigations and disciplinary matters, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating the Exchange's performance of its regulatory functions. The Exchange further believes that the proposed rule change would promote consistency and transparency on both the Exchange and its affiliated exchanges, thus making the Exchange's rules easier to navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[128] 15 U.S.C. 78f(b)(5).

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–2018–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2018–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2018–02 and should be submitted on or before April 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[129]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04962 Filed 3–12–18; 8:45 am]

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[129] 17 CFR 200.30–3(a)(12).

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H.R. 1725/P.L. 115–130

To direct the Secretary of Veterans Affairs to submit certain reports relating to medical evidence submitted in support of claims for benefits under the laws administered by the Secretary. (Mar. 9, 2018; 132 Stat. 332)

H.R. 3122/P.L. 115–131

Veterans Care Financial Protection Act of 2017 (Mar. 9, 2018; 132 Stat. 334)

H.R. 4533/P.L. 115–132

To designate the health care system of the Department of Veterans Affairs in Lexington, Kentucky, as the ''Lexington VA Health Care System'' and to make certain other designations. (Mar. 9, 2018; 132 Stat. 336)

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