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Contents

Federal Register

Vol. 83, No. 123

Tuesday, June 26, 2018

Agriculture Department
See Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29741–29742

Animal and Plant Health Inspection Service
NOTICES
Environmental Assessments; Availability, etc.:
Nuseed Americas, Inc.; Canola Genetically Engineered for Altered Oil Profile, 29742–29743

Antitrust Division
NOTICES
Changes under the National Cooperative Research and Production Act:
Automated Driving Behaviors Consortium, 29824
R Consortium, Inc., 29824–29825

Architectural and Transportation Barriers Compliance Board

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Wheelchair Seat Height Survey, 29744–29745

Army Department
NOTICES
Meetings:
Advisory Committee on Arlington National Cemetery, 29762–29763
Board on Coastal Engineering Research, 29763–29764
Prize Competitions:
Expeditionary Technology Search (xTechSearch), 29764–29765

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 29745–29746

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Foreign Adult Victims of Human Trafficking, 29789–29790

Coast Guard
RULES
Safety Zones:
Bay Village Independence Day Fireworks; Lake Erie, Bay Village, OH, 29689–29691
City of Erie Fourth of July Fireworks; Lake Erie, Erie, PA, 29682–29684
Lower Mississippi River, New Orleans, LA, 29687–29689
Officer Lehner Memorial Vintage Regatta, Buffalo Outer Harbor, Buffalo, NY, 29684–29685
Wine and Walleye Festival Fireworks, Ashtabula River, Ashtabula, OH, 29686–29687
PROPOSED RULES
Safety Zones:
Swim Around Charleston, Charleston, SC, 29719–29721
USA Triathlon Age Group National Championships Lake Erie, Cleveland, OH, 29721–29723

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings:
Market Risk Advisory Committee, 29762

Consumer Product Safety Commission
RULES
Safety Standards for Baby Changing Products, 29672–29682

Corporation for National and Community Service
NOTICES
Transformation and Sustainability Plans:
Preliminary Public Input; Correction, 29762

Defense Department
See Army Department
See Navy Department
PROPOSED RULES
Federal Acquisition Regulations:
Special Emergency Procurement Authority, 29736–29740
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29765–29767

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Formula Grant EASIE Annual Performance Report, 29775
Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs, 29768
International Early Learning Study 2018 Main Study, 29768–29769
Magnet Schools Assistance Program—Government Performance and Results Act Table Form, 29775–29776
Applications for New Awards:
Special Programs for Indian Children—Demonstration Grants, 29769–29774

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29776–29777
Meetings:
Basic Energy Sciences Advisory Committee, 29776

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29777–29778

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Montana; Revisions to Prevention of Significant Deterioration Permitting Rules, 29694–29696
South Carolina; Volatile Organic Compounds Definition, 29696–29698
South Dakota; Revisions to Permitting Rules, 29698–29702
Ocean Dumping:
Grays Harbor, WA; Withdrawal of Designated Disposal Site, 29706–29710
Pesticide Tolerances:
Fluroxypyr, 29702–29706
Previously-Incurred Costs in Water Infrastructure Finance and Innovation Act Program, 29691–29694
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
New York; Subpart 225–1, Fuel Composition and Use—Sulfur Limitations, 29723–29726
Texas; Reasonably Available Control Technology in Houston-Galveston-Brazoria Ozone Nonattainment Area, 29727–29731
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of Omaha Lead Superfund site, 29731–29736
NOTICES
Brownfields Utilization, Investment and Local Development Act:
Brownfields Grants, Ownership and Liability Provisions, and State and Tribal Response Programs, 29782–29783
Calls for Information:
Adverse Effects of Strategies for Attainment and Maintenance of National Ambient Air Quality Standards, 29784–29785
Calls for Scientific and Policy-Relevant Information:
Review of National Ambient Air Quality Standards for Ozone, 29785–29786
Clean Air Act Operating Permit Program:
Petitions for Objection to State Operating Permit for South Louisiana Methanol LP, St. James Methanol Plant in St. James Parish, LA, 29782
Coastal Nonpoint Pollution Control Program:
Intent to Find that Georgia has Satisfied All Conditions of Approval, 29761–29762
External Review Draft Integrated Science Assessments:
Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria, 29786–29788

Federal Aviation Administration
RULES
Airworthiness Directives:
International Aero Engines Turbofan Engines, 29665–29667
IFR Altitudes:
Miscellaneous Amendments, 29667–29672

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29825

Federal Communications Commission
RULES
Service Rules Governing Narrowband Operations in 769–775/799–805 MHz Bands, 29710–29712

Federal Deposit Insurance Corporation
NOTICES
Meetings:
Advisory Committee on Community Banking, 29788

Federal Emergency Management Agency
NOTICES
Flood Hazard Determinations, 29805–29810

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 29778–29782
Designations of Commission Staff as Non-Decisional:
Footprint Power, LLC; Footprint Power Salem Harbor Operations, LLC, 29781
Filings:
American Municipal Power, Inc., 29778–29779
Herrin, Michael D., 29780–29781
Permit Applications:
FreedomWorks, LLC, 29778–29779
Peak Hour Power, LLC, 29781

Federal Highway Administration
PROPOSED RULES
Indefinite Delivery and Indefinite Quantity Contracts for Federal-aid Construction, 29713–29716

Federal Maritime Commission
NOTICES
Agreements Filed, 29788–29789

Fish and Wildlife Service
NOTICES
Permit Applications:
Foreign Endangered Species, 29820–29821

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Guidance for Industry: Assessing User Fees under Biosimilar User Fee Amendments of 2017, 29792–29793
Meetings:
Antimicrobial Drugs Advisory Committee; Establishment of Public Docket, 29790–29792

General Services Administration
PROPOSED RULES
Federal Acquisition Regulations:
Special Emergency Procurement Authority, 29736–29740

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Health Resources and Service Administration Uniform Data System, 29800–29801

National Survey of Organ Donation Attitudes and Practices, 29798–29800
National Vaccine Injury Compensation Program:
List of Petitions Received, 29793–29796
Proposed Standards for the Children's Hospitals Graduate Medical Education Payment Program's Quality Bonus System, 29796–29798

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community Development Block Grant Grantees, 29813–29814
Community Development Block Grant-Disaster Recovery, 29814–29815
Multifamily Rental Project Closing Documents, 29815–29820

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Certain Non-Government Attorneys Not Authorized to Participate in Examinations of Books and Witnesses as Section 6103(n) Contractors; Hearing, 29716

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Small Diameter Graphite Electrodes from the People's Republic of China; Partial Rescission, 29747–29748
Charter Renewals:
U.S. Investment Advisory Council, 29746–29747
Determinations in Less-Than-Fair-Value Investigations:
Rubber Bands from the People's Republic of China and Thailand, 29748–29749
Terminations of Less-Than-Fair-Value Investigations:
Steel Propane Cylinders from Taiwan, 29748

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Steel Racks from China, 29822–29823
Complaints:
Certain Powered Cover Plates, 29823–29824

Justice Department
See Antitrust Division
See Federal Bureau of Investigation

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Plats of Surveys:
Colorado, 29821–29822

Maritime Administration
NOTICES
Requests for Administrative Waivers of the Coastwise Trade Laws:
Vessel EAGLE, 29867–29868
Vessel FROM RUSSIA WITH LOVE, 29869
Vessel KAT ATOMIC, 29865–29866
Vessel MISS SANDY RITA, 29866
Vessel PRIVATE RESERVE, 29866–29867
Waiver Requests for Aquaculture Support Operations for 2018 Calendar Year:
MILDRED 1, 29868–29869

Mine Safety and Health Administration
PROPOSED RULES
Requests for Information:
Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors at Surface and Underground Mines, 29716–29719

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulations:
Special Emergency Procurement Authority, 29736–29740

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29825–29827

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 29803–29805
National Center for Complementary and Integrative Health, 29802, 29805
National Heart, Lung, and Blood Institute, 29801–29802
National Human Genome Research Institute, 29802
National Institute of Neurological Disorders and Stroke, 29802–29803
National Institute on Aging, 29804–29805

National Oceanic and Atmospheric Administration
PROPOSED RULES
Taking and Importing Marine Mammals:
Navy Training and Testing Activities in Hawaii-Southern California Training and Testing Study Area, 29872–30029
NOTICES
Coastal Nonpoint Pollution Control Program:
Intent to Find that Georgia has Satisfied All Conditions of Approval, 29761–29762
Takes of Marine Mammals Incidental to Specified Activities:
Construction at City Dock and Ferry Terminal, in Tenakee Springs, AK, 29749–29761

National Science Foundation
NOTICES
Meetings; Sunshine Act, 29827

Navy Department
NOTICES
Exclusive and Partially Patent Licenses; Approvals:
OLLI Technology Corp. dba Tanka, 29767–29768

Nuclear Regulatory Commission
NOTICES
License Amendment; Applications:
Duane Arnold Energy Center; Withdrawal, 29834–29835
Meetings:
Advisory Committee on Reactor Safeguards, 29827–29828
Meetings; Sunshine Act, 29835
Proposed State Agreements:
Wyoming, 29828–29834

Overseas Private Investment Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29835–29837

Postal Service
NOTICES
Product Changes:
Priority Mail Negotiated Service Agreement, 29837

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29837–29839, 29841–29842, 29847, 29850
Meetings; Sunshine Act, 29838–29839
Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2:
Filing and Order Approving and Declaring Effective Amended Plan for Allocation of Regulatory Responsibilities between Financial Industry Regulatory Authority, Inc. and BOX Options Exchange, LLC, 29850–29855
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 29838
Cboe Exchange, Inc., 29844–29846, 29848–29850
Financial Industry Regulatory Authority, Inc., 29840–29841
Municipal Securities Rulemaking Board, 29855–29861
Nasdaq ISE, LLC, 29842–29843
Nasdaq Stock Market, LLC, 29861–29863
Options Clearing Corp., 29843–29844, 29846–29847

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Petition to Classify Special Immigrant under INA 203(b)(4) as Employee or Former Employee of U.S. Government Abroad, 29863–29864

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Statutory Authority to Preserve Rail Service, 29864–29865

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Replacement Naturalization/Citizenship Document, 29811
Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, 29812
Request for Return of Original Documents, 29813

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 29872–30029

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 29665
95 29667

16 CFR
1112 29672
1235 29672

23 CFR
Proposed Rules:
635 29713

26 CFR
Proposed Rules:
301 29716

30 CFR
Proposed Rules:
56 29716
75 29716

33 CFR
165 (5 documents) 29682, 29684, 29686, 29687, 29689
Proposed Rules:
165 (2 documents) 29719, 29721

40 CFR
35 29691
52 (3 documents) 29694, 29696, 29698
180 29702
228 29706
Proposed Rules:
52 (2 documents) 29723, 29727
300 29731

42 CFR
Proposed Rules:
2 29736
10 29736
12 29736
13 29736
18 29736
26 29736

47 CFR
2 29710
90 29710

50 CFR
Proposed Rules:
218 29872

Rules and Regulations

Federal Register
Vol. 83, No. 123
Tuesday, June 26, 2018

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0564; Product Identifier 2018–NE–23–AD; Amendment 39–19315; AD 2018–13–03]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines. This AD requires a one-time visual inspection of the engine fan hub for damage, and removal of parts if damage or defects are found that are outside the serviceable limits. This AD was prompted by reports of damage to the engine fan hub. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 11, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 11, 2018.

We must receive comments on this AD by August 10, 2018.

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

- *Federal eRulemaking Portal:* Go to *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 final rule, contact International Aero Engines, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0564.

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–2018–0564; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received information concerning damage to the engine fan hub found during an engine shop visit of an IAE PW1100G-series turbofan engine. The damage is believed to be the result of the installation of the inlet cone without using alignment pins, which might lead to bolts impacting and damaging the engine fan hub. This condition, if not addressed, could result in uncontained failure of the engine fan hub, damage to the engine, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018. The SB describes procedures for performing a one-time visual inspection of the inlet cone mating face and counter weight flange on the engine fan hub assembly for surface damage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires a one-time visual inspection of the engine fan hub for damage, and replacement of the engine fan hub if damage or defects are found that are outside of serviceable limits.

Differences Between the AD and the Service Information

PW SB PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018, only applies to PW1100G–JM engine models in service. This AD applies to all PW1100G–JM engine models certified under type certificate E00087EN. PW SB PW1000G–C–72–00–0104–00A–930A–D also excludes from its applicability certain serial numbered engines. We have no way to determine if these engines have been inspected and are therefore including these engines in the applicability of this AD.

Interim Action

We consider this AD interim action. An investigation to determine the cause of the failure is on-going and we may consider additional rulemaking if final action is identified.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time is less than the time required for public comment. In addition, all engine fan hubs must be inspected, and if needed, replaced before further flight. Therefore, we find good cause that notice and compliance for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0564 and Product Identifier 2018–NE–23–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

We estimate that this AD affects 14 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visual inspection	2 work-hours × $85 per hour = $170	$0	$170	$2,380

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–13–03 International Aero Engines: Amendment 39–19315; Docket No. FAA–2018–0564; Product Identifier 2018–NE–23–AD.

(a) Effective Date

This AD is effective July 11, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with serial numbers (S/Ns) up to and including S/N 770735.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of damage to the engine fan hub. We are issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 90 days after the effective date of this AD:

(1) For engines installed on an airplane, perform a visual inspection of the engine fan hub, in accordance with the Accomplishment Instructions, paragraphs 1.E.(1) to 1.E.(4), of Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018.

(2) For engines not installed on an airplane, perform a visual inspection of the engine fan hub, in accordance with the Accomplishment Instructions, paragraphs 2.D.(1) to 2.D.(4), of PW SB PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018.

(3) If the engine fan hub visual inspection reveals defects or damage to the engine fan hub that are found outside the serviceable limits specified in Table 3 in the Accomplishment Instructions of PW SB PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018, remove the engine fan hub from service and replace with a part that is eligible for installation, prior to further flight.

(h) Credit for Previous Actions

You may take credit for the inspection required by paragraph (g) of this AD if you performed the inspection before the effective date of this AD using PW SB PW1000G–C–72–00–0104–00A–930A–D, Original Issue, dated May 21, 2018.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0104–00A–930A–D, Issue No. 002, dated May 31, 2018.

(ii) Reserved.

(3) For International Aero Engines service information identified in this AD, contact International Aero Engines, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; internet: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 19, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–13639 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31201; Amdt. No. 540]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, July 19, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas J Nichols, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on June 15, 2018.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 19, 2018.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT

[Amendment 540 effective date July 19, 2018]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3225 RNAV Route T225 is Amended to Read in Part			
GALENA, AK VOR/DME	KUHZE, AK FIX	4400	17500

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6064 VOR Federal Airway V64 is Amended to Read in Part		
SEAL BEACH, CA VORTAC	*TUSTI, CA FIX	3000
*6200—MCA TUSTI, CA FIX, E BND		
TUSTI, CA FIX	COREL, CA FIX.	
	W BND	6200
	E BND	8000
COREL, CA FIX	PERIS, CA FIX.	
	W BND	8000
	E BND	11000
PERIS, CA FIX	HEMET, CA FIX	*11000
*6700—MOCA		
HEMET, CA FIX	HAPPE, CA FIX	*11000
*10200—MOCA		
§ 95.6071 VOR Federal Airway V71 is Amended to Read in Part		
HOT SPRINGS, AR VOR/DME	OLLAS, AR FIX	*3600
*3100—MOCA		
OLLAS, AR FIX	*HAAWK, AR FIX	**4500
*10000—MCA HAAWK, AR FIX, N BND		
**2500—MOCA		
HAAWK, AR FIX	HARRISON, AR VOR/DME	*10000
*3700—MOCA		
*4000—GNSS MEA		
§ 95.6078 VOR Federal Airway V78 is Amended to Read in Part		
PELLSTON, MI VORTAC	ALPENA, MI VORTAC	2700
ALPENA, MI VORTAC	*ZABLE, MI FIX	3000
*5000—MCA ZABLE, MI FIX, S BND		
BANJO, MI FIX	BENNY, MI FIX	*3000
*2300—MOCA		
BENNY, MI FIX	SAGINAW, MI VOR/DME	2400
§ 95.6081 VOR Federal Airway V81 is Amended to Read in Part		
BLACK FOREST, CO VOR/DME	HOHUM, CO FIX	#10000
*10000—GNSS MEA		
#BLACK FOREST R–330 UNUSABLE		
§ 95.6095 VOR Federal Airway V95 is Amended to Read in Part		
DURANGO, CO VOR/DME	ZEANS, CO FIX.	
	S BND	12300
	N BND	16500
ZEANS, CO FIX	LAZON, CO FIX	16500
LAZON, CO FIX	POWES, CO FIX.	
	N BND	15000
	S BND	16500
POWES, CO FIX	BLUE MESA, CO VOR/DME.	
	S BND	16500
	N BND	12800

From	To	MEA
§ 95.6133 VOR Federal Airway V133 is Amended to Read in Part		
BARRETTS MOUNTAIN, NC VOR/DME	MULBE, NC FIX.	
	S BND	5400
	N BND	7200
MULBE, NC FIX	*STOVE, VA FIX	7200
*11000—MCA STOVE, VA FIX, N BND		
STOVE, VA FIX	*PINEE, WV FIX	**13000
*11400—MCA PINEE, WV FIX, S BND		
**7000—MOCA		
§ 95.6143 VOR Federal Airway V143 is Amended to Read in Part		
LYNCHBURG, VA VORTAC	ELLON, VA FIX.	
	N BND	5700
	S BND	3200
ELLON, VA FIX	*CLYFF, VA FIX	5700
*6300—MCA CLYFF, VA FIX, N BND		
§ 95.6154 VOR Federal Airway V154 is Amended to Read in Part		
*LOTTS, GA FIX	SAVANNAH, GA VORTAC	**3000
*9000—MRA		
**1800—MOCA		
§ 95.6157 VOR Federal Airway V157 is Amended to Read in Part		
ALMA, GA VORTAC	*LOTTS, GA FIX	**10000
*9000—MRA		
*10000—MCA LOTTS, GA FIX, SW BND		
**2000—GNSS MEA		
§ 95.6179 VOR Federal Airway V179 is Amended to Read in Part		
DUBLIN, GA VORTAC	HUSKY, GA FIX	*3000
*2200—MOCA		
§ 95.6218 VOR Federal Airway V218 is Amended to Read in Part		
*BAULK, WI FIX	ROCKFORD, IL VOR/DME	**4000
*4000—MRA		
**2600—MOCA		
§ 95.6267 VOR Federal Airway V267 is Amended to Read in Part		
ORLANDO, FL VORTAC	PAOLA, FL FIX.	
	N BND	*2800
	S BND	*1900
*1600—MOCA		
§ 95.6291 VOR Federal Airway V291 is Amended to Read in Part		
KACEE, AZ FIX	PEACH SPRINGS, AZ VOR/DME	*11000
*10000—MOCA		
§ 95.6312 VOR Federal Airway V312 is Amended to Read in Part		
WOODSTOWN, NJ VORTAC	COYLE, NJ VORTAC	2100
§ 95.6323 VOR Federal Airway V323 is Amended to Read in Part		
NALIZ, GA FIX	WEMOB, GA FIX	*3000
*2100—MOCA		
WEMOB, GA FIX	HUSKY, GA FIX	*3000
*2200—MOCA		
§ 95.6325 VOR Federal Airway V325 is Amended to Read in Part		
COLUMBIA, SC VORTAC	*VESTO, GA FIX	8000
*8000—MCA VESTO, GA FIX, E BND		
VESTO, GA FIX	ATHENS, GA VOR/DME.	
	W BND	2500
	E BND	8000

From	To	MEA
§ 95.6361 VOR Federal Airway V361 is Amended to Read in Part		
MONTROSE, CO VOR/DME	ICIES, CO FIX.	
	S BND	10600
	N BND	15000
§ 95.6402 VOR Federal Airway V402 is Amended to Read in Part		
PANHANDLE, TX VORTAC	*BRISC, TX FIX	**7000
*8000—MCA BRISC, TX FIX, NE BND		
**5000—MOCA		
BRISC, TX FIX	*MITBEE, OK VORTAC	**8000
*8000—MCA MITBEE, OK VORTAC, SW BND		
**4500—MOCA		
§ 95.6417 VOR Federal Airway V417 is Amended to Read in Part		
ATHENS, GA VOR/DME	COLLIERS, SC VORTAC	2500
§ 95.6420 VOR Federal Airway V420 is Amended to Read in Part		
GAYLORD, MI VOR/DME	ALPENA, MI VORTAC	3200
§ 95.6421 VOR Federal Airway V421 is Amended to Read in Part		
DURANGO, CO VOR/DME	ZEANS, CO FIX.	
	N BND	16500
	S BND	12300
ZEANS, CO FIX	LAZON, CO FIX	16500
LAZON, CO FIX	POWES, CO FIX.	
	S BND	16500
	N BND	15000
POWES, CO FIX	BLUE MESA, CO VOR/DME.	
	S BND	16500
	N BND	12800
§ 95.6485 VOR Federal Airway V485 is Amended to Read in Part		
VENTURA, CA VOR/DME	*HENER, CA FIX	5000
*6500—MCA HENER, CA FIX, NW BND		
§ 95.6500 VOR Federal Airway V500 is Amended to Read in Part		
SOLDE, ID FIX	*REAPS, ID FIX.	
	E BND	**14000
	W BND	**17000
*15400—MCA REAPS, ID FIX, W BND		
**8200—MOCA		
§ 95.6506 VOR Federal Airway V506 is Amended to Read in Part		
TULSA, OK VORTAC	VINTA, OK FIX	2700
§ 95.6512 VOR Federal Airway V512 is Amended to Read in Part		
HOLAN, IN FIX	*SACKO, IN FIX	**3500
*10000—MCA SACKO, IN FIX, E BND		
**2100—MOCA		
**3000—GNSS MEA		
SACKO, IN FIX	LOUISVILLE, KY VORTAC	10000
LOUISVILLE, KY VORTAC	*CLEGG, KY FIX	10000
*10000—MCA CLEGG, KY FIX, W BND		
§ 95.6527 VOR Federal Airway V527 is Amended to Read in Part		
*HOT SPRINGS, AR VOR/DME	HIDER, AR FIX.	
	SE BND	3200
	NW BND	9500
*5700—MCA HOT SPRINGS, AR VOR/DME, NW BND		
HIDER, AR FIX	ROVER, AR FIX.	
	SE BND	*5500
	NW BND	*9500
*3200—MOCA		
ROVER, AR FIX	*SCRAN, AR FIX	**9500
*9500—MCA SCRAN, AR FIX, SE BND		

From	To	MEA
**3600—MOCA		
SCRAN, AR FIX	CASKS, AR FIX	*6500
*3700—MOCA		
GAMPS, AR FIX	BILIE, MO FIX	*4000
*3200—MOCA		
§ 95.6609 VOR Federal Airway V609 is Amended to Read in Part		
SAGINAW, MI VOR/DME	BENNY, MI FIX	2400
BENNY, MI FIX	BANJO, MI FIX	*3000
*2300—MOCA		
BANJO, MI FIX	*ZABLE, MI FIX	**5000
*5000—MCA ZABLE, MI FIX, S BND		
**2900—MOCA		
ZABLE, MI FIX	*RONDO, MI FIX	3200
*5000—MRA		
*RONDO, MI FIX	PELLSTON, MI VORTAC	**3200
*5000—MRA		
**2500—MOCA		
§ 95.6611 VOR Federal Airway V611 is Amended to Read in Part		
BLACK FOREST, CO VOR/DME	LUFSE, CO FIX	#*10000
*10000—GNSS MEA		
#BLACK FOREST R–028 UNUSABLE		
§ 95.6317 ALASKA VOR Federal Airway V317 is Amended to Read in Part		
ANNETTE ISLAND, AK VOR/DME	GESTI, AK FIX.	
	SE BND	5000
	NW BND	7000
GESTI, AK FIX	LEVEL ISLAND, AK VOR/DME	*7000
*5300—MOCA		
LEVEL ISLAND, AK VOR/DME	HOODS, AK FIX	*9000
*6000—MOCA		
HOODS, AK FIX	*SISTERS ISLAND, AK VORTAC.	
	SE BND	**9000
	NW BND	**7000
*7900—MCA SISTERS ISLAND, AK VORTAC, W BND		
**5500—MOCA		
§ 95.6456 ALASKA VOR Federal Airway V456 is Amended to Read in Part		
GULKANA, AK VOR/DME	*SANKA, AK FIX.	
	NE BND	11000
	SW BND	6000
*8000—MCA SANKA, AK FIX, NE BND		
SANKA, AK FIX	NORTHWAY, AK VORTAC	*11000
*10500—MOCA		
§ 95.6506 ALASKA VOR Federal Airway V506 is Amended to Read in Part		
KODIAK, AK VOR/DME	BREMI, AK FIX	#*12000
*9900—MOCA		
*10000—GNSS MEA		
#KODIAK R–280 UNUSABLE BYD 20NM BLO 12000		
BREMI, AK FIX	KING SALMON, AK VORTAC.	
	E BND	12000
	W BND	5000
§ 95.6406 HAWAII VOR Federal Airway V6 is Amended to Read in Part		
PLUMB, HI FIX	MAUI, HI VORTAC	6300
§ 95.6411 HAWAII VOR Federal Airway V11 is Amended to Read in Part		
BARBY, HI FIX	*SWEEP, HI FIX	**5400
*5400—MCA SWEEP, HI FIX, S BND		
**3000—MOCA		
SWEEP, HI FIX	MAUI, HI VORTAC	5000
§ 95.6415 HAWAII VOR Federal Airway V15 is Amended to Read in Part		
MAUI, HI VORTAC	*BARBY, HI FIX	8400
*9800—MCA BARBY, HI FIX, E BND		

From	To	MEA
BARBY, HI FIX *10000—MCA RABAT, HI FIX, W BND **2700—MOCA	*RABAT, HI FIX	**10000
§ 95.6422 HAWAII VOR Federal Airway V22 is Amended to Read in Part		
PLUMB, HI FIX MAUI, HI VORTAC *12000—MCA BARBY, HI FIX, SE BND	MAUI, HI VORTAC *BARBY, HI FIX	6300 8400

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7225 Jet Route J225 is Amended to Read in Part**			
CEDAR LAKE, NJ VOR/DME	KENNEDY, NY VOR/DME	18000	45000
§ 95.7536 Jet Route J536 is Amended to Read in Part			
SISTERS ISLAND, AK VORTAC #MEA is ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.	U.S. CANADIAN BORDER	#21000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V291 is Amended to Add Changeover Point			
FLAGSTAFF, AZ VOR/DME	PEACH SPRINGS, AZ VOR/DME	39	FLAGSTAFF
V325 is Amended to Add Changeover Point			
ATHENS, GA VOR/DME	COLUMBIA, SC VORTAC	24	ATHENS
V417 is Amended to Add Changeover Point			
ATHENS, GA VOR/DME	COLLIERS, SC VORTAC	24	ATHENS

[FR Doc. 2018–13611 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1235

[Docket No. CPSC–2016–0023]

Safety Standard for Baby Changing Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the United States Consumer Product Safety Commission (CPSC) to adopt consumer product safety standards for durable infant or toddler products. To comply with the CPSIA, the Commission is issuing a safety standard for baby changing products. This rule incorporates by reference ASTM F2388–18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use* (ASTM F2388–18). In addition, this rule amends the regulations regarding third party conformity assessment bodies to include the safety standard for baby changing products in the list of Notices of Requirements (NORs).

DATES: The rule will become effective on June 26, 2019. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 26, 2019.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission; 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–6820; email: *KWalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Congress enacted the CPSIA (Pub. L. 110–314, 122 Stat. 3016), including the Danny Keysar Child Product Safety Notification Act, on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant or toddler products. Any standard the Commission adopts under this mandate must be substantially the same as the applicable voluntary standard, or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. Section 104(f)(1) of the CPSIA defines the term ''durable infant or toddler product'' as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,'' and the Commission identified baby changing tables as a durable infant or toddler product in the product registration card rule codified in 16 CFR 1130.2(a)(14).

On September 29, 2016, the Commission issued a notice of proposed rulemaking (NPR), proposing to incorporate by reference the then-current voluntary standard for baby changing products, ASTM F2388–16, with more stringent requirements for

structural integrity, restraint system integrity, and warnings on labels and in instructional literature. 81 FR 66881. After the Commission issued the NPR, ASTM revised the voluntary standard several times, as discussed in section V of this preamble, and published the current version of the standard, ASTM F2388–18, in March 2018.

In this final rule, the Commission is incorporating by reference ASTM F2388–18, with no modifications, as the mandatory safety standard for baby changing products. As section 104(b)(1)(A) of the CPSIA requires, CPSC staff consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this standard, largely through the ASTM standard-development process. In addition, this final rule amends the list of NORs in 16 CFR part 1112 to include the standard for baby changing products. This rule is based on information CPSC staff provided in its briefing package, ''Draft Final Rule for Baby Changing Products for Domestic Use under the Danny Keysar Child Product Safety Notification Act,'' which is available on CPSC's website at: *https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Baby%20Changing%20Products%20-%20June%2013%202018.pdf?ZbvMCsfyQfLFivqHRbFWKclOordsuVeC.*

II. Product Description

ASTM F2388–18 defines a ''changing product'' as ''one of the following: changing table, changing table accessory, add-on changing unit, contoured changing pad.'' The standard defines each of those terms, as follows:

- A changing table is ''an elevated, freestanding structure generally designed to support and retain a child with a body weight of up to 30 lb (13.6 kg) in a horizontal position for the purpose of allowing a caregiver to change the child's diaper. Changing tables may convert from or to other items of furniture, such as, but not limited to, a dresser, desk, hutch, bookshelf, or play yard, may have pull-out or drop-down changing surfaces, and may provide storage for diapers and diaper products'';
- a changing table accessory is ''an accessory that attaches to a crib or play yard designed to convert the product into a changing table typically having a rigid frame with soft fabric or mesh sides or bottom surface, or both'';
- an add-on changing unit is ''a rigid addition to or separate product used in conjunction with an item of furniture that provides barriers to prevent the infant from rolling off the product when a diaper is being changed''; and
- a contoured changing pad is ''a changing pad designed for use on an elevated surface which incorporates barriers to prevent a child from rolling off the changing surface.'' [1]

Changing tables used in public facilities, such as public restrooms, are covered by ASTM F2285, *Standard Consumer Safety Performance Specification for Diaper Changing Tables for Commercial Use,* and are not subject to ASTM F2388–18 or this final rule.

Most changing tables and add-on changing units are constructed of wood; contoured changing pads often consist of synthetic-covered foam with contoured edges; and changing table accessories that attach to a play yard or crib generally are constructed of plastic or wood with a foam pad. Changing tables come in various designs, some of which include drawers, cabinets, or retractable stairs to assist children getting onto them.

III. Market Description

CPSC staff has identified 102 domestic firms that currently supply baby changing products to the U.S. market. Eighty-four of the firms (61 manufacturers and 23 importers or wholesalers) are small, according to the U.S. Small Business Administration's (SBA) standards,[2] and the remaining 18 firms are large. In addition, staff identified 17 foreign firms that supply baby changing products to the U.S. market, and one additional firm for which staff lacked sufficient information to determine a location or supply source. Staff also identified numerous baby changing products that are manufactured outside the United States and bought domestically through online sales.

At the time CPSC staff assessed the baby changing products market, staff identified 22 of the 61 small domestic manufacturers, and 10 of the 23 small domestic importers and wholesalers, as compliant with the ASTM standard for baby changing products (based on firms' assertions of compliance, certifications from the Juvenile Products Manufacturers Association, or participation in the development of the ASTM changing products standard).

[1] ASTM F2388–18 defines a ''changing pad'' as: ''a flat or contoured pad specifically designed for the purpose of changing the diaper of a child with a body weight of up to 30 lb (13.6 kg) on an elevated surface. The child is placed on the pad during the process of changing.''

[2] Under SBA size standards, a baby changing product manufacturer is ''small'' if it has 500 or fewer employees, and an importer is ''small'' if it has 100 or fewer employees.

IV. Incident Data

A. Summary

CPSC receives data regarding product-related injuries from several sources. One source is the National Electronic Injury Surveillance System (NEISS), from which CPSC can estimate, based on a probability sample, the number of injuries that are associated with specific consumer products that are treated in U.S. hospital emergency departments (U.S. EDs) nationwide. Other sources include reports from consumers and others through the Consumer Product Safety Risk Management System (which also includes some NEISS data) and reports from retailers and manufacturers through CPSC's Retailer Reporting System—CPSC refers to these sources collectively as Consumer Product Safety Risk Management System data (CPSRMS).

For this rulemaking, CPSC staff reviewed the NEISS and CPSRMS databases for incidents involving baby changing products and children younger than 3 years old because that age corresponds with the 30-pound weight limit in the ASTM standard. *See* Centers for Disease Control and Prevention, the National Center for Health Statistics, *Data Table of Infant Weight-for-Age Charts, http://www.cdc.gov/growthcharts/html_charts/wtageinf.htm* (last visited Apr. 9, 2018).

The preamble to the NPR summarized reports of incidents involving baby changing products that occurred between January 1, 2005 and December 31, 2015, which CPSC received through CPSRMS sources. For the final rule, CPSC staff has updated this information to reflect one reported changing product incident that occurred between January 1, 2005 and December 31, 2015, but was not included in the NPR, as well as new incidents that occurred between January 1, 2016 and November 30, 2017. In total, CPSC has received 188 reports of incidents involving baby changing products that occurred between January 1, 2005 and November 30, 2017. These incidents involved 7 fatalities, 31 injuries or adverse health problems, 116 incidents that did not result in injuries, and 34 incidents for which CPSC did not receive sufficient information to determine whether an injury occurred.[3]

[3] The NPR indicated that CPSC had received 182 reports of baby changing product-related incidents that occurred between January 1, 2005 and December 31, 2015, of which 5 were fatal, 30 reported injuries, 113 did not result in injuries, and 34 did not provide sufficient information to determine whether an injury occurred. Since the NPR, CPSC staff identified one additional fatality that occurred in 2010, and CPSC received an additional five reports of incidents that occurred

Continued

The preamble to the NPR also summarized NEISS estimates for baby changing product incidents that occurred between January 1, 2005 and December 31, 2014. After the Commission issued the NPR, complete injury data became available for 2015 and 2016, and CPSC staff has updated this information for the final rule. Including this new data and extrapolating from the probability sample, CPSC staff estimates that there were 39,010 baby changing product-related injuries to children under 3 years old that were treated in U.S. EDs between January 1, 2005 and December 31, 2016. There was a statistically significant increasing linear trend for injuries associated with baby changing products over this period. Seventy-six percent of the estimated injuries involved children between 0 and 11 months old, and 94 percent of the estimated injuries involved children under 2 years old.

B. Fatalities

CPSC is aware of seven fatal incidents to children under 3 years old that occurred between January 1, 2005 and November 30, 2017, involving baby changing products. One death involved a 10-month-old male who was strangled by a strap hanging from a changing table accessory in a play yard while the child was in the play yard beneath. Another death involved a 3-month old female who rolled over and compressed her neck on the changing table ledge, resulting in suffocation. The remaining five reported deaths involved children sleeping on baby changing products, which is not their intended use. All of the victims in these incidents were younger than 1 year old.

One of these incidents involved a 4-month-old male who was sleeping on a changing pad in a crib and died from positional asphyxia when his head hung over the raised side of the changing pad. Another incident involved a 3-day-old female, who died while sleeping on the changing portion of a play yard; her death was determined to be the result of mechanical asphyxia from being swaddled too tightly in a sleep sack. The remaining three sleep-related deaths involved babies (ages 6 weeks, 2 months, and 2 months) sleeping in the changing accessory portion of a play yard.

C. Nonfatal Injuries

The injuries and treatments reported through NEISS for 2015 and 2016 were consistent with those for 2005 through 2014, described in the NPR. In 94 percent of cases between 2005 and 2016, the patient was treated in the U.S. ED and released; in 5 percent of cases, the child was hospitalized. The most commonly injured body parts were the head (71 percent for 2005–2014; 73 percent for 2015–2016) and face (13 percent for 2005–2014; 12 percent for 2015–2016). The most common types of injuries were injuries to internal organs (50 percent for 2005–2014; 53 percent for 2015–2016), contusions and abrasions (27 percent for 2005–2014; 29 percent for 2015–2016), and fractures (9 percent for 2005–2014; 8 percent for 2015–2016).

D. Hazard Patterns

The hazards reported in the new incidents are consistent with the hazard patterns staff identified in the incidents presented in the NPR. The fatal incidents are discussed above, and primarily involved suffocation or asphyxia when babies were sleeping on baby changing products.

As reported in the NPR, structural integrity issues were the primary hazard associated with nonfatal incidents. Incident reports CPSC received after the NPR, for incidents that occurred between January 1, 2016 and November 30, 2017, also involved structural integrity issues. Three of the four nonfatal incidents that occurred between January 1, 2016 and November 30, 2017, were related to structural integrity. These incidents involved: A wooden shelf on the bottom of the changing table that fell because the small pins were too weak to keep the shelf in place; drawers falling out of a changing table; and bolts falling out. The fourth incident involved an 11-month-old male who fell off of a changing table when his caregiver was distracted.

V. ASTM F2388–18

In this final rule, the Commission incorporates by reference ASTM F2388–18. The Commission is incorporating by reference ASTM F2388–18 because it includes provisions that are the same as, or consistent with, the requirements proposed in the NPR, and CPSC staff believes that the standard addresses the hazards associated with baby changing products.

A. History of ASTM F2388

ASTM F2388, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use,* is the voluntary standard that addresses the hazard patterns associated with the use of baby changing products (in domestic settings). ASTM first approved and published the standard in 2004, as ASTM F2388–04, *Standard Consumer Safety Specification for Baby Changing Tables for Domestic Use.* ASTM has revised the standard several times since then. In the NPR, the Commission proposed to incorporate by reference ASTM F2388–16, with modifications.

After the Commission issued the NPR, ASTM revised ASTM F2388 three times. CPSC staff worked with representatives of manufacturers, consumer groups, retailers, and other industry members and groups on the ASTM subcommittee for baby changing products to develop requirements to address the hazards associated with baby changing products, including issues raised in the NPR. CPSC staff also participated in the ASTM Ad Hoc Committee on Standardized Wording for Juvenile Product Standards (Ad Hoc TG) to finalize recommendations for warning labels, entitled, ''Recommended Language Approved by Ad Hoc Task Group, Revision C'' (November 10, 2017), to provide consistent and effective warnings for juvenile product standards. The most recent version of the standard, ASTM F2388–18, reflects the work of these groups. ASTM approved ASTM F2388–18 on February 15, 2018, and published it in March 2018.

B. ASTM F2388–18: Comparison With the NPR and Assessment of Requirements

In the NPR, the Commission proposed to incorporate by reference ASTM F2388–16, which addressed many of the hazard patterns associated with baby changing products, with modifications to four areas of the standard. Specifically, the Commission proposed more stringent requirements than those in ASTM F2388–16 for structural integrity, restraint systems, warnings on labels, and instructional literature.

The requirements in ASTM F2388–18 are largely the same as those the Commission proposed in the NPR. ASTM F2388–18 includes the same scope, definitions, general requirements (*e.g.,* small parts; openings), performance requirements, and test methods that the Commission proposed incorporating by reference from ASTM F2388–16. In addition, ASTM F2388–18 includes modifications to reflect the more stringent requirements the Commission proposed in the NPR, to address comments filed in response to the NPR, and to provide additional detail and clarity. The following discussion compares the areas in which the NPR and ASTM F2388–18 differ, describes the more stringent

between January 1, 2016 and November 30, 2017, of which one was fatal, one reported injuries, and three did not result in injuries.

requirements in the NPR and ASTM F2388–18, and provides CPSC staff's assessment of the ASTM F2388–18 provisions.

1. Definitions

ASTM F2388–18 includes six definitions that were not in ASTM F2388–16, two of which are consistent with definitions the Commission proposed in the NPR. In the NPR, the Commission proposed to define ''key structural elements'' and ''non-rigid add-on changing unit accessory.'' ASTM F2388–18 includes these definitions, but uses the term ''changing table accessory'' instead of ''non-rigid add-on changing unit accessory.'' In addition, ASTM F2388–18 defines the terms ''changing product,'' ''protective component,'' ''secondary support component,'' and ''threaded fastener.'' As explained below, the Commission concludes that these definitions are appropriate and provide additional clarity.

ASTM F2388–18 defines ''changing product'' to clarify that this general term, used in the title of the standard and throughout the standard, encompasses changing tables, changing table accessories, add-on changing units, and contoured changing pads. Although the Commission did not propose to define this term in the NPR, the NPR did use ''changing products'' as the general term encompassing all products subject to the standard and the proposed rule, which included each of the products listed in the ASTM F2388–18 definition. Accordingly, this definition is appropriate and provides clarity about the products that are subject to the standard.

ASTM F2388–16 (and the NPR, through proposed incorporation by reference) used the term ''protective component,'' although that version of the standard did not define it. ASTM F2388–16 described protective components as ''caps, sleeves, or plugs used for protection from sharp edges, points or entrapment of fingers and toes.'' The definition in ASTM F2388–18 is nearly identical to this description, stating ''any component used for protection from sharp edges, points or entrapment of fingers or toes.'' Consequently, this definition is accurate and adds clarity to the standard.

Although the Commission did not propose to define ''secondary support component'' in the NPR, the NPR did propose requirements regarding secondary support straps, and the preamble to the NPR described the feature as ''a metal band that runs under the center of the changing surface to provide additional support'' that is installed by consumers when assembling a baby changing product. 81 FR at 66888. ASTM F2388–18 defines a ''secondary support component'' as ''a strap, bar, rod, or other component that is consumer installed and provides added support, to the changing surface of the changing table.'' Because these descriptions are consistent, this definition is appropriate, and it provides added clarity to include an explicit definition in the standard.

Similarly, the Commission did not propose to define ''threaded fastener'' in the NPR, but the NPR did describe threaded fasteners as products, such as wood or sheet metal screws, metal inserts, and machine screws, which allow consumers to assemble and disassemble products. 81 FR at 66887. ASTM F2388–18 defines a ''threaded fastener'' as ''a discrete piece of hardware that has internal or external screw threads which is used for the assembly of multiple parts and facilitates disassembly.'' This definition is consistent with the NPR description, indicating that the definition is accurate, and including it in the standard provides clarity.

2. Scissoring, Shearing, and Pinching

ASTM F2388–18 requires baby changing products to be designed to prevent injuries from scissoring, shearing, or pinching, and includes a method of assessing compliance with this requirement (which consists of admitting a probe of particular dimensions). ASTM F2388–16 did not include requirements regarding scissoring, shearing, and pinching, and the Commission did not propose additional requirements to address these hazards in the NPR. However, these requirements are appropriate in light of other durable infant and toddler product standards. The scissoring, shearing, and pinching provisions in ASTM F2388–18 are identical to those in other ASTM durable infant and toddler product standards (*e.g.,* high chairs, infant walkers, full-size baby cribs, play yards) that have the potential for these injuries. Accordingly, these requirements are appropriate to address a hazard common across products.

3. Self-Folding Steps

ASTM F2388–18 includes two distinct methods of assessing the single action release mechanism on self-folding steps, depending on the type of action necessary to release the mechanism. In ASTM F2388–16, the test for assessing self-folding steps on a baby changing product applied to all products with self-folding steps that had a ''single action release mechanism.'' The test involved applying a force of 10 lbf (45 N) to the locking or latching mechanism. The NPR proposed to incorporate this requirement by reference, without modification. ASTM F2388–18 retains this test for mechanisms that require a ''pull or push action,'' and adds a duration for applying the force. Specifying a test duration is helpful to provide clarity about the test procedure.

ASTM F2388–18 also includes a different test for self-folding steps with a release mechanism that requires a ''twist or turn action'' to release, which was not in ASTM F2388–16 and was not proposed in the NPR. For steps with this mechanism, testers must apply a torque of 4 lb-in. (0.5 N-m) to the mechanism. This separate test is appropriate to better reflect and assess the different types of release mechanisms on self-folding steps.

4. Structural Integrity Requirements

In the NPR, the Commission proposed more stringent requirements in two areas to address structural integrity issues—threaded fasteners and secondary support straps. First, the Commission proposed requirements for threaded fasteners, to provide secure connections between fasteners and key structural elements of changing tables and products. Specifically, the Commission proposed to:

- Prohibit the use of threaded fasteners, such as wood screws or sheet metal fasteners, directly into wood components that are key structural elements assembled by consumers;
- require a means of preventing manufacturer-installed metal threaded fasteners used in key structural elements from loosening (such as with lock washers); and
- require a means of preventing manufacturer-installed metal inserts in key structural elements from loosening (such as by gluing).

The Commission proposed these limits for key structural elements, such as primary changing surface supports and side, end, base, and leg assemblies to address the stability of components that support the weight of occupants.

ASTM F2388–18 includes the same requirements regarding threaded fasteners as the Commission proposed in the NPR, as well as two additions. As one minor addition, ASTM F2388–18 includes additional detail about the features that are ''non-key structural elements,'' and therefore, not subject to the threaded fastener requirements. Specifically, where the NPR listed drawers, secondary supports, storage components, and accessory items, ASTM F2388–18 lists these as well as

other examples, such as fasteners that attach contoured pads and add-on changing units to supporting furniture (section 5.8.1.1). This additional detail is consistent with the requirements proposed in the NPR, which will improve the structural integrity of baby changing products. ASTM F2388–18 also specifies that the prohibition of threaded fasteners on key structural elements assembled by consumers does not apply to products that are also clothing storage units, because those products fall under the scope of ASTM F2057, *Safety Specification for Clothing Storage Units.* This added exemption is acceptable because incident data indicate that the products that were involved in structural integrity incidents associated with fasteners were traditional stand-alone changing products, and not clothing storage units, such as dressers.

Second, the Commission proposed to adopt the structural integrity testing required in ASTM F2388–16, but modified the test to specify that consumer-installed secondary support straps must not be installed for the test. This would reflect the less-structurally sound condition the product may be in when consumers use it without installing the secondary support strap or install the strap incorrectly.

ASTM F2388–18 includes the same provisions proposed in the NPR. The only minor difference is that where the NPR used the term ''secondary support straps or bars,'' ASTM F2388–18 uses ''secondary support components.'' The meaning of these terms is the same, and these requirements are appropriate to provide greater product stability.

5. Restraint System Requirements

ASTM F2388–16, the NPR, and ASTM F2388–18 do not require baby changing products to include restraint systems. However, to ensure that restraints function effectively if provided, in the NPR, the Commission proposed to require testing of restraint systems. The proposed test required any restraint provided with a baby changing product to be secured on a CAMI dummy and pulled in four directions anticipated during normal use with a 30 pound force. To pass this performance standard, straps and buckles were required not to break or separate from baby changing products more than 1 inch from their initial adjustment positions.

ASTM F2388–18 includes the same restraint system testing requirements as those proposed in the NPR. Accordingly, these requirements are appropriate to reduce the hazards associated with ineffective restraints.

6. Warning Label Requirements

In the NPR, the Commission proposed more stringent warning label content and format requirements than those in ASTM F2388–16. With respect to content, the NPR proposed to require on-product warning labels specifically addressing fall hazards, proper securement of attachable changing products, and the suffocation hazard if babies sleep on a changing product. With respect to form, the NPR proposed to include form requirements for warnings, to increase the likelihood that consumers would notice, read, and follow the warnings. The requirements for warning format proposed in the NPR were drawn from the Ad Hoc TG recommendations, which were under development at the time.

ASTM F2388–18 includes labeling requirements that are the same as those proposed in the NPR. ASTM F2388–18 includes some minimal modifications that do not notably alter the requirements. For example, ASTM F2388–16 and the NPR specified that changing accessories sold with non-full-size cribs and play yards were exempt from the requirement to mark manufacturer and manufacturing date information on the product and retail package because they were subject to another ASTM standard with similar requirements. ASTM F2388–18 extends this exemption to accessories sold with full-size cribs, as well. This does not reduce the stringency of the requirement because full-size cribs are also subject to another ASTM standard that addresses this information. As another example, ASTM F2388–18 includes more example figures of warnings than the NPR provided, which clarify the meaning of some requirements and provide examples of additional combinations of warning statements. Additionally, ASTM F2388–18 includes a note, explaining what ''address'' means in the requirement that product warnings ''address'' specified information. The NPR also required warnings to ''address'' specific information, but did not explicitly define that term. This explanatory note is useful and including it aligns with the Ad Hoc TG recommendations.

7. Instructional Literature Requirements

In the NPR, the Commission proposed more stringent requirements for instructional literature, including format requirements consistent with those for on-product warnings, a requirement that instructions be in English (at a minimum), and that additional labels must not contradict the meaning of required information. Additionally, the Commission proposed to include a note in the regulatory text, referencing ANSI Z535.6, *Product Safety Information in Product Manuals, Instructions, and Other Collateral Materials* (ANSI Z535.6; available at: *http://www.ansi.org/*), for optional additional guidance about the design of product safety messages in instructional literature.

The instructional literature requirements in ASTM F2388–18 are consistent with those in the NPR, with minor adjustments to align with the Ad Hoc TG recommendations. For example, where the NPR required warnings in instructions to align with the on-product warning format requirements generally, ASTM F2388–18 includes an equivalent requirement, but exempts warnings in instructions from distinctiveness and color requirements. These requirements are appropriate because they are consistent with the NPR and the Ad Hoc TG recommendations.

VI. Comments Filed in Response to the NPR

CPSC received nine comments in response to the NPR. The comments are available in the docket for this rulemaking, CPSC–2016–0023, at: *www.regulations.gov.* A summary of the comments, grouped by topic, and CPSC staff's responses are below.

A. Postpone Rulemaking

Summary of Comment: Comments recommended that the Commission delay issuing a final rule or issue a supplemental NPR because ASTM's then-upcoming 2017 revisions to the standard likely would address the concerns raised in the NPR.

Response: ASTM has updated its standard several times since the NPR, and approved ASTM F2388–18 on February 15, 2018. ASTM F2388–18, which the Commission is incorporating by reference without modification, addresses the issues raised in the NPR. As discussed in section V of this notice, the requirements in ASTM F2388–18 align with the requirements in the NPR, making a supplemental NPR unnecessary.

B. Wood Screws

Summary of Comment: Comments requested that the Commission only apply the wood screw restriction to ''open frame'' products, or exclude from the wood screw restrictions furniture, such as dressers, that include barriers or a changing pad. Commenters stated that incident data does not indicate that these types of products are involved in incidents. Commenters stated that

furniture is often sold unassembled and consumers use wood screws to assemble it, making it difficult for such products to comply with the wood screw restriction. Commenters noted that the ASTM subcommittee considered excluding these types of furniture from the wood screw restriction. One commenter recommended removing the wood screw restriction and, instead, relying on the structural performance tests in the standard.

Response: Consistent with these comments, ASTM F2388–18 excludes changing tables that are also clothing storage units (such as dressers) from the wood screw restriction. This exclusion is reasonable because incident data indicate that fastener failures occur in open-frame changing tables, rather than changing tables that are also clothing storage units. In addition, changing tables that are also clothing storage units are subject to requirements in ASTM F2057, *Safety Specification for Clothing Storage Units.* For all other changing tables, ASTM F2388–18 prohibits the use of wood screws on key structural elements, consistent with requirements in other ASTM durable infant or toddler product standards, such as cribs and high chairs. This requirement is good engineering practice and addresses incidents in which a changing product collapsed due to wood screws coming out or missing from the product.

C. Metal Inserts

Summary of Comment: Comments opposed the proposal to require glue or other locking means for metal inserts. Commenters stated that glue inside the insert can result in assembly difficulties for consumers, is design restrictive, and unnecessary. In addition, one commenter requested definitions of ''key structural elements'' and ''threaded fasteners'' to clarify which products and features would be subject to the requirement.

Response: This requirement is similar to requirements in other ASTM durable infant or toddler product standards (such as cribs and high chairs), is good engineering practice, and addresses structural integrity issues identified in incident data. CPSC staff does not consider the wording ''. . . shall be glued or include other means to impede loosening or detaching'' to be design restrictive because it provides manufacturers with flexibility to meet the requirements by any means (glue is just an example of how the requirement can be met). In addition, to provide clarity about the features subject to this requirement, ASTM F2388–18 includes definitions for ''key structural elements'' and ''threaded fasteners.''

D. Restraints

Summary of Comment: A comment requested that the Commission require baby changing products to include restraint straps, rather than allow them to be optional. The commenter stated that barriers are not sufficient to prevent children from rolling off of products and that there are restraint designs that would not interfere with changing a diaper.

Response: Restraints may give caregivers a sense of safety, diminishing their attentiveness, and increasing potential hazards. For example, if caregivers believe that restraint straps provide safety, they may leave a child unattended on a changing table, and an unattended child in a restraint consisting of a single waist strap is exposed to a potential strangulation hazard. As such, the Commission does not believe it is appropriate to require restraints at this time. Moreover, incident data indicate that restraint failures involve restraints detaching from the product, or straps or buckles breaking. The final rule addresses these demonstrated hazards by requiring that if restraints are provided, they must be tested to ensure they are effective.

E. Warnings

Summary of Comment: A comment suggested that the Commission require pictograms in warnings to convey the hazards associated with baby changing products.

Response: The commenter did not provide recommended pictograms for staff to evaluate. CPSC's Division of Human Factors staff believes that a well-developed and tested pictogram can increase comprehension, but designing effective, understandable graphics can be difficult. Readers do not properly understand some seemingly obvious graphics, which can result in misinterpretations.

F. Effective Date

Summary of Comment: CPSC received comments about the proposed 6-month effective date. One comment, submitted by three consumer advocate groups, supported the 6-month effective date. Two commenters requested a longer effective date (one firm requested 1 year and the other at least 1 year). The latter two commenters expressed concern that six months would not provide adequate time for producers to modify their products, and one of the commenters noted that some manufacturers ''purchase their materials as a single order to cover an entire year,'' which would be problematic if these firms need to change their products sooner than that.

Response: The Commission generally considers 6 months an appropriate effective date for rules issued under section 104 of the CPSIA, but recognizes that longer effective dates minimize the impact on affected firms. As the final regulatory flexibility analysis for this rule explains, the final rule could have a significant economic impact on as much as 43 percent of the small firms that supply baby changing products to the U.S. market. Many of those firms may not be aware of the ASTM voluntary standard for changing products or this rulemaking. Accordingly, the Commission is providing a longer effective date for the final rule than proposed in the NPR. The rule will take effect 12 months after publication of this final rule.

G. Miscellaneous

Summary of Comment: A comment stated that a mandatory standard for baby changing products would not reduce the risk of fatalities because the fatalities reported to CPSC involved babies sleeping on products, which is not their intended use.

Response: As the Division of Human Factors memorandum in the NPR briefing package explained, the fatal incidents involving baby changing products suggest that caregivers may mistake changing accessories for sleep surfaces. To address this issue and reduce the risk associated with babies sleeping on baby changing products, the NPR proposed and the final rule requires baby changing products to bear warnings specifically cautioning against allowing babies to sleep on the products. The Commission believes that this will reduce the risk of such foreseeable misuse and the resulting injuries and deaths.

VII. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. These regulations require the preamble to a final rule to summarize the material and discuss the ways in which the material the agency incorporates by reference is reasonably available to interested persons, and how interested parties can obtain the material. 1 CFR 51.5(b). In accordance with the OFR regulations, this section summarizes ASTM F2388–18, and describes how interested parties may obtain a copy of the standard.

ASTM F2388–18 contains requirements concerning:

- Sharp points and edges;
- small parts;
- surface coatings;
- wood parts;

- openings;
- toys;
- threaded fasteners;
- protective components;
- scissoring, shearing, and pinching;
- structural integrity;
- stability;
- barriers;
- retention of contoured changing pads and add-on changing units;
- entrapment in shelves and in enclosed openings;
- self-folding steps;
- restraint systems;
- warnings and labels; and
- instructional literature.

The standard also includes test methods to assess conformance with these requirements. Interested parties may obtain a copy of ASTM F2388–18 from ASTM, through its website (*http://www.astm.org*), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428. Alternatively, interested parties may inspect a copy of the standard at CPSC's Office of the Secretary.

VIII. Final Rule

Section 1235.2(a) of the final rule requires baby changing products to comply with ASTM F2388–18 and incorporates the standard by reference. Section VII of this preamble describes the OFR requirements for incorporating material by reference. In accordance with those requirements, section VII summarizes ASTM F2388–18, explains how the standard is reasonably available to interested parties, and how interested parties may obtain a copy of the standard.

The final rule also amends 16 CFR part 1112 to add a new § 1112.15(b)(45) that lists 16 CFR part 1235, *Safety Standard for Baby Changing Products,* as a children's product safety rule for which the Commission has issued an NOR. Section XIV of this preamble provides additional information about certifications and NORs.

IX. Effective Date

The Administrative Procedure Act (5 U.S.C. 551–559) generally requires that agencies set an effective date for a final rule that is at least 30 days after the **Federal Register** publishes the final rule. 5 U.S.C. 553(d). The NPR proposed that the final rule for baby changing products, and the amendment to part 1112, would take effect 6 months after publication. CPSC received comments requesting an implementation date of 1 year, asserting that additional time would be necessary for firms to modify products to meet the standard. CPSC believes that 1 year is sufficient for firms to modify their products to meet the new standard. Therefore, this rule will take effect 1 year after publication in the **Federal Register**, and will apply to products manufactured or imported on or after that date.

X. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under the PRA, CPSC must estimate the ''burden'' associated with each ''collection of information.'' 44 U.S.C. 3506(c).

In this rule, section 9 of ASTM F2388–18 contains labeling requirements that meet the definition of ''collection of information'' in the PRA. 44 U.S.C. 3502(3). In addition, section 10 of ASTM F2388–18 requires instructions to be provided with baby changing products; however, CPSC believes this requirement can be excluded from the PRA burden estimate. OMB allows agencies to exclude from the PRA burden estimate any ''time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities,'' if the disclosure activities required to comply are ''usual and customary.'' 5 CFR 1320.3(b)(2). Because baby changing products generally require use and assembly instructions, and CPSC is not aware of baby changing products that generally require instructions but lack them, CPSC believes that providing instructions with baby changing products is ''usual and customary.'' For this reason, the burden estimate includes only the labeling requirements.

The preamble to the NPR discussed the information collection burden of the proposed rule and requested comments on the accuracy of CPSC's estimates. 81 FR 66893 to 66894. CPSC did not receive any comments about the information collection burden of the proposed rule. However, the information collection burden has changed since the NPR because CPSC staff has identified 120 baby changing product suppliers (102 domestic firms, 17 foreign firms, and 1 firm of unknown location), rather than the 85 firms identified in the NPR, that it estimates will be subject to the information collection burden. Accordingly, the estimated burden of this collection of information is as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1235.2	120	6	720	1	720

The estimated reporting burden is based on CPSC staff's expectation that all 120 baby changing product suppliers known to CPSC will need to modify their labels to comply with the final rule. CPSC staff estimates that it will take about 1 hour per model to make these modifications and, based on staff's evaluation of product lines, that each supplier has an average of 6 models of baby changing products. Consequently, CPSC estimates that the burden associated with the labeling requirements is: 120 entities × 1 hour per model × 6 models per entity = 720 hours. CPSC staff estimates that the hourly compensation for the time required to create and update labels is $34.21 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' Sept. 2017, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost associated with the labeling requirements is: $34.21 per hour × 720 hours = $24,631.20. CPSC staff does not expect there to be operating, maintenance, or capital costs associated with this information collection.

As the PRA requires, CPSC has submitted the information collection requirements of this final rule to OMB. 44 U.S.C. 3507(d). OMB has assigned control number 3041–0175 to this information collection.

XI. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires agencies to consider the potential economic impact

of a proposed and final rule on small entities, including small businesses. Section 604 of the RFA requires agencies to prepare and publish a final regulatory flexibility analysis (FRFA) when they issue a final rule, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FRFA must discuss:

- The need for and objectives of the rule;
- significant issues raised in public comments about the initial regulatory flexibility analysis (IRFA), a response to comments from the Chief Counsel for Advocacy of the SBA, the agency's assessment of the comments, and any changes made to the rule as a result of the comments;
- the description and estimated number of small entities that will be subject to the rule;
- the reporting, recordkeeping, and other compliance requirements of the rule, as well as the small entities that would be subject to those requirements, and the types of skills necessary to prepare the reports or records;
- steps the agency took to minimize the significant economic impact on small entities; and
- the factual, policy, and legal reasons the agency selected the alternative in the final rule, and why it rejected other significant alternatives.

5 U.S.C. 604.

Based on an assessment by CPSC's Directorate for Economic Analysis staff, CPSC cannot certify that this rule will not have a significant economic impact on a substantial number of small entities. As a result, staff has prepared a FRFA. This section summarizes the FRFA for this final rule. The complete FRFA is available as part of CPSC staff's briefing package at: *https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Baby%20Changing%20Products%20-%20June%2013%202018.pdf?ZbvMCsfyQfLFivqHRbFWKclOordsuVeC.*

B. Comments Relevant to the FRFA

CPSC did not receive any comments specifically addressing the IRFA that accompanied the proposed rule or from the Chief Counsel for Advocacy of SBA. However, CPSC received comments about the effective date of the final rule, which are relevant to the FRFA insofar as they address the costs associated with the rule. These comments are discussed in section VI.F. of this preamble. After considering these comments, and the potential economic impact of the rule on small firms, the Commission is extending the effective date for the final rule to 1 year, rather than the proposed 6 months. CPSC believes that this longer effective date will reduce the economic impact of the rule on firms, some of which may not be aware of the ASTM standard or this rulemaking, by reducing the potential for a lapse in production or imports while bringing products into compliance with the rule, and spreading the costs of compliance over a longer period.

C. Description of Small Entities Subject to the Rule

CPSC staff identified 120 firms that supply baby changing products to the U.S. market, consisting of 102 domestic firms, 17 foreign firms, and 1 firm for which staff could not determine the location. Of the 102 domestic firms, 84 are small entities, according to SBA's standards, and 18 are large. Of the 84 small domestic entities, 61 are manufacturers, and 23 are importers or wholesalers. It is possible that there are additional baby changing product suppliers in the U.S. market that staff has not identified.

D. Description of the Final Rule

Sections V and VII of this preamble describe the requirements in the final rule, which incorporates by reference ASTM F2388–18. In addition, the final rule amends the regulations regarding third party conformity assessment bodies to include the safety standard for baby changing products in the list of NORs.

E. Impact on Small Businesses

For the FRFA, staff limited its analysis to the 84 small domestic firms staff identified as supplying baby changing products to the U.S. market because SBA guidelines and definitions apply to domestic entities. In assessing whether a rule will have a significant economic impact on small entities, staff generally considers impacts ''significant'' if they exceed 1 percent of a firm's revenue. This section provides details about staff's assessment of the economic impact of the final rule on small domestic entities. To summarize, staff believes that it is unlikely that the final rule will have a significant economic impact on 22 of the 61 small manufacturers and 10 of the 23 small importers and wholesalers, all of which already comply with a version of the ASTM standard. Of the remaining firms, which do not already comply with the voluntary standard, staff does not expect the final rule to have a significant economic impact on 13 of the 39 small manufacturers and 3 of the 13 small importers and wholesalers because most of these firms supply products that staff does not expect will require changes to conform to the rule. Staff could not rule out a significant economic impact on the remaining 26 small manufacturers and 10 small importers and wholesalers.

1. Small Manufacturers

At the time staff prepared the FRFA, 22 of the 61 small manufacturers reported that their baby changing products complied with the then-current ASTM standard. Staff believes that firms that report complying with the voluntary standard will continue to comply with the standard as it evolves, as part of an established business practice. Staff does not expect the final rule to have a significant economic impact on any of these 22 firms because ASTM F2388–18 was published well before the effective date of this rule. Staff expects third party testing costs to be minimal because these firms already test their products for compliance with the voluntary standard.

The remaining 39 small manufacturers produce baby changing products that do not comply with the voluntary standard. Seven of these firms manufacture only wooden changing trays that are sold separately from furniture, which are subject to few requirements other than side height, labeling, and instructions. Staff does not expect changes to warnings, instructions, or side heights to create significant costs. An additional 12 firms manufacture only contoured changing pads, which are also subject to minimal requirements, primarily including barrier and retention requirements, labels, and instructions. Staff believes that firms will not have to modify most of these changing pads to meet these requirements, but it is possible that a few firms would need to modify their products to meet the barrier and retention requirements. These modifications could be costly because firms would need new molds for foam products. For purposes of the FRFA, staff assumed that two firms would need to modify their contoured changing pads to comply with the final rule.

The remaining 20 firms manufacture a variety of changing products. Firms staff interviewed before the Commission issued the NPR indicated that the cost of completely redesigning a product could range from $25,000 to $200,000, depending on the type of changing product. It is likely that the final rule will have a significant impact on nine of these firms (and possibly one more) based on their revenue levels; it is unlikely the rule will have a significant economic impact on three of these firms, based on their revenues; and staff

could not determine the revenues of the remaining seven firms.

Staff believes that third party testing costs are not likely to have a significant economic impact on 21 of the 39 small domestic noncompliant manufacturers, but could exceed 1 percent of revenues for the remaining 18 firms, with varying degrees of likelihood. Staff also believes that third party testing costs could result in significant economic impacts for 7 of the 20 small domestic noncompliant manufacturers that are not likely to experience significant economic impacts from the requirements in ASTM F2388–18.

2. Small Importers and Wholesalers

At the time staff prepared the FRFA, 10 of the 23 small importers and wholesalers reported that their baby changing products complied with the then-current ASTM standard. Staff considered the economic impact to importers and wholesalers together because both rely on outside firms to supply the products they distribute to the U.S. market. Like small, compliant manufacturers, staff expects that these importers and wholesalers will comply with ASTM F2388–18 before the effective date of the final rule. Therefore, staff does not expect the final rule to have a significant economic impact on any of these firms. Likewise, staff expects third party testing costs to be minimal because costs would be limited to the difference between the cost of current testing regimes and third party testing costs.

The remaining 13 small importers and wholesalers supply baby changing products that do not comply with the voluntary standard. The economic impact of the rule on these importers and wholesalers depends on the extent of the changes needed for their products to comply with the rule and the response of their suppliers. Staff generally cannot determine this information for importers and wholesalers that do not comply with the voluntary standard.

Nevertheless, staff anticipates that the rule could have a significant economic impact on some of these firms. Staff estimates that the rule will not have a significant economic impact on one importer that supplies only wooden changing trays. The rule also may not have a significant economic impact on two importers and one wholesaler that provide only contoured changing pads. However, one of these firms may need to redesign its product, which would have a significant economic impact on the firm. Each of these firms has wide enough product lines that it could stop supplying changing products, although the impact of that on revenue is unclear.

Of the remaining six importers and three wholesalers, four firms have low enough revenues that they are likely to experience a significant economic impact, regardless of how their suppliers respond, as their suppliers are not likely to absorb any of the costs and finding alternative suppliers can be costly. Three of these firms may be able to stop supplying changing products, but it is not clear what impact this would have on their revenues. Staff does not have revenue information for the remaining five firms. As a result, staff cannot rule out the possibility that the rule will have a significant economic impact on these five firms. However, one of these firms appears to be tied to its suppliers, who may absorb some of the costs, and another firm has a wide enough product line that it could stop supplying changing products.

Staff believes that third party testing could result in significant costs for three of the firms that import noncompliant baby changing products. For two of these firms, testing costs could exceed 1 percent of gross revenue if the firm tests only one unit per model. A third firm would need to test about three units per model before testing costs would exceed 1 percent of its gross revenue. Staff did not have access to revenue data for seven of the small noncompliant importers and wholesalers to determine the potential economic impact of the rule.

3. Accreditation Requirements for Testing Laboratories

Section 14 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires all children's products that are subject to a children's product safety rule to be tested by a third party conformity assessment body (*i.e.,* testing laboratory) that has been accredited by CPSC. Testing laboratories that want to conduct this testing must meet the NOR for third party conformity testing. The final rule amends 16 CFR part 1112 to establish an NOR for testing laboratories to test for compliance with the baby changing product rule.

In the IRFA for this rule, staff anticipated that the accreditation requirements would not have a significant economic impact on a substantial number of small laboratories because: (1) The rule imposed requirements only on laboratories that intended to provide third party testing services; (2) laboratories would assume the costs only if they anticipated receiving sufficient revenue from the testing to justify accepting the requirements as a business decision; and (3) most laboratories would already have accreditation to test for conformance to other juvenile product standards, thereby limiting the costs to adding the baby changing product standard to their scope of accreditation. CPSC has not received any information to date that contradicts this assessment. Therefore, staff believes that the NOR for the baby changing product standard will not have a significant economic impact on a substantial number of small entities.

F. Alternatives and Steps To Minimize Economic Impacts

In response to comments, the Commission is providing a 1 year effective date, rather than the proposed 6 months. This should reduce the economic impact of the rule for small entities. Setting a later effective date reduces the likelihood of a lapse in production or imports if firms cannot comply with the standard or obtain third party testing within the time provided. In addition, a later effective date spreads the costs of compliance over a longer period, reducing annual costs and the present value of total costs.

XII. Environmental Considerations

CPSC's regulations list categories of agency actions that ''normally have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c). Such actions qualify as ''categorical exclusions'' under the National Environmental Policy Act (42 U.S.C. 4321–4370m–12), which do not require an environmental assessment or environmental impact statement. One categorical exclusion listed in CPSC's regulations is for rules or safety standards that ''provide design or performance requirements for products.'' 16 CFR 1021.5(c)(1). Because the final rule for baby changing products creates design or performance requirements, the rule falls within the categorical exclusion.

XIII. Preemption

Under section 26(a) of the CPSA, no state or political subdivision of a state may establish or continue in effect a requirement dealing with the same risk of injury as a federal consumer product safety standard under the CPSA unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). However, states or political subdivisions of states may apply to CPSC for an exemption, allowing them to establish or continue such a requirement if the state requirement ''provides a significantly higher degree of protection from [the] risk of injury'' and ''does not

unduly burden interstate commerce.'' *Id.* 2075(c).

Section 104 of the CPSIA requires the Commission to issue consumer product safety standards for durable infant or toddler products. As such, consumer product safety standards that the Commission creates under CPSIA section 104 are covered by the preemption provision in the CPSA. As a result, the preemption provision in section 26 of the CPSA applies to the mandatory safety standard for baby changing products.

XIV. Testing, Certification, and Notification of Requirements

Section 14(a) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on a third party conformity assessment body's testing, the product complies with the applicable children's product safety rule. 15 U.S.C. 2063(a)(2)(A), 2063(a)(2)(B). Section 14(a) also requires the Commission to publish an NOR for a third party conformity assessment body (*i.e.,* testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. 15 U.S.C. 2063(a)(3)(A). Because this safety standard for baby changing products is a children's product safety rule, it requires the Commission to issue an NOR.

On March 12, 2013, the Commission published a final rule in the **Federal Register**, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* establishing 16 CFR part 1112, which sets out the general requirements and criteria concerning testing laboratories. 78 FR 15836. Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which the Commission has published NORs. When the Commission issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, the Commission is amending part 1112 to include the baby changing products standard.

Testing laboratories that apply for CPSC acceptance to test baby changing products for compliance with the new baby changing product rule would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1235, *Safety Standard for Baby Changing Products,* in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: *www.cpsc.gov/labsearch.*

As the RFA requires, CPSC staff conducted a FRFA for the rulemaking in which the Commission adopted part 1112. 78 FR 15836, 15855 (Mar. 12, 2013). To summarize, the FRFA concluded that the accreditation requirements would not have a significant economic impact on a substantial number of small laboratories because no requirements were imposed on laboratories that did not intend to provide third party testing services. The only laboratories CPSC expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

By the same reasoning, adding an NOR for the baby changing product standard to part 1112 will not have a significant economic impact on small test laboratories. A relatively small number of laboratories in the United States have applied for accreditation to test for conformance to existing juvenile product standards. Accordingly, CPSC expects that only a few laboratories will seek accreditation to test for compliance with the baby changing product standard. Of those that seek accreditation, CPSC expects that most will have already been accredited to test for conformance to other juvenile product standards. The only costs to those laboratories will be the cost of adding the baby changing product standard to their scopes of accreditation. For these reasons, CPSC certifies that amending 16 CFR part 1112 to include an NOR for the baby changing products standard will not have a significant economic impact on a substantial number of small entities.

XV. Consumer Registration of Durable Infant or Toddler Products

As section 104(d) of the CPSIA requires, regulations in 16 CFR part 1130 require manufacturers of durable infant or toddler products to provide registration forms with each product, maintain the contact information consumers submit on these forms, and mark manufacturer and model information on products. Section 1130.2(a)(14) lists ''changing tables'' as one of the products subject to the registration card requirements. However, ''changing tables'' is no longer used as the general term to encompass all baby changing products that are subject to ASTM F2388–18 and this final rule, and this term may create confusion since it is only one type of baby changing product. Because all of the baby changing products subject to this rule are ''durable infant or toddler products,'' section 104(d) of the CPSIA requires the registration card requirements to apply to all of these products.

Accordingly, the Commission anticipates issuing a notice proposing to amend 16 CFR part 1130 to clarify that ''changing tables'' include all changing products identified in ASTM F2388–18, which includes changing tables, contoured changing pads, changing table accessories, and add-on changing units.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1235

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(45) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(45) 16 CFR part 1235, Safety Standard for Baby Changing Products.

* * * * *

■ 3. Add part 1235 to read as follows:

PART 1235—SAFETY STANDARD FOR BABY CHANGING PRODUCTS

Sec.
1235.1 Scope.
1235.2 Requirements for baby changing products.

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

§ 1235.1 Scope.

This part establishes a consumer product safety standard for baby changing products.

§ 1235.2 Requirements for baby changing products.

Each baby changing product shall comply with all applicable provisions of ASTM F2388–18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use,* approved on February 15, 2018. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2018–13556 Filed 6–25–18; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0499]

RIN 1625–AA00

Safety Zone; City of Erie Fourth of July Fireworks; Lake Erie, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 280-foot radius of the launch site located at Dobbins Landing, Erie, PA. This safety zone is intended to restrict vessels from portions of Lake Erie during City of Erie Fourth of July fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 9:45 p.m. until 10:45 p.m. on July 3, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0499 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 LT Michael Collet, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels form the hazards associated with a fireworks display.

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** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the fireworks display.

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 Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone on July 3, 2018, from 9:45 p.m. until 10:45 p.m. The safety zone will encompass all waters of Lake Erie, Erie, NY contained within 280-foot radius of: 42°08′17.13″ N, 080°05′30.17″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF 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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular

area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 establishes a temporary safety zone. 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.T09–0499 to read as follows:

§ 165.T09–0499 Safety Zone; City of Erie Fourth of July Fireworks; Lake Erie, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, Erie, PA contained within a 280-foot radius of: 42°08′17.13″ N, 80°05′30.17″ W.

(b) *Enforcement period.* This regulation will be enforced from 9:45 p.m. until 10:45 p.m. on July 3, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene

representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 20, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–13643 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0078]

RIN 1625–AA00

Safety Zone; Officer Lehner Memorial Vintage Regatta; Buffalo Outer Harbor, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Buffalo Outer Harbor, Buffalo, NY. This safety zone is intended to restrict vessels from portions of the Buffalo Outer Harbor during the Officer Lehner Memorial Vintage Regatta. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with this regatta. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 9:45 a.m. until 4:15 p.m. on July 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0078 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 LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On December 27, 2017, the Buffalo Vintage Boat Racing Association and BR Guest Inc., notified the Coast Guard that it will be conducting a regatta on July 1, 2018, from 10:00 a.m. until 4:00 p.m. on the Buffalo Outer Harbor. In response, on April 25, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Officer Lehner Memorial Vintage Regatta; Buffalo Outer Harbor, Buffalo, NY (83 FR 17962, April 25, 2018). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regatta. During the comment period that ended May 25, 2018, we received no relevant comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in the vicinity of the planned regatta.

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 Buffalo (COTP) has determined the Officer Lehner Memorial Vintage Regatta presents significant risks to the public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the regatta takes place.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no relevant comments on our NPRM published April 25, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone on July 1, 2018 from 9:45 a.m. until 4:15 p.m. The safety zone will encompass all navigable waters at the start point at position 42°52′04″ N, 078°53′03″ W, then South to 42°51′07″ N, 078°52′09″ W (NAD 83) on the Outer Harbor in Buffalo, NY. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10:00 a.m. to 4:00 p.m. regatta.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF 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 conclusion that this rule is not a significant regular action. Vessel traffic will be able to safely transit around this safety zone, which impacts a small designated area of the Buffalo Outer Harbor, by transiting a short distance in Lake Erie. The safety zone will also have built in times where vessels will be able to transit through the regatta area during event breaks. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 establishes a temporary safety zone. 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.T09–0078 to read as follows:

§ 165.T09–0078 Safety Zone; Officer Lehner Memorial Vintage Regatta; Buffalo Outer Harbor, Buffalo, NY.

(a) *Location.* The safety zone will encompass all waters of the Outer Harbor, Buffalo, NY, starting at position 42°52′04″ N, 078°53′03″ W then South to 42°51′07″ N, 078°52′09″ W (NAD 83). The course will extend a minimum of 100 yards from the shore and the breakwall.

(b) *Enforcement period.* This rule will be enforced from 9:45 a.m. until 4:15 p.m. on July 1, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo (COTP) or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his designated on-scene representative.

(3) The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or his on-scene representative to obtain permission to do so. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (716) 843–9322. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his on-scene representative.

Dated: June 20, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–13666 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0468]

RIN 1625–AA00

Safety Zone; Wine and Walleye Festival Fireworks; Ashtabula River, Ashtabula, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 280-foot radius of the launch site at the R.W. Sidley Facility, Ashtabula, OH. This safety zone is intended to restrict vessels from portions of the Ashtabula River during the Wine and Walleye Festival fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective from 9:45 p.m. until 11:15 p.m. on July 28, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0468 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 LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *Ryan.S.Junod@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with a fireworks display.

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 would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in vicinity of the fireworks display.

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 Buffalo (COTP) has determined that fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone on July 28, 2018, from 9:45 p.m. until 11:15 p.m. The safety zone will encompass all waters of the Ashtabula River, Ashtabula, OH contained within 280-foot radius of: 41°54′06″ N, 080°47′49″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF 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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 establishes a temporary safety zone. 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.T09–0468 to read as follows:

§ 165.T09–0468 Safety Zone; Wine and Walleye Festival Fireworks; Ashtabula River, Ashtabula, OH.

(a) *Location.* This zone will encompass all waters of the Ashtabula River; Ashtabula, OH contained within a 280-foot radius of: 41°54′06″ N, 080°47′49″ W.

(b) *Enforcement period.* This regulation will be enforced from 9:45 p.m. until 11:15 p.m. on July 28, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 20, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–13659 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0331]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the

Mississippi River from mile marker (MM) 94 to MM 95 above Head of Passes. This action is necessary to provide for the safety of persons, vessels, and the marine environment near Algiers Point, New Orleans, LA, during a fireworks display on June 30, 2018. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: This rule is effective from 8:45 p.m. through 10 p.m. on June 30, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0331 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 Lieutenant Commander Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 4, 2018, AFX Pro, LLC, notified the Coast Guard that it would be conducting a fireworks display from 10 p.m. through 10:45 p.m. on June 30, 2018, for a wedding celebration. The fireworks are to be launched from a barge in the Mississippi River at the approximate mile marker (MM) 94.5 above Head of Passes near Algiers Point, New Orleans, LA. In response, on April 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lower Mississippi River, New Orleans, LA (83 FR 16817). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 17, 2018, we received one comment.

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 New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in this June 30, 2018 display will be a safety concern for anyone within a one-mile section of the river. The purpose of this rule is to ensure safety of persons, vessels, and the marine environment before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published April 17, 2018. The comment was unrelated to the substance of this rule. Therefore, no changes were made to the regulatory text of the final rule based on the comment.

However, on April 18, 2018, AFX Pro, LLC notified the Coast Guard that the fireworks display would begin at 9 p.m. instead of 9.45 p.m. and end at 10 p.m. instead of 11 p.m., as we originally published in the NPRM. Therefore, the regulatory text of this rule updates the effective period in the NPRM to 8:45 p.m. through 10 p.m.

This rule establishes a temporary safety zone from 8:45 p.m. through 10 p.m. on June 30, 2018. The safety zone will cover all navigable waters of the Mississippi River above Head of Passes between mile markers (MM) 94 and 95. The duration of the zone is intended to ensure the safety of persons, vessels, and the marine environment before, during, and after the scheduled fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

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 and duration of the temporary safety zone. This temporary safety zone is for only one hour and fifteen minutes on a one-mile section of the river. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule would 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.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 lasting one hour and fifteen minutes that will prohibit entry between mile marker 94 and mile marker 95 on the Lower Mississippi River above Head of Passes. 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.T08–0331 to read as follows:

§ 165.T08–0331 Safety Zone; Lower Mississippi River, New Orleans, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River, New Orleans, LA from mile marker (MM) 94 to MM 95 above Head of Passes.

(b) *Effective period.* This section is effective from 8:45 p.m. through 10 p.m. on June 30, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and Local Notices to Mariners of any changes in the planned schedule.

Dated: June 12, 2018.

K.M. Luttrell,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2018–13644 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0567]

RIN 1625–AA00

Safety Zone; Bay Village Independence Day Fireworks; Lake Erie, Bay Village, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 560-foot radius of the launch site located at Cahoon Park, Bay Village, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Bay Village Independence Day fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or

persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective from 9:45 p.m. through 10:45 p.m. on July 4, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0567 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 LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *Ryan.S.Junod@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA)(5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause find that those procedures are ''impracticable, unnecessary, or contrary to public interest.'' On April 19, 2018, the Captain of the Port (COTP) Buffalo published a notice of proposed rulemaking (NPRM), Docket Number USCG–2017–1112, to make temporary safety zones for annual events a final rule. This event was included in the NPRM. Its purpose was to mitigate potential threats to personnel, vessels, and the marine environment in the navigable waters within the specified safety zones. The NPRM addressed these concerns, and invited the public to comment during the comment period, which ended on May 21, 2018. As such, it is unnecessary to publish an NPRM for this temporary rule because the public had opportunity to comment on it and no comments were received concerning this event.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in the vicinity of the fireworks display.

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 Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone on July 4, 2018, from 9:45 p.m. through 10:45 p.m. The safety zone will encompass all waters of Lake Erie, Bay Village, OH contained within 560-foot radius of: 41°29′23.9″ N, 081°55′44.5″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF 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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 establishes a temporary safety zone. 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.T09–0567 to read as follows:

§ 165.T09–0567 Safety Zone; Bay Village Independence Day Fireworks; Lake Erie, Bay Village, OH.

(a) *Location.* This zone will encompass all U.S waterways within a 560 foot radius of the fireworks launch site located at position 41°29′23.9″ N, 081°55′44.5″ W, Bay Village, OH (NAD 83).

(b) *Enforcement period.* This regulation is effective and will be enforced on July 4, 2018 from 9:45 p.m. until 10:45 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 20, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–13600 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–HQ–OW–2016–0569; FRL–9979–90–OW]

Previously-Incurred Costs in the WIFIA Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this interim final rule Environmental Protection Agency (EPA) is amending the Water Infrastructure Finance and Innovation Act (WIFIA) regulations to clarify the process for, and conditions under which, a recipient of WIFIA credit assistance can include costs incurred, and the value of integral in-kind contributions made, before receipt of assistance in the calculation of total eligible costs, and can be reimbursed for certain of those costs by WIFIA loan proceeds. This interim final rule pertains to a matter involving a federal loan and loan guarantee program and is therefore exempt from the rulemaking requirements of the Administrative Procedure Act. As such, EPA is issuing this rule as interim final.

DATES: This rule is effective on June 26, 2018. Comments must be received on or before August 27, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0569, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

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

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Water Infrastructure Division, Office of Wastewater Management, Mail Code 4201C, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC, 20460; telephone number: (202) 564–0614; email address: *dorfman.jordan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action only applies to entities seeking credit assistance under the WIFIA program for the development and construction of a water infrastructure project. EPA has promulgated regulations to implement this program. A list of eligible entities and eligible projects can be found at 33 U.S.C. 3904 and 3905 and the Interim Final Rule at 40 CFR 35.10005.

B. What should I consider as I prepare my comments for EPA?

Submitting Confidential Business Information (CBI). Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk, CD–ROM, or flash drive that you mail to EPA, mark the outside of the disk, CD–ROM, or flash drive as CBI and then identify electronically within the disk, CD–ROM, or flash drive the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for preparing your comments. When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the Agency taking?

Section 5008(c)(2) of the Water Infrastructure Improvements for the Nation Act, Public Law 114–322, added section 5029(b)(10) (33 U.S.C. 3908(b)(10)) to the WIFIA authorizing legislation. This section requires that any eligible project costs incurred, and the value of any integral in-kind contributions made, before receipt of assistance be credited toward the 51 percent of project costs to be provided by sources of funding other than a WIFIA loan. 33 U.S.C. 3908(b)(10). This section provides WIFIA borrowers the opportunity to include costs incurred prior to receipt of assistance and the value of integral in-kind contributions made before receipt of assistance, in the calculation of total eligible costs in order to calculate the size of the loan. However, it does not address what costs can be reimbursed. The size of the project is important in determining the amount of funding that may be awarded to the WIFIA borrower (''size of the loan'') because the statute, at 33 U.S.C. 3908(b)(2)(A), limits the size of the loan to 49 percent of the total reasonably anticipated eligible costs for the project. Instead of addressing the reimbursement of costs, 33 U.S.C. 3908(b)(10) uses the term ''credited'' and directs that certain costs be credited toward a category of costs, the 51 percent to be provided by a non-WIFIA source. Importantly, the statute does not prohibit the use of a WIFIA loan to reimburse eligible costs incurred prior to receipt of assistance. The WIFIA loan can therefore be used to reimburse any eligible cost, whether or not incurred prior to the receipt of assistance, except for the value of in-kind contributions which do not represent out-of-pocket costs to a borrower and are not costs for which a borrower would typically seek reimbursement or payment.

For these reasons, EPA is clarifying current regulations by adding to 40 CFR 35.10010(c) the clause ''value of any integral in-kind contributions made'' to allow these costs to be included in the calculation of eligible project costs and by changing ''prior to a project sponsor's submission of an application for credit assistance'' to ''before receipt of credit assistance'' to ensure that all such costs and integral in-kind contributions are included. EPA is also adding the clause, ''such costs, excluding the value of any integral in-kind contributions, are payable from the proceeds of the WIFIA credit instrument'' to ensure that such costs may be reimbursed from WIFIA loan proceeds.

Crediting prior costs and the value of integral in-kind contributions to the project increases the size of the project and, by extension, may increase the size of the WIFIA loan. For example, if a borrower has incurred $110 million in costs prior to the receipt of assistance, and anticipates incurring $90 million in costs after receipt of assistance, the size of the project would be $200 million. Looking at 33 U.S.C. 3908(b)(2)(A) in isolation, EPA could potentially fund up to 49 percent of that $200 million, or $98 million. However, by further directing that the costs incurred and contributions made prior to receipt of assistance be credited toward the 51 percent of project costs to be provided by sources of funding other than WIFIA, 3908(b)(10) serves to limit the size of the loan if the borrower has completed a substantial portion of the overall project. In this example project, the size of the loan would be limited to $90 million because the $110 million of costs incurred prior to receipt of assistance must be credited to the 51 percent category of costs to be provided by non-WIFIA sources of funding, leaving only $90 million to be funded by WIFIA.

Costs and in-kind contributions must be directly related to the development or execution of the project including, for example, preliminary design, right-of-way acquisition, National Environmental Policy Act (NEPA) compliance related costs, and construction related costs. The WIFIA program retains the right to ask for appropriate documentation as evidence of such costs and in-kind contributions for sizing of the WIFIA loan and, in the

case of incurred costs, for reimbursement.

In addition, 40 CFR 35.10010(c) is amended by removing ''[i]n addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.'' This sentence is redundant because 40 CFR 35.10005 provides a definition of eligible project costs from which the determination of eligibility of a cost can be determined. It causes confusion because it implies that fees charged by the WIFIA program cannot be included as an eligible project cost even though they are specifically allowed to be financed as part of a WIFIA loan by statute at 33 U.S.C. 3908(b)(7)(B). Furthermore, EPA has determined that the cost of obtaining rating opinion letters is eligible under 33 U.S.C. 3906(4) which states that ''capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction'' are eligible costs.

B. What is the Agency's authority for taking this action?

This interim final rule is issued under the authority of 33 U.S.C. 3908(b)(10) and 3911.

III. Statutory and Executive Orders Reviews

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

This action is not a significant regulatory action.

B. Executive Order 13771

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

C. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA because this rule merely establishes the process for, and conditions under which, a recipient of WIFIA credit assistance can include costs incurred, and the value of integral in-kind contributions made, before receipt of assistance in the calculation of total eligible costs, and can be reimbursed for certain of those costs by WIFIA loan proceeds.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. With this interim final rule, the EPA is amending the WIFIA regulations to clarify the process for, and conditions under which, a recipient of WIFIA credit assistance can include costs incurred, and the value of integral in-kind contributions made, before receipt of assistance in the calculation of total eligible costs, and can be reimbursed for certain of those costs by WIFIA loan proceeds. This interim final rule does not impose costs on small entities applying for a WIFIA loan. I have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. While a tribal government, or a consortium of tribal governments may apply for WIFIA credit assistance, this action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because environmental health or safety risks are not addressed by this action.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This rulemaking simply establishes the process for, and conditions under which, a recipient of WIFIA credit assistance can include costs incurred, and the value of integral in-kind contributions made, before receipt of assistance in the calculation of total eligible costs, and can be reimbursed for certain of those costs by WIFIA loan proceeds.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

This action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

L. National Environmental Policy Act

Each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4370). This rulemaking simply establishes the process for, and conditions under which, a recipient of WIFIA credit assistance can include costs incurred, and the value of integral in-kind contributions made, before receipt of assistance in the calculation of total eligible costs, and can be reimbursed for certain of those costs by WIFIA loan proceeds; therefore, by itself, this rulemaking will not have any effect on the quality of the environment.

List of Subjects in 40 CFR Part 35

Environmental protection, Reporting and recordkeeping requirements, and Water finance.

Dated: June 18, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 35 is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.;* 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 300f *et seq.;* 42 U.S.C. 6901 *et seq.;* 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 42 U.S.C. 13101 *et seq.;* Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997), 2 CFR 200.

■ 2. Amend § 35.10010 by revising paragraph (c) to read as follows:

§ 35.10010 Limitations on assistance.

* * * * *

(c) Costs incurred, and the value of any integral in-kind contributions made, before receipt of credit assistance may be considered in calculating eligible project costs only upon approval of the Administrator. Such costs and integral in-kind contributions must be directly related to the development or execution of the project and must be eligible project costs as defined in § 35.10005. In addition, such costs, excluding the value of any integral in-kind contributions, are payable from the proceeds of the WIFIA credit instrument and shall be considered incurred costs for purposes of paragraph (f) of this section. Capitalized interest on the WIFIA credit instrument is not eligible for calculating eligible project costs.

* * * * *

[FR Doc. 2018–13714 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0136; FRL–9979–76—Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Revisions to PSD Permitting Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to fully approve the State Implementation Plan (SIP) revision submitted by the State of Montana on October 14, 2016. Montana's October 14, 2016 submittal revises their prevention of significant deterioration (PSD) regulations. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: This final rule is effective on July 26, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2018–0136. 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 electronically through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the EPA taking final action to approve?

The EPA is taking final action to approve a revision to Montana's PSD regulations as submitted by the State of Montana on October 14, 2016. We are taking final action to approve the following revision to Administrative Rules of Montana (ARM) 17.8.818(7)(a)(iii): Removing the phrase ''averaged over a 24-hour period.''

We provided a detailed background in our proposed rulemaking, published on April 27, 2018. See 83 FR 18494. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on May 29, 2018.

In this action, we are responding to the comments we received and taking final rulemaking action on the State's October 14, 2016 submittal.

II. Response to Comments

We received two comments during the public comment period. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response.

III. Final Action

We are taking final action to approve changes to Montana's SIP—in particular the revisions to ARM 17.8.818(7)(a)(iii), which removes the phrase ''averaged over a 24-hour period''—as submitted on October 14, 2016. We are taking final action to approve this change, as it is consistent with the CAA and the EPA regulations as follows:

1. CAA section 110(a)(2)(C), which requires each state plan to include ''a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [the NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter'';
2. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Montana's regulations in ARM 17.8 create enforceable obligations for sources;
3. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. As described in our proposed rulemaking, Montana fulfilled this requirement;
4. CAA section 110(l), provides that the EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. The revisions to ARM 17.8.818 would not interfere with sections 110(a)(2) and 110(i) of the Act, as they are in compliance with current federal regulations;
5. CAA section 161, which requires a SIP to contain emission limitations to prevent significant deterioration of air quality in regions designated as attainment or unclassifiable; and
6. Montana's SIP revision complies with the requirements of 40 CFR 51.166 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions.

IV. Incorporation by Reference

In this action, the EPA is taking final action to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is taking final action to incorporate by reference a change to the State of Montana's SIP removing ''averaged over a 24-hour period'' from ARM 17.8.818(7)(a)(iii). The EPA has made, and will continue to make, these materials generally available through

www.regulations.gov and at the EPA Region 8 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 the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provision of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely finalizes approval of 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 expected to be an Executive Order 13771 regulatory action because this action is not significant 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,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this final rule is not approved to apply on any Indian reservation land or in any other area where the 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. The 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).

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 *August 27, 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* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 20, 2018.

Douglas Benevento,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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 BB—Montana

■ 2. Section 52.1370(c) is amended by revising table entry ''17.8.818'' to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA rule final date	Final rule citation	Comments
*	*	*	*	*	*
(vi) Administrative Rules of Montana, Subchapter 08, Prevention of Significant Deterioration of Air Quality					
*	*	*	*	*	*
17.8.818	Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.	08/20/2016	6/26/2018	[*insert* **Federal Register** *citation*].	

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

State citation	Rule title	State effective date	EPA rule final date	Final rule citation	Comments
*	*	*	*	*	*

* * * * *

[FR Doc. 2018–13597 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0557; FRL–9979–92–Region 4]

Air Plan Approval; SC; VOC Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the South Carolina State Implementation Plan (SIP). The revision makes a modification to the definition of ''volatile organic compounds'' (VOC). EPA is approving the SIP revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC) on September 5, 2017, because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective July 26, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0557. 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 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 electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, 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. The telephone number is (404) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 2004 (69 FR 69298), EPA issued a final rule revising the definition of VOC at 40 CFR 51.100(s) by adding tertiary butyl acetate (or t-Butyl acetate or TBAC) to the list of compounds that are considered to be negligibly reactive and excluded from the definition of VOC. Additionally, on February 25, 2016 (81 FR 9339), EPA issued a final rule further revising the definition of VOC at 40 CFR 51.100(s) by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. EPA removed these requirements in part because there was no evidence that TBAC was being used at levels that cause concern for ozone formation and because the data that had been collected under these requirements had proven to be of limited utility in judging the cumulative impacts of exempted compounds.[1] *See* 81 FR 9339, 9341.

On February 15, 2018 (83 FR 6822), EPA published a notice of proposed rulemaking (NPRM) for changes to the South Carolina SIP, submitted by the South Carolina DHEC on September 5, 2017. The submission revises South Carolina Regulation 61–62.1—*Definitions and General Requirements,* specifically Section I—''Definitions,'' by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. EPA received one adverse comment in the proposed rulemaking. After considering the adverse comment, EPA is now taking final action to approve the South Carolina Regulation 61–62.1, Section I—''Definitions'' revision. For more information, see the February 15, 2018, NPRM.

II. Response to Comment

Comment: EPA received one adverse comment to the revision to Regulation 61–62.1, Section I—''Definitions.'' The Commenter asserted that air quality policy should be based on no negative impacts on health, and as a result, stated, ''This proposed revision would do the opposite because it fails to acknowledge the change in emissions that South Carolina could undertake after tert-butyl acetate (TBAc) is taken off the states list of volatile organic compounds. I reject this revision because EPA's logic for approval is flawed when they say, ''. . . There was no evidence that TBAc was being used at levels that cause concern for ozone formation . . .''. The Commenter expressed concerns that the use of TBAC could change in South Carolina, and since record keeping and monitoring will no longer be required, this impact will not be assessed. Because of these concerns, the Commenter recommended that EPA prohibit South Carolina from adding TBAC to the negligibly reactive list and require South Carolina to continue monitoring TBAC. Finally, the Commenter noted health effects of TBAC.

Response: EPA previously approved South Carolina's revision of its definition of VOC which added t-Butyl acetate to the list of negligibly reactive compounds that are excluded from the State's definition of VOC. 72 FR 30704 (June 4, 2007). That prior rulemaking action is final and is not reopened in the current rulemaking action. Similarly, EPA's prior 2004 (60 FR 69298) final rulemaking that revised the definition of VOC to exclude TBAC as a negligibly reactive compound and EPA's 2016 (81 FR 9339) final rulemaking that removed TBAC recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC are also not reopened in the current rulemaking action. Rather, in the current action, the State is merely

[1] In the 2016 EPA rule, EPA also discussed the efforts surrounding any future determinations about the health risks associated with TBAC, including noting that data collected through the recordkeeping and reporting requirements did not appear relevant to any such future determinations and that EPA was assessing the health risks from TBAC through its Integrated Risk Information System. This effort is on-going and more information regarding health risks may be found at EPA's previous 2016 rulemaking (81 FR 9339, 9341).

updating the SIP to remove the recordkeeping, emissions reporting, modeling, and inventory requirements for TBAC consistent with EPA's 2016 rulemaking and the federal definitions in 40 CFR 51.100(s).

With regard to health risks, EPA acknowledges the comment regarding the health effects associated with TBAC and is continuing to take steps to assess potential risks associated with this compound. In the 2016 EPA rule, EPA discussed the efforts surrounding any future determinations about the health risks associated with TBAC, including noting that data collected through the recordkeeping and reporting requirements did not appear relevant to any such future determinations and that EPA was assessing the health risks from TBAC through its Integrated Risk Information System. This effort is ongoing, and we refer the Commenter to EPA's previous 2016 rulemaking (81 FR 9339, 9341) for more information regarding health risks.

III. 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 South Carolina Regulation 61–62.1, Section I—''Definitions,'' effective August 25, 2017, which revises definitions applicable to the SIP. 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). Therefore, these materials have been approved by EPA for inclusion in the State's implementation plan, 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 in the next update to the SIP compilation.[2]

IV. Final Action

For the reasons discussed above, EPA is approving the aforementioned change to the South Carolina SIP, submitted on September 5, 2017, because it is consistent with the CAA and federal regulations.

[2] 62 FR 27968 (May 22, 1997).

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 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, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, 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.'' EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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).

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 August 27, 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 in 40 CFR Part 52

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

Dated: June 12, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

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 PP—South Carolina

■ 2. Section 52.2120(c) is amended by revising the entry under Regulation No. 62.1 for ''Section I'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section I	Definitions	8/25/2017	6/26/2018, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–13571 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0148; FRL–9979–69—Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to the Permitting Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 4, 2017 related to South Dakota's Air Pollution Control Program. The October 4, 2017 submittal revises certain definitions and dates of incorporation by reference and contains new, amended and renumbered rules. In this rulemaking, we are taking final action on all portions of the October 4, 2017 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on July 26, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2018–0148. 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 available information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA is taking final action to approve all revisions as submitted by the State of South Dakota on October 4, 2017, with the exception of the revisions that we are not acting on, as outlined in section II.A. of our proposed rulemaking published on April 27, 2018 (83 FR 18496).

We provided a detailed explanation of the bases for our proposed approval in our April 27, 2018 rulemaking, which will not be restated here. See 83 FR 18496. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on May 29, 2018.

In this action, we are responding to the comments we received and taking final rulemaking action on the rules from the State's October 4, 2017, submittal.

II. Brief Discussion of Statutory and Regulatory Requirements

The changes we are taking final action to approve are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include ''a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter.''

2. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as ''the plan shall provide'' and ''the plan may provide.''

In addition, the CAA (section 110(a)(2)(C)) and 40 CFR 51.160 requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Such minor NSR programs are for pollutants from stationary sources that do not require Prevention of Significant Deterioration (PSD) or nonattainment new source review (NNSR) permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: ''[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.'' South Dakota's new revisions to ARSD 74:36 will not interfere with attainment, reasonable further progress (RFP), or

any other applicable requirement of the CAA.

III. Response to Comments

We received three comments during the public comment period. The comments were not related to the EPA's proposed rulemaking for South Dakota's permitting program changes which was published on April 27, 2018. As such, we are not providing a response to the comments.

IV. Final Action

As outlined in our proposed rulemaking, the EPA finds that the addition of new, revised and removed rules to ARSD 74:36 will not interfere with attainment or maintenance of any of the NAAQS in the State of South Dakota and would not interfere with any other applicable requirement of the Act or the EPA regulations; and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve South Dakota's revisions as submitted on October 4, 2017.

Specifically, we are taking final action to approve the following revisions: *74:36:01:01 (Definitions)*—74:36:01:01(8), 74:36:01:01(29), 74:36:01:01(67), 74:36:01:05(1) and 74:36:01:20(5), (7), and (8); *74:36:02 (Ambient Air Quality)*—74:36:02:02, 74:36:02:03, 74:36:02:04 and 74:36:02:05; *74:36:03 (Air Quality Episodes)*—74:36:03:01 and 74:36:03:02; *74:36:04 (Operating Permits for Minor Sources)*—74:36:04:04; *74:36:06 (Regulated Air Pollutant Emissions)*—*74:36:06:07; 74:36:09 (Prevention of Significant Deterioration)*— 74:36:09:02 and 74:36:09:03; *74:36:10 (New Source Review)*— 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07 and 74:36:10:08; *74:36:11 (Performance Testing)*—74:36:11:01; *74:36:12 (Control of Visible Emissions)*—74:36:12:01 and 74:36:12:03; *74:36:18 (Regulations for State Facilities in the Rapid City Area)*—74:36:18:10; *74:36:20 (Construction Permits for New Sources or Modifications)*—74:36:20:05; *74:36:21 (Regional Haze Program)*—74:36:21:02(8), 74:36:21:04, 74:36:21:05 and 74:36:21:09.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the State of South Dakota's revisions to its state implementation plan as described in section IV. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 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 the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law provisions as meeting federal requirements; this action 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 Clean Air Act; and
- Does not provide the 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 does not apply on any Indian reservation land or in any other area where the 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. The 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).

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 August 27, 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

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

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 20, 2018.

Douglas Benevento,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart QQ—South Dakota

■ 2. Section 52.2170(c) is amended by revising the table entries for: *74:36:01:01; 74:36:01:05; 74:36:01:20; 74:36:02:02; 74:36:02:03; 74:36:02:04; 74:36:02:05; 74:36:03:01; 74:36:03:02; 74:36:04:04; 74:36:06:07; 74:36:09:02; 74:36:09:03; 74:36:10:02; 74:36:10:03.01; 74:36:10:05; 74:36:10:07; 74:36:10:08; 74:36:11:01; 74:36:12:01; 74:36:12:03; 74:36:18:10; 74:36:20:05; 74:36:21:02; 74:36:21:04; 74:36:21:05;* and *74:36:21:09* to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	*	*	*	*	*
		74:36:01 Definitions			
74:36:01:01	Definitions	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	Except for 74:36:01:01.(73).
*	*	*	*	*	*
74:36:01:05	Applicable requirements of the Clean Air Act defined.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*
74:36:01:20	Physical change in or change in the method of operation defined.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*
		74:36:02 Ambient Air Quality			
*	*	*	*	*	*
74:36:02:02	Ambient air quality standards.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:02:03	Methods of sampling and analysis.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:02:04	Ambient air monitoring network.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:02:05	Air quality monitoring requirements.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
		74:36:03 Air Quality Episodes			
74:36:03:01	Air pollution emergency episode.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:03:02	Episode emergency contingency plan.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
		74:36:04 Operating Permits for Minor Sources			
*	*	*	*	*	*
74:36:04:04	Standard for issuance of a minor source operating permit.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*
		74:36:06 Regulated Air Pollutant Emissions			
*	*	*	*	*	*
74:36:06:07	Open burning practices prohibited.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	* *		*	*	* *
74:36:09 Prevention of Significant Deterioration					
*	* *		*	*	* *
74:36:09:02	Prevention of significant deterioration.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	Except for 74:36:09:02.(10).
74:36:09:03	Public participation	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:10 New Source Review					
*	* *		*	*	* *
74:36:10:02	Definitions	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:10:03.01	New source review preconstruction permit required.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:10:05	New source review preconstruction permit required.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:10:07	Determining credit for emissions Offsets.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:10:08	Projected actual emissions.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:11 Performance Testing					
74:36:11:01	Stack performance testing or other testing methods.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:12 Control of Visible Emissions					
74:36:12:01	Restrictions on visible emissions.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:18 Regulations for State Facilities in the Rapid City Area					
*	* *		*	*	* *
74:36:18:10	Visible emission limit for construction and continuous operation activities.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	* *		*	*	* *
74:36:20 Construction Permits for New Sources Or Modifications					
*	* *		*	*	* *
74:36:20:05	Standard for issuance of construction permit.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	*	*	*	*	*
74:36:21 Regional Haze Program					
*	*	*	*	*	*
74:36:21:02	Definitions	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*
74:36:21:04	Visibility impact analysis	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
74:36:21:05	BART determination	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*
74:36:21:09	Monitoring, record-keeping, and reporting.	9/13/2017	7/26/2018	[Insert **Federal Register** citation], 6/26/2018.	
*	*	*	*	*	*

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[FR Doc. 2018–13598 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0225; FRL–9978–70]

Fluroxypyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluroxypyr in or on teff forage, teff grain, teff hay, and teff straw. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 26, 2018. Objections and requests for hearings must be received on or before August 27, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0225, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0225 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 27, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0225, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or

other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of October 23, 2017 (82 FR 49020) (FRL–9967–37), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8550) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of herbicide fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] in or on teff, forage at 12.0 ppm; teff, grain at 0.5 ppm; teff, straw at 12.0 ppm; and teff, hay at 20.0 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has changed the numerical expression of the proposed tolerance values in order to conform to current Agency policy on significant figures.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluroxypyr including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluroxypyr follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The active ingredient used in formulating end-use herbicide products is fluroxypyr 1-methylheptyl ester. However, since the ester form has been shown to rapidly hydrolyze to the acid form, the residues of fluroxypyr 1-methylheptyl ester along with its fluroxypyr acid metabolite (free and conjugated), are collectively expressed as ''fluroxypyr'' and are therefore regulated together for tolerance enforcement. In terms of toxicity, the ester and acid forms are considered the same.

Fluroxypyr has low acute toxicity by the oral and dermal routes of exposure and moderate to mild acute toxicity by the inhalation route of exposure, based on lethality studies. Fluroxypyr is not a dermal sensitizer, nor is it irritating to the skin; however, it is a mild eye irritant.

The kidney is the target organ for fluroxypyr following oral exposure to rats, mice, and dogs. In the rat, increased kidney weight, nephrotoxicity, and death were observed in both sexes in the 90-day feeding study, and increased kidney weight and microscopic kidney lesions were observed in both sexes in the chronic study. Increased kidney weight was also observed in maternal rats in the developmental toxicity study, and kidney effects (deaths due to renal failure; increased kidney weight, and microscopic kidney lesions) were observed in both sexes in the 2-generation reproduction study in rats. Although microscopic kidney lesions were observed in dogs in the 28-day feeding study, no kidney effects or other treatment related toxicity were seen in the chronic feeding study in dogs at the same doses used in the 28-day study. Microscopic kidney lesions were observed in mice following long-term exposure.

There was no evidence of increased susceptibility (quantitative/qualitative) following in utero exposure in rats and rabbits, or following pre and/or postnatal exposure in rats. Neither developmental toxicity nor reproductive toxicity was observed in rats. In rabbits, developmental toxicity was not observed following exposure to dose levels that resulted in maternal death; however, abortions were observed in rabbits following exposure to fluroxypyr at the limit dose. There was no evidence of neurotoxicity or neuropathology in any of the studies. An immunotoxicity study in rats found no indication of immunotoxicity. Fluroxypyr is classified ''not likely to be carcinogenic to humans'' due to lack of evidence to suggest carcinogenicity in the database, and there is no concern for its mutagenicity potential.

Specific information on the studies received and the nature of the adverse effects caused by fluroxypyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Fluroxypyr: Human Health Risk Assessment to Support Proposed New Use on Teff*'' on pages 13–16 in docket ID number EPA–HQ–OPP–2017–0225.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe

exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fluroxypyr used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of January 16, 2013 (78 FR 3328) (FRL–9371–1).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluroxypyr, EPA considered exposure under the petitioned-for tolerances as well as all existing fluroxypyr tolerances in 40 CFR 180.535. EPA assessed dietary exposures from fluroxypyr in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluroxypyr; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, ''What We Eat in America'' (NHANES/WWEIA) dietary survey conducted in 2003–2008. As to residue levels in food, EPA assumed tolerance-level residues with 100 percent crop treated (PCT) for all existing and proposed crop uses and default processing factors for processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluroxypyr does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fluroxypyr. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluroxypyr in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluroxypyr. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluroxypyr for chronic exposures are estimated to be 540 parts per billion (ppb) for surface water and 0.055 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration value of 540 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluroxypyr is currently registered for the following uses that could result in residential exposures: Residential turfgrass, golf courses, parks and sports fields. Residential handler exposure was not assessed because all the labels require the use of personal-protective equipment (PPE) and are not intended for application by homeowners.

For post-application exposure, although adults and children performing physical activities on treated turf (*e.g.,* golfing, mowing) may receive dermal exposure to fluroxypyr residues, a quantitative risk assessment for the dermal route of exposure was not conducted since there are no toxicity findings for the short-term dermal route of exposure up to the limit dose. In addition, a quantitative post-application inhalation exposure assessment was not conducted because of the low acute inhalation toxicity, low vapor pressure, and the relatively low use rate.

Young children 1 to <2 years old may receive incidental oral post-application exposure to fluroxypyr from treated turf. The post-application exposures for children playing on treated turf resulting in incidental oral exposure as a result of mouthing behaviors were assessed.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluroxypyr to share a common mechanism of toxicity with any other substances, and fluroxypyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluroxypyr does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased qualitative or quantitative susceptibility following in utero exposure in rats and rabbits or following pre and/or postnatal exposure in rats.

Fluroxypyr is neither a developmental nor a reproductive toxicant in rats. Fluroxypyr has been evaluated for potential developmental effects in the

rat and rabbit (gavage administration). Maternal toxicity included death in rats and rabbits. There were no developmental effects in the rat, and while abortions were observed in the rabbit, they occurred only at the limit dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluroxypyr is complete.

ii. There is no indication that fluroxypyr is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluroxypyr results in increased susceptibility in in utero rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilizes tolerance-level residue estimates and assumes 100 PCT for all commodities. This assessment will not underestimate exposure/risk. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluroxypyr in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluroxypyr.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluroxypyr is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluroxypyr from food and water will utilize 3.5% of the cPAD for all infants less than 1-year-old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluroxypyr is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluroxypyr is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluroxypyr.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 2,500 for children 1–2 years old. Because EPA's level of concern for fluroxypyr is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, fluroxypyr is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluroxypyr.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluroxypyr is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluroxypyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate GC/ECD (gas chromatography/electron-capture detection) analytical methods are available to enforce the proposed plant tolerances. The available methods for plant commodities involve extraction of fluroxypyr residues with acetone, partitioning with hexane, purification using a florisil column, and analysis of residues by GC/ECD. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluroxypyr on teff.

V. Conclusion

Therefore, tolerances are established for the combined residues of fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] in or on teff, forage at 12 ppm; teff, grain at 0.50 ppm; teff, hay at 20 ppm; and teff, straw at 12 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types

of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2018.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.535, add alphabetically the entries ''Teff, forage''; ''Teff, grain''; ''Teff, hay''; and ''Teff, straw'' to the table in paragraph (a) to read as follows:

§ 180.535 Fluroxypyr 1-methylheptyl ester; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Teff, forage	12
Teff, grain	0.50
Teff, hay	20
Teff, straw	12
* * * * *	

* * * * *

[FR Doc. 2018–13724 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2018–0284; FRL–9979–31—Region 10]

Ocean Dumping; Withdrawal of Designated Disposal Site; Grays Harbor, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to withdraw from EPA regulation and management one designated ocean dredged material disposal site, the Grays Harbor Eight Mile Site, located near the mouth of Grays Harbor, Washington. This action is pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended. The disposal site was designated by the EPA for a specific one-time use in 1990. The Grays Harbor Eight Mile Site fulfilled its intended purpose in 1990 as a single-use disposal site, and monitoring indicates that there will be no unacceptable adverse impacts to the marine environment once the EPA relinquishes management of the site. Five other open-water dredged material disposal sites remain in close proximity to the mouth of Grays Harbor. These sites remain available for use for the disposal of suitable dredged material and are not affected by this withdrawal.

DATES: This rule is effective on September 24, 2018 without further notice, unless the EPA receives adverse comment by July 26, 2018. If the EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R10–OW–2018–0284; FRL–9979–31—Region 10], at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets* .

Docket: All documents in the docket are listed in the *http://www.regulations.gov/* index. Although listed in the index, some information may not be publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov/* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding federal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT:

Bridgette Lohrman, Office of Environmental Review and Assessment, U.S. Environmental Protection Agency, Region 10, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR 97205; (503) 326–4006, *lohrman.bridgette@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. In 1990, the EPA designated the Grays Harbor Eight Mile Site for the single purpose of serving as an ocean dredged material disposal site (ODMDS) for dredged material from the deepening of the Grays Harbor Federal Navigation Channel by the United States Army Corps of Engineers, Seattle District (USACE). The disposal site served this purpose in 1990, and the EPA is now taking the administrative action of withdrawing the site from regulation and relinquishing future management of the site. The site has not been used for disposal of dredged material since 1990 because such an action would require the EPA to re-designate the disposal site for a changed purpose. The EPA has not received any requests from the dredging community to use this site since 1990. Five other open-water dredged material disposal/placement sites remain in close proximity to the mouth of Grays Harbor. These five sites remain available for use, and are not affected by this withdrawal. The ability of the USACE, the Port of Grays Harbor, and other interested parties to find suitable dredged material disposal options will not be changed by this action. Post-disposal monitoring at the Grays Harbor Eight Mile Site shows that the site does not have now and will not have unacceptable adverse effects on the marine environment into the future.

2. Does this action apply to me?

In 1990, the EPA designated the Grays Harbor Eight Mile Site to be used for a single purpose, to receive dredged material from the deepening of the Grays Harbor Federal Navigation Channel in 1990. The site has served its intended purpose and has not been available for use since 1990. If an interested party wanted to use the Grays Harbor Eight Mile Site for the ocean disposal of dredged material, the EPA would need to administratively withdraw the site, designate the site with the new purpose, and provide for public comment. Thus, the current action to remove this ODMDS from EPA regulation and management does not affect any person seeking an open-water location to dispose of suitable dredged material. In addition, post-disposal monitoring at the Grays Harbor Eight Mile Site, conducted by the EPA and the USACE, demonstrates that the monitoring requirements set forth in the Site Management and Monitoring Plan (SMMP) of 1990 have been met, and that the EPA relinquishing management of the site will not cause an unacceptable adverse impact to the marine environment. For any questions regarding the applicability of this action to a particular person or entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

3. Background

a. History of Disposal Sites Near Grays Harbor, Washington

EPA Region 10 designated both the Grays Harbor Eight Mile Site and the Southwest Navigation, or 3.9-Mile Site, on July 5, 1990, for the disposal of dredged material removed during the deepening of the Grays Harbor Federal Navigation Channel by the USACE in Grays Harbor, Washington. While the Southwest Navigation Site was designated for indefinite use, the Grays Harbor Eight Mile Site was designated for the single purpose of accommodating materials from the Federal navigation channel project, which was expected to occur over a two-to-three-year period beginning in 1990. The USACE disposed of 2.8 million cubic yards of dredged material at the Grays Harbor Eight Mile Site in 1990, and the site has not been used for the ocean disposal of dredged material since that time.

The Grays Harbor Eight Mile Site is approximately 7.1 nautical miles (8 statute miles) offshore and west/northwest of the entrance to Grays Harbor (Figure 1). The Site is circular, with a radius of 0.40 nautical miles on a central coordinate of 46°57′ N and 124°20.06′ W. The site covers an area of approximately 0.5 square nautical miles. Water depths at the Grays Harbor Eight Mile Site range from 140 to 160 feet. The disposal site is characterized as being located on offshore relict gravel deposits, which contain no significant benthic fish or invertebrate communities.

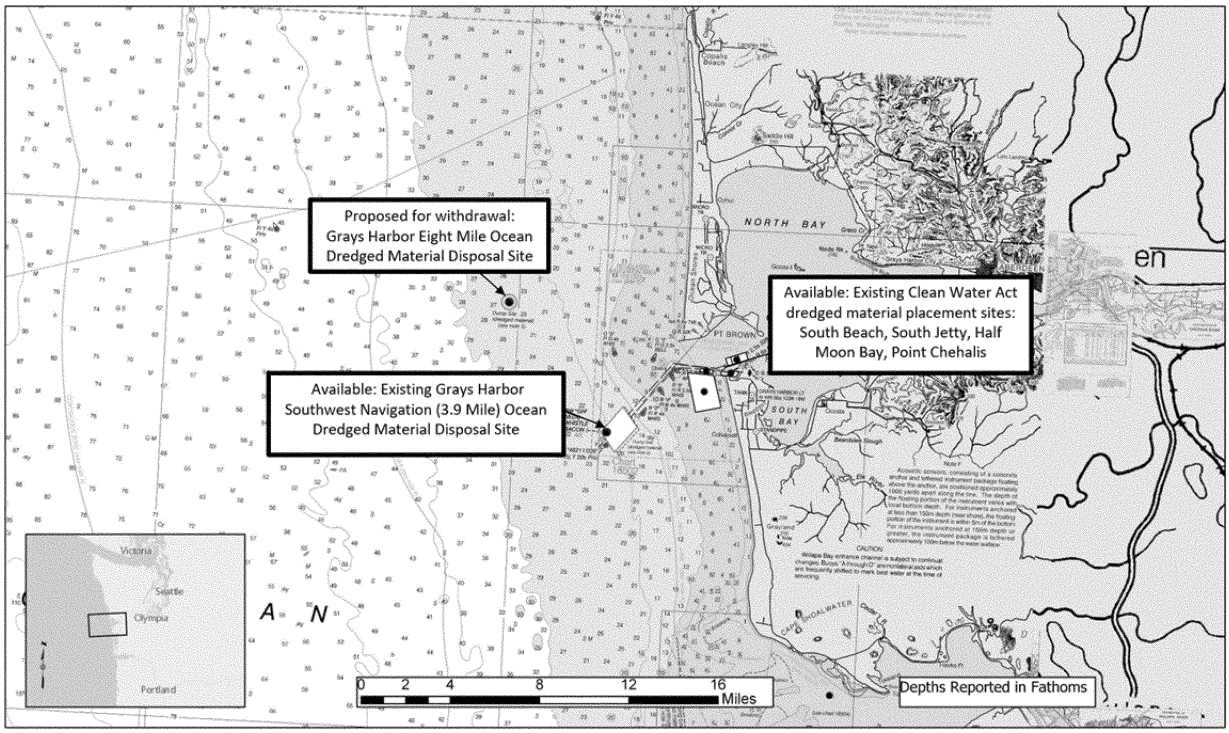

Figure 1. The location of the Grays Harbor Eight Mile Site in relation to other sites available for the disposal of dredged material.

In the final rule (55 FR 27634, July 5, 1990) designating the Grays Harbor Eight Mile Site, the EPA stated: ''EPA intends to de-designate the site after dumping at the site has been completed and monitoring indicates that the material has stabilized.'' This action stated that de-designation would occur within the five years following completion of disposal and monitoring activities. The USACE conducted two post-disposal surveys of the ODMDS in 1991 and 1992 in accordance with the SMMP of 1990. The results of those two surveys did not satisfy all requirements of the SMMP. Additionally, the chemical analysis of the sediments at the disposal site at that time provided conclusive data documenting the presence of dioxins/furans and other contaminants at the Grays Harbor Eight Mile Site. Dioxin concentrations at the disposal site ranged from 0.49 to 1.88 [parts per trillion (pptr) dry weight TEQ (toxicity equivalent)]. These concentrations were not considered a risk to the marine environment at that time, and as a point of comparison, are well below the current marine screening level of 4 pptr dry weight TEQ, used for screening the suitability of open-water disposal of dredged material in Puget Sound today. The remote sensing data were inconclusive about the disposal mound height and areal extent. These two parameters were identified in the Grays Harbor Eight Mile Site designation documents and SMMP as indicators of stabilization. The EPA determined that additional data were warranted to assess whether the disposed material from the Grays Harbor Navigation Channel Deepening Project had stabilized.

b. Recent Events

The EPA conducted a survey of the Grays Harbor Eight Mile Site on July 19, 2016 to assess the physical attributes of the site in preparation for formal withdrawal of the disposal site from EPA regulation and management. The main objective of the survey was to conduct a high-resolution multi-beam echo sounder survey to assess the bathymetry and surficial geology within and around the disposal site. The survey focused on characterizing sediments in and around the Grays Harbor Eight Mile Site to determine whether dredged material had spread beyond the site boundaries or created a mound that could impact navigation. The survey area was rectangular, containing the ODMDS and a 500-foot buffer area.

The 2016 survey revealed a disposal mound, ranging 1 to 7 feet above ambient seafloor elevations, within the ODMDS. This mound confirmed that dredged material was disposed within the ODMDS boundaries in 1990. The survey also revealed the appearance of dredged material slightly outside the northeast portion of the ODMDS. This is likely the result of movement of sediment by near-bottom currents on the seafloor after disposal was completed. The Grays Harbor Eight Mile SMMP predicted a mound on the seafloor of 10 to 15 feet from the disposal. Since the observed mound was only 1 to 7 feet high, it is likely that the seafloor currents have suspended the disposed material and redeposited it, either off the center of the mound or beyond the boundaries of the ODMDS, over time. This redistribution of disposed material from the original mound has not caused mounding of significance beyond the disposal site boundaries, based on the bathymetric survey results.

The seafloor substrate within the Grays Harbor Eight Mile Site is a mix of unconsolidated to consolidated sediments, likely ranging from mud and silts to coarse sand. The 2016 bathymetric survey indicated that the disposal mound within the ODMDS consists of softer, probably fine-grained sediments. At the peak of this mound, the sediments appear to be coarser, which may be an indication of seafloor scour or fine-grained material not settling on the seafloor but rather staying re-suspended in the water column. The grain size within the

ODMDS is different from ambient grain sizes surrounding the disposal site. This is likely the result of disposal activities, and is limited to a small, discrete area within the site. Thus, any potential lasting effects on benthic infauna, or the epibenthic organisms which feed on these infauna, are negligible.

c. This Action

This action is an administrative procedure to formally remove the Grays Harbor Eight Mile Site from regulation (40 CFR 228) and EPA management. The EPA will continue to manage the Grays Harbor Southwest Navigation Site, located 3.9 nautical miles from the mouth of Grays Harbor. The Grays Harbor Eight Mile Site that will be removed from regulation and EPA management is a circle with radius 0.40 statute miles, centered at: 46°57′ N, 124°20.06′ W, based upon the North American Datum of 1927.

4. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to this action because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that where the preparation of NEPA documents for certain EPA regulatory actions, including action under the MPRSA, is appropriate, the EPA will prepare an environmental review document. The EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents'' (63 FR 58045, October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA has determined that no environmental review document is necessary for withdrawal of the Grays Harbor Eight Mile Site.

b. MSA and MMPA

The EPA has found no evidence that the disposal of dredged material has affected the physical, chemical, or biological attributes of the Site which would impact Essential Fish Habitat (EFH) under Section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1855(b)(2), nor affect marine mammals protected under the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389.

c. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the maximum extent practicable with the enforceable policies of approved state programs. The EPA's withdrawal of the Grays Harbor Eight Mile Site from regulation will have no effect on the State of Washington's coastal zone because the disposal site is approximately four nautical miles seaward of the State's territorial sea and the EPA found no evidence that the disposal of dredged material has impacted the biological community, navigation safety, or ocean use inside or outside the disposal site.

d. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any critical habitat. The withdrawal from regulation of the Grays Harbor Eight Mile Site will have no effect on listed or threatened species or on any critical habitat. The post-disposal monitoring conducted by EPA and the USACE indicates that the site will have no physical, chemical, or biological impacts to benthic marine species.

e. NHPA

The National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. This site withdrawal will not affect any historic properties. The withdrawal of the Grays Harbor Eight Mile Site from EPA regulation means that management of the site by the EPA will be relinquished.

5. Statutory and Executive Order Reviews

This rule withdraws one designated ocean dredged material disposal site pursuant to Section 102 of the MPRSA and 40 CFR 228.11. This action complies with applicable executive orders and statutory provisions as follows:

a. Executive Orders 12866 and 13563

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

b. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act (PRA). The EPA does not reasonably anticipate collection of information from ten or more people based on the lack of use of the site since 1990. Consequently, the direct final action is not subject to the PRA.

c. Regulatory Flexibility

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). This action will not impose any requirements on small entities. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this action will not have a significant economic impact on small entities because the rule will only have the effect of withdrawing one site

that had fulfilled its stated purpose when EPA designated the site in 1990.

d. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, and does not significantly affect small governments. The action imposes no new enforceable duty on any state, local or tribal governments or the private sector.

e. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175, because the withdrawal from EPA regulation of the Grays Harbor Eight Mile Site will not have a direct effect on 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. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA consulted with tribal officials in the development of this action, particularly as it relates to potential impacts to tribal trust resources and tribal operations within the Quinault Indian Nation's Usual and Accustomed Area. The Quinault Indian Nation responded to EPA's request for Tribal Consultation on April 5, 2018, stating this action does not require government-to-government consultation.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Section 3. Background, a. History of Disposal Sites near Grays Harbor, Washington.

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

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

i. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section 5. Statutory and Executive Order Reviews, f. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.*

k. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: May 24, 2018.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons set out in the preamble, the EPA amends title 40, chapter I, subchapter H of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.15 [Amended]

■ 2. Section 228.15 is amended by removing and reserving paragraph (n)(10).

[FR Doc. 2018–13715 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket No. 13–87; PS Docket No. 06–229, WT Docket No. 96–86, RM–11433 and RM–11577, FCC 16–111]

Service Rules Governing Narrowband Operations in the 769–775/799–805 MHz Bands

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, the information collection associated with the Commission's Service Rules Governing Narrowband Operations in the 769–775/799–805 MHz Bands Order on Reconsideration (*Order*). This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 2.1033(c)(20) and 90.548(c) published at 81 FR 66830, September 29, 2016, are effective July 26, 2018.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy and Licensing Division, Public Safety and Homeland Bureau, at (202) 418–0848, or email: *john.evanoff@fcc.gov.* For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on March 13, 2017, OMB approved, for a period of three years, the information collection requirements relating to the 700 MHz interoperability testing rules contained in the Commission's *Report and Order,* FCC 16–111, published at 81 FR 66830, Sept. 29, 2016. The OMB Control Number is 3060–0057. The Commission publishes this document as an

announcement of the effective date of the rules. 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, 3060–0057, 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 FCC is notifying the public that it received final OMB approval on March 13, 2017, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR parts 2 and 90.

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 3060–0057.

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: 3060–0057.

OMB Approval Date: March 13, 2017.

OMB Expiration Date: March 31, 2020.

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form Number: FCC Form 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents and Responses: 3,740 respondents; 22,250 responses.

Estimated Time per Response: 35 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r).

Total Annual Burden: 778,750 hours.

Total Annual Cost: $34,465,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Commission rules require that manufacturers of certain radio frequency (RF) equipment file FCC Form 731 to obtain approval prior to marketing their equipment. Manufacturers may then market their RF equipment based on a showing of compliance with technical standards established in the FCC Rules for each type of equipment or device operated under the applicable FCC Rule part. The following types of equipment are regulated (a) the RF equipment is regulated under certain rule sections of 47 CFR part 15 and part 18, and (b) in addition, rules governing certain RF equipment operating in the licensed services also require equipment authorization as established in the procedural rules in 47 CFR part 2. The RF equipment manufacturers comply with the information collection requirements by (a) Filing FCC Form 731 electronically with the Commission, or (b) Submitting the information to a Telecommunications Certification Body (TCB), which acts on behalf of the FCC to issue grants of certification and may issue grants more expeditiously than the FCC. The TCBs have flexibility in the format in which they require the collection of information (i) TCBs may require applicants to submit the required information in FCC Form 731 format or in another format selected by the TCB, but (ii) whatever the information collection method, the information required is governed by the procedural rules in 47 CFR part 2 and a showing of compliance with the FCC technical standards for the specific type of equipment. RF manufacturer applicants for equipment certification may also request ''expedited authorization'' to market their equipment by: (a) Choosing to pay the fee levied by a TCB, and (b) submitting their request to a TCB in order for expedited authorization to market. The TCB processes the RF equipment manufacturer's application as follows: (i) The TCB receives and reviews the RF manufacturer's information submission/application; and (ii) the TCB enters the information into the FCC Equipment Authorization System database using an interface that provides the TCB with the tools to issue a standardized Grant of Equipment Authorization. Whichever method the RF manufacturers choose to submit their information—via either the FCC on FCC Form 731 or the TCB, FCC Rules require that applicants supply the following data: (a) Demographic information including Grantee name and address, contact information, etc.; (b) information specific to the equipment including FCC Identifier, equipment class, technical specifications, etc.; and (c) attachments that demonstrate compliance with FCC Rules that may include any combination of the following based on the applicable Rule parts for the equipment for which authorization is requested: (1) Identification of equipment (47 CFR 2.925); (2) attestation statements that may be required for specific equipment; (3) external photos of the equipment for which authorization is requested; (4) block diagram of the device; (5) schematics; (6) test report; (7) test setup photos; (8) Users Manual; (9) Internal Photos; (10) Parts List/Tune Up Information; (11) RF Exposure Information; (12) Operational Description; (13) Cover Letters; and, (14) Software Defined Radio/Cognitive Radio Files.

In general, an applicant's submission is as follows: (a) FCC Form 731 includes approximately two pages covering the demographic and equipment identification information; and (b) applicants must supply additional documentation and other information, as described above, demonstrating conformance with FCC Rules, which may range from 100–1,000 pages. The supplemental information is essential to control potential interference to radio communications, which the FCC may use, as is necessary, to investigate complaints of harmful interference. In response to new technologies and in allocating spectrum, the Commission may establish new technical operating standards: (a) RF equipment manufacturers must meet the new standards to receive an equipment authorization, and (b) RF equipment manufacturers must still comply with the Commission's requirements in FCC Form 731 and demonstrate compliance as required by 47 CFR part 2 of FCC Rules. Thus, this information collection applies to a variety of RF equipment: (a) That is currently manufactured, (b) that may be manufactured in the future, and

(c) that operates under varying technical standards. On July 8, 2004, the Commission adopted a Report and Order, Modification of Parts 2 and 15 of the Commission's rules for Unlicensed Devices and Equipment Approval, ET Docket No. 03–201, FCC 04–165. The change requires that all paper filings required in 47 CFR Sections 2.913, 2.926(c), 2.929(c) and 2.929(d) of the rules are outdated and now must be filed electronically via the internet on FCC Form 731. The Commission believes that electronic filing speeds up application processing and supports the Commission in further streamlining to reduce cost and increase efficiency. Information on the procedures for electronically filing equipment authorization applications can be obtained from the Commission's rules, and from the internet at: *http://transition.fcc.gov/oet/ea/ea-app-info.htm.*

On August, 26, 2016, the Federal Communications Commission released an Order on Reconsideration, FCC 16–111, PS Docket No. 13–87 that modified Part 2 and Part 90 of the Rules for equipment approval and Private Land Mobile Radio Services. The amended rule requires all Wireless Communications Equipment Manufacturers who manufacture 700 MHz narrowband equipment capable of operating on the interoperability channels to demonstrate compliance with the Commission's Interoperability Technical Standards in 90.548. The *Order on Reconsideration* prescribed two methods stage for showing compliance with Section 90.548 after equipment authorization application approval and before the marketing and sale of equipment capable of operating on the 700 MHz narrowband interoperability channels. Specifically, the Commission modified Section 2.1033(c)(20) to provide that before equipment operating under 47 CFR part 90 and capable of operating on the 700 MHz interoperability channels (See 47 CFR 90.531(b)(1)) may be marketed or sold, the manufacturer thereof shall have a Compliance Assessment Program Supplier's Declaration of Conformity and Summary Test Report or, alternatively, a document detailing how the manufacturer determined that its equipment complies with 47 CFR 90.548 and that the equipment is interoperable across vendors. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold.

The Commission also modified Section 90.548(c) of the Commission's rules to provide that transceivers capable of operating on the interoperability channels listed in 47 CFR 90.531(b)(1) shall not be marketed or sold until the transceiver has previously been certified for interoperability by the Compliance Assessment Program (CAP) administered by the U.S. Department of Homeland Security; provided, however, that this requirement is suspended if the CAP is discontinued. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold. In the alternative, manufacturers may employ their own protocol for verifying compliance with Project 25 standards and determining that their product is interoperable among vendors. In the event that field experience reveals that a transceiver is not interoperable, the Commission may require the manufacturer thereof to provide evidence of compliance with 47 CFR 90.548.

To effectively implement the provisions of the new Rules, no modifications to the existing FCC Form 731 Application for Equipment Authorization are required. The changes are intended to simplify the filing process, ensure equipment complies with Project 25 standards and is interoperable across vendors. The following specific methods are proposed to ensure compliance with Section 90.548 and simplify filing processes for equipment manufacturers:

(1) The *Order on Reconsideration* establishes that before the marketing or sale of equipment designed to operate on the 700 MHz narrowband interoperability channels, manufacturers shall have a Compliance Assessment Program Supplier's Declaration of Conformity and Summary Test Report or, alternatively, a document detailing how the manufacturer determined that its equipment complies with § 90.548 and that the equipment is interoperable across vendors. OMB has approved the information collections associated with P25 CAP compliance under OMB Control No. 1640–0015.[1]

(2) In the event that field experience reveals that a transceiver is not interoperable, the Commission may require the manufacturer thereof to provide evidence of compliance with § 90.548.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–13700 Filed 6–25–18; 8:45 am]

BILLING CODE 6712–01–P

[1] Congressional direction for a P25 compliance assessment program can be found in the *COPS Law Enforcement Technologies and Interoperable Communications Program* section of the Conference Report to Public Law 109–148, as well as the *Science & Technology Management and Administration* section of Division E of the Conference Report to Public Law 110–161.

Proposed Rules

Federal Register
Vol. 83, No. 123
Tuesday, June 26, 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 Highway Administration

23 CFR Part 635

[FHWA Docket No. FHWA–2018–0017]

RIN 2125–AF83

Indefinite Delivery and Indefinite Quantity Contracts for Federal-Aid Construction

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA has announced that the Indefinite Delivery and Indefinite Quantity (ID/IQ) method of contracting, including job order contracts, for low-cost construction contracts will be allowed, without FHWA approval, under certain circumstances. This advance notice of proposed rulemaking seeks comment on how FHWA may further expand this contracting method on a permanent basis.

DATES: Comments must be received on or before August 27, 2018. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by the document number at the top of this document, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about this ANPRM, please contact Mr. John Huyer, FHWA Office of Program Administration, (651) 291–6111, or via email at *John.Huyer@dot.gov.* For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at *Jomar.Maldonado@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On May 2, 2018,[1] FHWA announced that contracting agencies no longer need to submit individual requests and work plans pursuant to Special Experimental Project No. 14 (SEP–14) for low-cost ID/IQ contracts that are awarded to the lowest responsive bidder based on an invitation for bids. The FHWA considers ''low-cost contracts'' to be 1- or 2-year contracts awarded to the lowest responsive bidder for construction of projects that qualify for FHWA categorical exclusions under the National Environmental Policy Act of 1969 (23 CFR 771.117) and where the total value of task or work orders does not exceed $2,000,000 per year. However, the ID/IQ contracting technique continues to be authorized on an experimental basis while FHWA explores rulemaking to revise FHWA's regulations to accommodate this contracting technique. This ANPRM seeks comment on how FHWA may operationalize this contracting technique on a permanent basis.

Background

The ID/IQ contracts are a method of contracting that allows an indefinite quantity of services for a fixed time. They are used in the Federal Government when agencies cannot determine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period. For construction ID/IQ contracts, contractors bid unit prices for estimated quantities of standard work items, and task orders are used to define the location and quantities for specific work. The ID/IQ contracts may be awarded to the lowest responsive bidder based on an invitation for bids or the best-value proposer based on responses to Requests for Proposals. Contracting agencies use other names for these types of contracts, including on-call contracts, area-wide contracts, continuing contracts, push-button contracts, and task order contracts. Job Order Contracts (JOCs) are a form of ID/IQ contracts that utilize a construction task catalogue with pre-priced work item descriptions and where contractors bid ''mark-up rates.'' The contract is awarded to the lowest responsive bidder determined by their rates.

Although ID/IQ contracts have been specifically authorized in the Federal procurement process (48 CFR 16.5) and for the contracting of architecture and engineering (A/E) services in the Federal-aid highway program (FAHP) (23 CFR part 172), the FAHP authorization and procurement laws for construction do not address the possible use of ID/IQ contracts. The FAHP construction procurement statute, 23 U.S.C. 112(b)(1), requires contracts to be awarded by a competitive bidding process to the lowest responsive bidder (traditional design-bid-build project delivery method based upon the premise of a 100 percent-complete design and a well-defined scope of work). The ID/IQ contracts are awarded based upon a general, but not completely defined, scope of work for a geographic area and limited time period (but not specific locations, designs, or quantities) and are often awarded based upon specific evaluation criteria.

A. Experience Under Special Experimental Project Number 14 (SEP–14)

The FHWA has used its authority in 23 U.S.C. 502(b)(1) to test the use of ID/IQ contracts for the construction of FAHP projects through the SEP–14 Program for innovative contracting techniques. Under the SEP–14 Program, contracting agencies interested in testing an innovative contracting technique submit project-specific (or programmatic) work plans to FHWA for

[1] 83 FR 19393, May 2, 2018.

their implementation. The FHWA Division Office evaluates the work plan, coordinates with FHWA Headquarters, and, if it finds the work plan to be acceptable, FHWA approves the use of the technique on a temporary basis for a project or group of pilot projects. Over time, FHWA Headquarters staff assess the initiative to determine if it is a technique that should be operationalized for the FAHP on a permanent basis without the need for individual requests, work plans, and evaluation reports. Operationalizing SEP–14 experiments has taken different paths in the past based on the source of the policy warranting innovation and FHWA's risk assessment, such as FHWA-initiated memoranda (for example, cost plus time bidding and lane rental), FHWA-initiated rulemaking (for example, warranty clauses at 23 CFR 635.413), and congressionally initiated statutory amendments (for example, design-build and contractor manager/general contractor under 23 U.S.C. 112(b)(3)–(4)). More information on SEP–14 can be found at *https://www.fhwa.dot.gov/construction/cqit/sep14.cfm.*

From 2007 to the present, FHWA, State departments of transportation (State DOTs), and Local Public Agencies (LPAs) through the State DOTs have experimented with the use of ID/IQ contracts and JOCs for construction. The FHWA has approved the use of this contracting method under SEP–14 for 16 different State DOTs and 6 LPAs. Evaluation reports indicate that JOCs and ID/IQ contracts allow for cost-effective contracting for small value contracts and preventive maintenance programs. Specifically, the reports indicate that these contracts eliminate the need for contracting agencies to advertise and award numerous small contracts and provide contracting agencies with wide flexibility in programming and addressing preventive maintenance needs.

Having evaluated the use of JOCs and ID/IQ contracts for construction in the FAHP for over a decade, FHWA has now determined that they are suitable for operationalization. This is consistent with Senate report language accompanying fiscal years 2017 and 2018 appropriations to operationalize JOCs. S. Rept. No. 114–243, 43 (April 21, 2016); S. Rept. No. 115–138, 52 (July 27, 2017). The approach is also consistent with the Department of Justice's Office of Legal Counsel (OLC) opinion regarding competition and contracting requirements. *See Competitive Bidding Requirements Under the Federal-Aid Highway Program,* 23 U.S.C. 112 (Aug. 23, 2013).

B. Steps for Operationalizing ID/IQs and JOCs for Construction in the FAHP

The FHWA is proceeding with two phases to operationalize ID/IQ contracts and JOCs for construction in the FAHP. The first phase is the issuance of an FHWA Notice on how FHWA will allow ID/IQ contracts and JOCs for construction without the need for project-specific work plans from contracting agencies. The FHWA published a **Federal Register** Notice requesting public comment on allowing contracting agencies to establish ID/IQ and JOCs for low-cost construction contracts at 83 FR 19393 (May 2, 2018). Please refer to that notice for details on the proposed implementation of phase one. The second phase is the initiation of this rulemaking.

Amendments to the construction and approval regulations are necessary in order to allow the contracting technique on a permanent basis. To assist the Agency in this effort, FHWA seeks public comments on the following questions:

1. Would it be appropriate to allow notice and award of the base ID/IQ contract or JOC prior to approval of plans, specifications and estimates, environmental review, and right-of-way clearances, but require these prior to the issuance of individual tasks?

2. Would the allowance of time extensions be appropriate? What should be the minimum time extension length? What should be the maximum time extension length?

3. Is the $2,000,000 per year limitation appropriate? Should this figure be indexed? If so, how?

4. Should FHWA consider allowing ID/IQ contracts using best value considerations? What criteria (for example, past performance, quality, timeliness) should be considered for best value determinations?

5. Should multiple award ID/IQ contracts be allowed? If so, what conditions or criteria should be used for awarding work orders?

6. What contract term/extension limits should be allowed? Should ''on-ramp'' procedures be used to allow new contractors to be considered for the award pool after the initial award and ''off-ramp'' procedures be used to discontinue the use of contractors who are not performing satisfactorily?

7. What procedures should be in place to ensure fairness and transparency in the selection and implementation of multiple-award ID/IQ contracts?

8. What change conditions clause would be appropriate for ID/IQ contracts and JOCs? What would be an appropriate clause for significant changes in the character of work?

9. How should the contracting agencies address the estimates required under 23 CFR 635.115? Would the estimate quantities be the minimum value provided under the contract, the estimate for the base contract, or the estimated maximum value under the contract including contract extensions?

10. How would the 30 percent self-performance requirement in 23 CFR 635.116(a) apply to ID/IQ contracts and JOCs? How would it be enforced given the nature of the task orders?

11. How should authorizations to proceed with work be given for individual task orders?

12. What costs, benefits, and cost-savings would result from allowing this contracting technique on a permanent basis? Please submit data that would help FHWA quantify cost-effectiveness, as well as quantifiable cost-savings associated with advertising and awarding small contracts and increasing flexibility in programming, and any other efficiencies that may result from the operationalization of this contracting method.

13. Are there any other aspects related to the use of ID/IQ contracts or JOC for construction in the FAHP that FHWA should consider?

The FHWA will consider all responses and comments and take them into account in the development of a notice of proposed rulemaking (NPRM) on this subject.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA also will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. An NPRM may be published at any time after close of the comment period.

Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has preliminarily determined that this action would not be a significant regulatory action within the meaning of Executive Order (E.O.)

12866 and within the meaning of the DOT regulatory policies and procedures. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation. The FHWA anticipates that this rulemaking would be a deregulatory action and result in cost-savings because it proposes to remove the traditional procurement requirements for Federal-aid highway construction work for small construction work that would result in expeditious project delivery of low-cost and/or repetitive work. The FHWA seeks data on the costs, benefits, and cost-savings associated with this action.

Based upon the information received in response to this ANPRM, FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of any proposed recommendation.

This ANPRM is not a regulatory action under Executive Order 13771.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, FHWA will evaluate the effects of any action proposed on small entities. This action merely seeks information regarding the use of the ID/IQ method of contracting, including JOCs, for low-cost construction contracts. Therefore, FHWA is unable to certify at this time whether or not it will have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Because of the preliminary nature of this document and lack of necessary information on costs, FHWA is unable to evaluate the effects of the potential regulatory changes in regard to imposing a Federal mandate involving expenditure by State, local, and Indian Tribal governments, in the aggregate, or by the private sector, of $151.1 million or more in any one year (2 U.S.C. 1532). Nevertheless, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of this rulemaking to assess the effects on State, local, and Indian Tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets applicable standards in section 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets the requirements of E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency does not, however, anticipate that any such rule would be economically significant or would present an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that any such rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FHWA will analyze any action that might be proposed in accordance with the principles and criteria contained in E.O. 13132, and FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues.

Executive Order 13175 (Tribal Consultation)

The FHWA will analyze any proposal under E.O. 13175, dated November 6, 2000. The FHWA preliminarily believes that any proposal will not have substantial direct effects on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Therefore, a Tribal summary impact statement may not be required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be analyzed for the purpose of the PRA for its impact upon information collection. The FHWA would be required to submit any proposed collections of information to OMB for review and approval at the time the NPRM is issued, and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of any proposed information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA will analyze any action that might be proposed for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

The FHWA will analyze any proposed action under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, to assess whether there would be any adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Authority: 23 U.S.C. 112 and 502; 23 CFR 635.

Issued on June 20, 2018 under authority delegated in 49 CFR 1.85.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2018–13645 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–132434–17]

RIN 1545–BO12

Certain Non-Government Attorneys Not Authorized To Participate in Examinations of Books and Witnesses as a Section 6103(n) Contractor; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notification of a public hearing on notice of proposed rulemaking.

SUMMARY: This document provides a notification of public hearing on proposed regulations relating to section 7602(a) of the Internal Revenue Code relating to administrative proceedings.

DATES: The public hearing is being held on Tuesday, July 31, 2018, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Thursday, July 19, 2018.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–132434–17), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–132434–17), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–132434–17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William V. Spatz (202) 317–5461; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–132434–17) that was published in the **Federal Register** on Wednesday, March 28, 2018 (83 FR 13206).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by June 26, 2018, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Thursday, July 19, 2018.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

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

[FR Doc. 2018–13695 Filed 6–25–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 75

[Docket No. MSHA–2018–0016]

RIN 1219–AB91

Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors at Surface and Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information.

SUMMARY: Mining safety could be substantially improved by preventing accidents that involve mobile equipment at surface coal mines and metal and nonmetal mines and belt conveyors at surface and underground mines. The Mine Safety and Health Administration (MSHA) is taking a number of actions related to mobile equipment and belt conveyors to improve miners' safety, including providing technical assistance, conducting awareness campaigns, and developing best practices and training materials. MSHA is also considering the role of engineering controls that would increase the use of seatbelts, enhance equipment operators' ability to see all areas near the machine, warn equipment operators of potential collision hazards, prevent equipment operators from driving over a highwall or dump point, and help prevent entanglement hazards related to working near moving or re-energized belt conveyors. MSHA is seeking information and data on engineering controls that could reduce the risk of accidents and improve miner safety. MSHA is also seeking suggestions from stakeholders on: Best practices, training materials, policies and procedures, innovative technologies, and any other information they may have to improve safety in and around mobile equipment, and working near and around belt conveyors.

MSHA will hold stakeholder meetings to provide the mining community an opportunity to discuss and share information about the issues raised in this notice. A separate notice announcing stakeholder meetings will be published in the **Federal Register** at a later date.

DATES: Comments must be received or postmarked by midnight Eastern Daylight Time on December 24, 2018.

ADDRESSES: Comments must be identified with ''RIN 1219–AB91'' and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.
- *Fax:* 202–693–9441.

Instructions: All submissions must include ''RIN 1219–AB91'' or ''Docket No. MSHA 2018–0016.'' Do not include personal information that you do not

want publicly disclosed. MSHA will post all comments without change to *http://www.regulations.gov* and *http://arlweb.msha.gov/currentcomments.asp,* including any personal information provided.

Docket: For access to the docket to read comments and background information, go to *http://www.regulations.gov,* or *http://www.msha.gov/currentcomments.asp.* To review comments and background information in person go to MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. EDT Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. Mobile Equipment at Surface Mines

Mobile equipment used at surface coal mines, surface metal and nonmetal mines, and the surface areas of underground mines is a broad category that includes bulldozers, front end loaders, service trucks, skid steers, haul trucks, and many other types of vehicles and equipment. Accidents involving mobile equipment have historically accounted for a large number of the fatalities in mining, especially in metal and nonmetal mines. In 2017, for example, nearly 40 percent of the 28 mining fatalities and more than 30 percent of injuries involved mobile equipment.

Since 2007, 61 miners have been killed in accidents involving mobile equipment. MSHA conducted an investigation of all of these accidents. MSHA determined that contributing factors in many of these accidents included: (1) No seatbelt, seatbelt not used, or inadequate seatbelts; (2) larger vehicles striking smaller vehicles; and (3) equipment operators' difficulty in detecting the edges of highwalls or dump points, causing equipment to fall from substantial heights.

Seatbelts

MSHA has preliminarily determined that mobile equipment operators are more likely to survive rollover and tipping accidents when they are wearing a seatbelt. MSHA examined 38 fatal accidents that occurred since 2007 involving mobile equipment in which the deceased was not wearing a seatbelt. MSHA determined that 35 of the victims (92 percent) might have survived had they been wearing a seatbelt. The Agency believes that engineering controls could increase the use of seatbelts by equipment operators. For example, engineering control devices could ensure that mobile equipment operators use a seatbelt by affecting equipment operation in the event the operator does not fasten the seatbelt.

Other engineering controls could increase equipment seatbelt use without impeding or halting machine operation. These controls include high-visibility seatbelt materials and warning devices, such as warning lights and audible warning signals, that remind the equipment operator to fasten the seatbelt. Some warning signals stop after a period of time; others continue until the seatbelt is fastened. Additional engineering controls could promote seatbelt usage by making equipment operation impractical or uncomfortable, or by notifying mine management if the seatbelt is not used (or not used properly).

Large Equipment Striking Smaller Equipment

There are areas around mobile equipment in which the equipment operator cannot see other miners, equipment, or structures (*i.e.,* ''blind areas''). Mobile equipment size and shape and the operator's cab location can each create unique blind areas. Blind areas have contributed to mobile equipment operators driving over highwalls or dump points, colliding with other equipment, and striking miners. Engineering controls, such as collision warning systems and collision avoidance systems, could provide equipment operators with additional information about their surroundings and help reduce accidents. These systems could provide warnings when other vehicles, miners, or structures pose a potential collision hazard. Collision avoidance systems could provide an additional level of safety by activating machine controls, such as automatic braking, to avoid collisions.

Autonomous mining systems may also have the potential to improve miner safety. Autonomous mining systems, which are controlled remotely, do not require an on-board operator, thereby removing the miner from hazardous situations. In addition, autonomous mining systems are equipped with GPS technology and use enhanced safety features, such as collision avoidance systems, which can indicate the location of other nearby equipment and miners, thereby reducing striking accidents and fatalities.

Highwalls and Dump Points

Since 2007, there have been 20 fatal accidents in surface coal and metal and nonmetal mines involving bulldozer operators and haul truck drivers who traveled over the edge of the highwall or dump point. Systems that integrate technologies such as GPS, radar, and radio frequency identification tagging could help equipment operators better identify the edges of highwalls or dump points. Other practices, such as ground markers and aerial markers, also could help equipment operators identify their locations relative to the edges of highwalls or dump points when pushing or dumping material. Devices that provide visual, audible, or other signals could also warn equipment operators of hazards surrounding their locations.

II. Belt Conveyors at Surface and Underground Mines

Since 2007, there have been 17 fatalities related to working near or around belt conveyors, of which 76 percent were related to miners becoming entangled in belt drives, belt rollers, and discharge points. Factors that contribute to entanglement hazards include inadequate or missing guards, inadequate or an insufficient number of crossovers in strategic locations, and/or inappropriate lock out/tag out procedures. Systems that can sense a miner's presence in hazardous locations; ensure that machine guards are properly secured in place; and/or ensure machines are properly locked out and tagged out during maintenance would reduce fatalities.

IV. Information Request

MSHA is requesting information from the mining community regarding the types of engineering controls available, how to implement such engineering controls, and how these controls could be used in mobile equipment and belt conveyors to reduce accidents, fatalities and injuries. When responding—

- Address your comments to the topic and question number. For example, the response to questions regarding seatbelts, Question 1, would be identified as ''A.1''.
- Please provide sufficient detail in your responses to enable adequate Agency review and consideration. Where possible, include specific

examples to support the rationale for your position.

- Please identify the relevant information on which you rely. Include experiences, data models, calculations, studies and articles, and standard professional practices.
- Please provide specific information on the technological and economic feasibility of the engineering and administrative controls included in this notice, as well as any additional controls or practices which you may suggest.

MSHA invites comment in response to the questions below as well as on issues related specifically to the impact on small mines.

A. Seatbelts

Seat belt interlocks are engineering controls that prevent or otherwise affect equipment operation. MSHA is particularly interested in engineering controls that affect equipment operation when the seatbelt is not properly fastened.

1. What are the advantages, disadvantages, and costs associated with a seatbelt interlock system?

2. Are seatbelt interlock systems available that could be retrofitted, and if so, onto which types of machines and how? What are the costs associated with retrofitting machines with these systems?

3. Are some types of mobile equipment unsuited for use with seatbelt interlock systems, and if so, which machines and why?

4. Reliability is the ability of a system to perform repeatedly with the same result. Please provide information on how to determine the reliability of seatbelt interlock systems.

Some engineering controls encourage and promote seatbelt use without directly preventing or affecting equipment operation. These engineering controls include audible and visual warning devices, such as lights and buzzers/bells that remind equipment operators to fasten their seatbelts.

5. What are the advantages, disadvantages, and costs associated with these warning devices?

B. Collision Warning Systems and Collision Avoidance Systems

MSHA is also interested in collision warning systems and collision avoidance systems that may help prevent accidents by decreasing equipment blind areas and reducing collisions. These systems detect obstacles and provide the equipment operators with information about their location. The installation of the systems would likely need to be customized to account for variations in height, articulation, and other equipment design features. Such systems would likely also need to have the capability to adjust to mining conditions and environments such as road conditions, weather, and traffic patterns. They would also need to be designed and installed to minimize distractions such as nuisance alarms and unnecessary stops, and to be compatible with other technologies, such as GPS, radar, radio frequency identification tagging, electromagnetic systems, cameras, peer-to-peer networks, and path prediction technologies.

6. What are the advantages, disadvantages, and costs associated with collision warning systems and collision avoidance systems?

7. Please provide information on how collision warning systems and collision avoidance systems can protect miners, *e.g.,* warning, stopping the equipment, or other protection. Include your rationale. Include successes or failures, if applicable.

8. What types of mobile equipment can, and should, be equipped with collision warning and collision avoidance systems? For example, systems that work well on haul trucks may not work well on other mobile equipment; certain types of equipment may be more likely to be used near smaller vehicles; or some types of equipment may have larger blind areas.

9. Collision warning systems and collision avoidance systems may require multiple technologies that combine positioning/location, obstacle detection, path prediction, peer-to-peer communication, or alarm functions. What combination of technologies would be most effective in surface mining conditions? Please provide your rationale.

10. Please describe situations, if any, in which it would be appropriate to use a collision warning system rather than a collision avoidance system.

11. Please describe any differences between a surface coal environment and a surface metal and nonmetal environment that would influence your response to the questions above.

C. Highwall and Dump Points

Various technologies, such as GPS, can be used to provide equipment operators better information regarding their location in relation to the edge of highwalls or dump points. Other mechanisms, such as ground markers and aerial markers, also could help equipment operators identify their location when pushing or dumping material.

12. Which technologies or systems can prevent highwall and dump point overtravel? Please describe the advantages, disadvantages, and costs associated with these technologies or systems.

13. Many surface mines use GPS on equipment for tracking, dispatching, and positioning. How can these systems be used to provide equipment operators better information on their location with respect to highwall or dump points?

14. What are the advantages, disadvantages, and costs associated with ground and aerial markers?

D. Autonomous Mobile Equipment

15. Please identify the types of autonomous mobile equipment in use at surface mines.

16. Please describe the advantages and disadvantages associated with autonomous mobile equipment.

17. Please provide information related to any experience with testing or implementing autonomous mobile equipment, including costs and benefits.

E. Belt Conveyors

18. What technologies are available that could provide additional protections from accidents related to working near or around belt conveyors? Can these technologies be used in surface and underground mines?

19. Please provide information related to any experience with testing or implementing systems that sense a miner's presence in hazardous locations; ensure that machine guards are properly secured in place; and/or ensure machines are properly locked out and tagged out during maintenance. Please also include information and data on the costs and benefits associated with these systems.

F. Training and Technical Assistance

20. Please provide suggestions on how training can increase seatbelt use and improve equipment operators' awareness of hazards at the mine site.

21. Please provide suggestions on how training can ensure that miners lock and tag conveyor belts before performing maintenance work.

G. Benefits and Costs

MSHA requests comment on the costs, benefits, and the technological and economic feasibility of suggested engineering controls to improve miners' safety. Your answers to these questions will help MSHA evaluate options and determine an appropriate course of action.

H. Other Information

22. Please provide any data or information that may be useful to

MSHA to determine non-regulatory initiatives the Agency should explore.

Authority: 30 U.S.C. 811, 813(h).

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2018–13603 Filed 6–25–18; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0598]

RIN 1625–AA00

Safety Zone, Swim Around Charleston; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels would be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 26, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0598 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On April 9, 2018, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston on September 16, 2018 and would impact waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina. The legal basis for the proposed rule is the Coast Guard's authority to establish a safety zone is 33 U.S.C. 1231. The purpose of the proposed rule is to ensure safety of life on the navigable waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during Swim Around Charleston.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone on the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during Swim Around Charleston from 7:45 a.m. to 2 p.m. on September 16, 2018. Approximately 100 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The COTP will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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: (1) The safety zone would be enforced for only seven hours; (2) the safety zone would move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone would no longer be enforced in that portion of the waterway; (3) although persons and vessels would not be able to enter or transit through the safety zone without authorization from the COTP or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter or transit through the safety zone if authorized by the COTP or a designated representative; and (5) the COTP would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone lasting less than seven hours that would prohibit entry within the safety zone. Normally such actions are categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. 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 NPRM 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.

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 proposes to amend 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.T07–0598 to read as follows:

§ 100.T07–0598 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) *Regulated area.* The following regulated area is a moving safety zone: All waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N, 79°54′27″ W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I–526 bridge and boat landing on the Ashley River in approximate position 32°50′14″ N, 80°01′23″ W. All

coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Swim Around Charleston, or serving as safety vessels.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on September 16, 2018 from 7:45 a.m. until 2 p.m.

Dated: June 20, 2018.

J.W. Reed,

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

[FR Doc. 2018–13679 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0427]

RIN 1625–AA00

Safety Zone; USA Triathlon Age Group National Championships Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of Lake Erie during the USA Triathlon National Championships. This action is necessary to provide for the safety of life on these navigable waters near Edgewater Park, Cleveland, OH, during the swim events during the multiple triathlons over the course of three days. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 26, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0427 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On November 29, 2017, USA Triathlon notified the Coast Guard that it will be conducting the USA Triathlon Age Group National Championships from 10:00 a.m. to 1:30 p.m. on August 10, 2018, from 5:00 a.m. to 5:30 p.m. on August 11, 2018, and from 5:00 a.m. to 12:00 p.m. on August 12, 2018. The swim portion of the multiple triathlon events will be held off Edgewater Park in Lake Erie, Cleveland, OH. Hazards from swim events include participants swimming in an area that has a high amount of recreational traffic and interfering with vessels intending to operate in that location, as well as swimming within approaches to public and private marinas. The Captain of the Port Buffalo (COTP) has determined that potential hazards associated with the swim events would be a safety concern for anyone intending to participate in this event or for vessels that operate in their vicinity.

The purpose of this rulemaking is to ensure the safety of the event participants and transiting vessels on specified waters of Lake Erie before, during and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone from 10:00 a.m. to 1:30 p.m. on August 10, 2018, from 5:00 a.m. to 5:30 p.m. on August 11, 2018, and from 5:00 a.m. to 12:00 p.m. on August 12, 2018. The safety zone will cover all navigable waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W then Northwest to 41°29′34″ N, 081°45′02″ W then Northeast to 41°29′43″ N, 081°44′31″ W, then Southeast back to shore at position 41°29′28″ N, 081°44′22″ (NAD 83). The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the schedule events over the course of the three days. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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-day of the safety zone. Moreover, the Coast Guard would issue

a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involve a safety zone lasting three days that would prohibit entry within all waters of Lake Erie, off of Edgewater Park, Cleveland, OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W then Northwest to 41°29′34″ N, 081°45′02″ W then Northeast to 41°29′43″ N, 081°44′31″ W, then Southeast back to shore at position 41°29′28″ N, 081°44′22″ (NAD 83). Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. 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 NPRM 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.

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 proposes to amend 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.T09–0427 to read as follows:

§ 165.T09–0427 Safety Zone; USA Triathlon Age Group National Championships; Lake Erie, Cleveland, OH.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W then Northwest to 41°29′34″ N, 081°45′02″ W then Northeast to 41°29′43″ N, 081°44′31″ W, and Southeast back to shore at position 41°29′28″ N, 081°44′22″ (NAD 83).

(b) *Enforcement Period.* This rule will be enforced from 10:00 a.m. to 1:30 p.m. on August 10, 2018 from 5:00 a.m. to 5:30 p.m. on August 11, 2018 and from 5:00 a.m. to 12:00 p.m. on August 12, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 20, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–13665 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0414; FRL–9979–91—Region 2]

Approval of Air Quality Implementation Plans; New York; Subpart 225–1, Fuel Composition and Use—Sulfur Limitations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan concerning sulfur-in-fuel limits. The intended effect of this revision is to add a regulatory mechanism for meeting the existing obligations related to regional haze. The SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations'' and Section 200.1, ''Definitions'' and, also removes an obsolete provision from the Code of Federal Regulations related to facility specific sulfur-in-fuel limits.

DATES: Comments must be received on or before July 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2016–0414, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods *i.e.*, 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: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381, or by email at *wieber.kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. EPA's Evaluation of New York's Submittal
III. Updating 40 CFR 52.1675 Control Strategy and Regulations: Sulfur Oxides
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

The Environmental Protection Agency (EPA) proposes to approve New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Section 200.1, ''Definitions,'' which adds a definition for waste oil. EPA proposes to approve, with limitations, Subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations,'' as contributing to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter less than or equal to 2.5 microns in diameter ($PM_{2.5}$) and the NAAQS for sulfur dioxide (SO_2), and establishing a revised regulatory mechanism for New York's regional haze SIP. The EPA's proposed approval of New York's sulfur-in-fuel regulation into the SIP does not alter the EPA's prior action on New York's Regional Haze SIP, which includes emission reductions related to the sulfur-in-fuel requirements of section 19–0325 of the Environmental Conservation Law (ECL). 77 FR 51915 (Aug. 28, 2012). The EPA is proposing to approve these revisions, requested by New York, as strengthening the effectiveness of New York's SIP.

Pursuant to 40 CFR part 51, the EPA also is proposing to remove a section from 40 CFR 52.1675 which lists sulfur limitations for various facilities in New York. EPA has determined that these limitations have expired and/or refer to sources which have been shut down. That determination was reflected in EPA's reformatting exercise that ensured that all revisions to the New York State SIPs are accurately reflected in 40 CFR part 52, including 40 CFR 52.1670(d), ''EPA approved State source-specific requirements.'' 76 FR 41705 (July 15, 2011). In addition, the sulfur-in-fuel rule proposed for approval here requires the use of lower sulfur fuel, with lower sulfur concentrations than the limits listed in 40 CFR 52.1675. The EPA is therefore removing the existing sulfur limitations in 40 CFR 52.1675 as they are superfluous and obsolete.

II. EPA's Evaluation of New York's Submittal

On June 12, 2013, New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA the proposed revisions to Section 200.1 and Subpart 225–1 and supplemental materials, including documentation of the comment period and public hearings, and NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal.

Revisions to Section 200.1

The EPA is proposing to approve Section 200.1, which includes New York's new definition for ''waste oil'' at 6 NYCRR 200.1(cw). This definition is relevant to Subpart 225–1 and is consistent with similar definitions of waste oil recognized by EPA.

NYSDEC also revised 6 NYCRR 200.9, Table 1, updating the list of federal regulations referenced in the amended Subpart 225–1. In a separate rulemaking action, the EPA approved a SIP submittal from New York, dated October 12, 2011 and revised on July 25, 2016, of Section 200.9, Table 1. 81 FR 95049 (Dec. 27, 2016). That approval included the revisions to Section 200.9, Table 1, referenced in NYSDEC's June 12, 2013 submittal. We therefore have already acted on the revision to Section 200.9, Table 1, which references the amended Subpart 225–1, and we are not taking action here.

Subpart 225–1

New York relied on ECL section 19–0325, limiting sulfur concentrations in fuel oil, in its Regional Haze SIP and the EPA approved it as part of New York's emissions reduction plan to make reasonable progress toward reducing widespread visibility impairment. 77 FR 51915. By submitting this revision to Subpart 225–1 to the EPA for SIP approval, New York is adding a regulatory mechanism for implementing the reduced sulfur-in-fuel limits in ECL–19–0325 and the Regional Haze SIP. The EPA proposes to approve these revisions to strengthen the New York's SIP.

Sulfur-in-Fuel Limitations

Section 225–1.2 provides the sulfur-in-fuel limitations and are identified below.

Owners and/or operators of any stationary combustion installation that fires solid fuels are limited to the firing of solid fuel with a sulfur content listed in the table below on or after July 1, 2014:

Area	Solid fuel (pounds of sulfur per million Btu gross heat content)
New York City	0.2 MAX.
Nassau, Rockland and Westchester Counties	0.2 MAX.
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town	0.6 MAX.
Erie and Niagara Counties	1.7 MAX, 1.4 AVG.*
Remainder of State	2.5 MAX, 1.9 AVG *, and 1.7 AVG (ANNUAL).**

* Averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive three-month period.

** Annual averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive 12-month period.

Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2014:

Area	Residual oil (percent sulfur by weight)
New York City	0.30
Nassau, Rockland and Westchester Counties	0.37

Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the purchase of residual oil with a sulfur content listed in the table below on or after July 1, 2014, and are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2016:

Area	Residual oil (percent sulfur by weight)
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town	0.50
Erie and Niagara Counties	0.50
Remainder of State	0.50

Owners and/or operators of commercial, industrial, or residential emission sources that fire number two heating oil on or after July 1, 2012 are limited to the purchase of number two heating oil with 0.0015 percent sulfur by weight or less.

Owners and/or operators of a stationary combustion installation that fires distillate oil other than number two heating oil are limited to the purchase of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2014.

Owners and/or operators of any stationary combustion installation that fires distillate oil including number two heating oil are limited to the firing of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2016.

Owners and/or operators of any stationary combustion installation that fires waste oil on or after July 1, 2014 are limited to the firing of waste oil with 0.75 percent sulfur by weight or less.

Exceptions and Variances Provided for in Subpart 225–1

6 NYCRR Sections 225–1.3 and 225–1.4 include provisions allowing for exceptions or variances from the sulfur-in-fuel limits set forth in ECL 19–0325 and Section 225–1.2.

Section 225–1.3 addresses exceptions to fuel limitations due to fuel shortage. It provides that NYSDEC may issue an order granting a temporary exception based on an insufficient supply of conforming fuel, provided the decision is certified by the New York State Energy Research and Development Authority. The exception cannot exceed 45 days, unless the department permits a public hearing, after which the extension can be granted for up to one year. Section 225–1.3(e) recognizes that, pursuant to New York State Energy Law 5–117, any provisions of Section 225–1.3 may be preempted if the Governor declares that a fuel-supply emergency exists or is impending.[1]

Section 225–1.4 allows for fuel mixture or equivalent emission rate variances. Fuels with sulfur content greater than that allowed by Section 225–1.2 may be fired when the facility owner can demonstrate that sulfur dioxide emissions do not exceed the value for S calculated using the following equation:

$$S = (1.1AM + 2BT)/(M + T)$$

Where:

S = Allowable sulfur dioxide emission (in pounds per million Btu)

A = Sulfur in oil allowed by section 225–1.2 of this Subpart (in percent by weight)

B = Average sulfur in solid fuel allowed by section 225–1.2 of this Subpart (in pounds of sulfur per million Btu gross heat content)

M = Percent of total heat input from liquid fuel

T = Percent of total heat input from solid fuel (including coal, coke, wood, wood waste, and refuse-derived fuel)

Fuel mixtures and equivalent emission rate variances only apply to processes or stationary combustion installations. Compliance will be based on the total heat input from all fuels fired, including gaseous fuels. Any process or stationary combustion installation owner who chooses to fire a fuel mixture is subject to the emission and fuel monitoring requirements of Section 225–1.5.[2]

In the initial approval of Part 225 into the SIP, the EPA indicated that variances adopted by the State pursuant to sections 225.2(b) and (c), 225.3, and 225.5(c) are federally enforceable only if approved by the EPA as SIP revisions. 46 FR 55690, 55693 (Nov. 12, 1981). The provisions of 225.2(b) and (c), 225.3, and 225.5(c), although now renumbered in revised Subpart 225–1, are substantively unchanged. Therefore, EPA's condition, that variances adopted pursuant to these conditions are federally enforceable only if approved by the EPA as SIP revisions, remains in effect. 81 FR 23167, 23171 (April 20, 2016); 40 CFR part 52.1670.

The EPA proposes to approve New York's Subpart 225–1 submittal, provided that, consistent with prior approvals of Part 225, any exception or variance must to be submitted to the EPA as a source-specific SIP revision and is not federally enforceable until approved by EPA.

III. Updating 40 CFR 52.1675 Control Strategy and Regulations: Sulfur Oxides

40 CFR 52.1675 includes a list of special limitations of sulfur-in-fuels, adopted in the 1980s, for a variety of sources. EPA has determined that either these limits have expired or the sources have shut down. 47 FR 7662 (2/22/82); letter from NYSDEC, dated March 25, 2011, confirming the shut-down of Lovett Generating Station (a copy is in the docket for this action). EPA's determination was reflected in the reformatting exercise that ensured that all revisions to the New York State SIP are accurately reflected in 40 CFR part 52, including 40 CFR 52.1670(d), ''EPA approved State source-specific requirements.'' 76 FR 41705 (July 15, 2011). 40 CFR 52.1670(d) identifies all source-specific requirements still effective in New York State. The EPA is proposing to remove the provisions listed below from 40 CFR 52.1675 as superfluous and obsolete.

List of special limitations from 40 CFR 52.1675(d), (f) and (g) that the EPA proposes to remove:

(d) Section 225.3(e) of Subchapter A, Chapter III, Title 6 of New York State's Official Compilation of Codes, Rules and Regulations, is disapproved since it does not provide for the type of permanent control necessary to assure attainment and maintenance of national standards.

* * * * *

(f) The following applies to the Environmental Protection Agency's approval as a SIP revision of the ''special limitation'' promulgated by the Commissioner of the New York State Department of Environmental Conservation on November 20, 1979 permitting the purchase and use by the Consolidated Edison Company of New York, Inc. of fuel oil with a maximum sulfur content of 1.5 percent, by weight, at units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and unit 3 of its Ravenswood generating station in Queens, New York:

(1) On or before the ''Date of Conversion'' indicated below, each ''Facility'' indicated below shall combust only natural gas for the duration of the special limitation.

(a) City College of New York, Amsterdam Ave. between W. 135th St. and W. 138th St., Manhattan—

North Campus Academic Center: Converted North Campus Main Boiler (Compton Hall): Two boilers shut-down; One boiler converted;

South Campus—Boiler Plant: Converted;

North Campus Science and Physical Education Building: October 1, 1980.

(b) Harlem Hospital, 135th St. and Lenox Ave., Manhattan: April 1, 1981;

(c) Columbia University, 116th St. and Broadway, Manhattan: Converted;

(d) New York City Housing Auth., Senator Robert F. Wagner Houses, 23–96 First Ave.: October 1, 1980;

(e) New York City Housing Auth., Frederick Douglass Houses, 880 Columbus Ave., Manhattan: October 1, 1980;

(f) New York City Housing Auth., Manhattanville Houses, 549 W. 126th St., Manhattan: October 1, 1980;

(g) New York City Housing Auth., St. Nicholas Houses, 215 W. 127th St.: October 1, 1980;

(h) New York City Housing Auth., General Grant Houses, 1320 Amsterdam Ave., Manhattan: October 1, 1980;

(i) New York City Housing Auth., Harlem River Houses, 211–0–1 W. 151st Street, Manhattan: October 1, 1980;

(j) New York City Housing Auth., Martin Luther King Towers, 90 Lenox Ave., Manhattan: October 1, 1980;

(k) New York City Housing Auth., Drew Hamilton Houses, 210 W. 142nd Street, Manhattan: October 1, 1980.

(2) If any of the facilities identified in paragraph (g)(1) of this section, fail to meet the requirements of that paragraph, the Consolidated Edison Company shall not burn fuel oil with a sulfur content in excess of 0.30 percent, by weight. For this purpose, Consolidated Edison shall maintain a reserve supply of fuel oil with a maximum sulfur content of 0.30 percent, by weight, and shall have a mechanism to switch promptly to the use of such fuel oil.

(3) EPA's approval of this revision to the New York SIP will extend for a period of twelve months from [August 11, 1980] or such longer period limited to twelve months from the date on which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities. However, once the use of high sulfur fuel oil has commenced, failure to meet any of the conversion dates specified in paragraph (g)(1) of this section shall not extend the period of EPA approval.

[1] Section 5–117 of the New York State Energy Law concerns powers granted to the Commissioner of the New York State Energy Research and Development Authority (NYSERDA) when the Governor finds there is a fuel supply emergency; the powers are authorized to the extent that they are not in conflict with federal law.

[2] Subpart 225–1.4 also allows variances for fuel fired to demonstrate the performance of experimental equipment and/or processes for reducing sulfur compounds from an emission source.

(4) On or before July 1, 1981 the Consolidated Edison Company of New York, Inc. shall displace the use of approximately 7.1 million gallons of residual oil, as projected on an annual basis, through a gas conversion program to be implemented within a two-mile radius of the Mabel Dean Bacon High School Annex monitor. Beginning on the first day of the month in which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities and continuing for twelve months thereafter, the Consolidated Edison Company of New York, Inc. shall submit a report to the EPA, on a monthly basis, which includes, but is not limited to, the following information regarding this program:

(i) The total gallonage of fuel oil capacity converted (projected to an annual amount) as of that date,

(ii) The potential gallonage from sources at which conversion work has begun, and

(iii) The projected gallonage from sources expected to be converted by July 1, 1981.

(g) The Environmental Protection Agency has approved a New York State Implementation Plan revision relating to the SO_2 *emission limit for units 4 and 5 of Orange and Rockland Utilities' Lovett generating station. The revision which allows Lovett to burn coal at units 4 and 5 was submitted by the New York State Department of Environmental Conservation (NYSDEC) on September 18, 1990, with additional materials submitted on April 12, 1991, and June 3, 1991. This action sets the emission limit applicable to the facility to 1.0 pound per million British thermal units (MMBtu) for units 4 and 5 if both are operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all, as set forth in the Certificates to Operate issued by NYSDEC on April 3, 1991. The* SO_2 *emission limit, monitoring and recordkeeping requirements pertaining to the* SO_2 *emissions are incorporated by reference into the Certificates to Operate.*

The EPA also proposes to revise 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225–1, and for it to read as follows:

(e) Any exception or variance promulgated by the Commissioner under 6 NYCRR Sections 225–1.3 and 1.4 shall not exempt any person from the requirements otherwise imposed by 6 NYCRR Subpart 225–1; provided that the Administrator may approve such exception or variance as a plan revision when the provisions of this part, section 110(a)(3)(A) of the Act, and 40 CFR Part 51 (relating to approval of and revisions to State implementation plans) have been satisfied with respect to such exception or variance.

The removed sections of 40 CFR 52.1675: (d), (f) and (g), will be labeled as reserved.

IV. Proposed Action

The EPA proposes to approve the revisions to New York's Title 6 of the New York Codes, Rules and Regulations Subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations'' and Section 200.1, ''Definitions,'' both effective on April 5, 2013, into New York's SIP as strengthening enforcement of the State's air pollution control regulations.

In addition, EPA has determined that the source-specific limits in the New York's SIP at 40 CFR 52.1675(d), (f) and (g) have either expired or the affected sources have shut down and that the 52.1675 requirements are therefore superfluous and obsolete. The EPA is proposing to remove the source-specific limits from 52.1675(d), (f) and (g). The EPA also proposes to revise 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225–1.

V. Incorporation by Reference

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section IV. Proposed Action.

EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. 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 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 Order 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, this rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 8, 2018.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2018–13722 Filed 6–25–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0055; FRL–9979–57—Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology in the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing approval of revisions to the Texas State Implementation Plan (SIP) addressing volatile organic compounds (VOC) revised rules and the State's reasonably available control technology (RACT) analyses for VOC and nitrogen oxides (NO_X). We are proposing to approve the revised VOC rules as assisting in reaching attainment of the 2008 ozone National Air Quality Ambient Air Quality Standards (NAAQS or the standard) and as meeting the RACT requirements in the Houston-Galveston-Brazoria 2008 8-hour ozone nonattainment area (HGB area). We are also proposing to approve negative declarations for certain VOC source categories subject to RACT in the HGB area. The EPA also is proposing to find that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard.

DATES: Written comments must be received on or before July 26, 2018.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0055, at *http://www.regulations.gov* or via email to *Todd.Robert@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert M. Todd, (214) 665–2156, *Todd.Robert@epa.gov.* For 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, 214–665–2156, *Todd.Robert@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) help produce ground-level ozone, or smog, which harms human health and the environment. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above include implementation of RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOC or NO_X. The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See September 17, 1979 (44 FR 53761).

For a Moderate, Serious, or Severe area a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO_X, respectively. See CAA sections 182(b), 182(c), and 182(d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of CTG and Alternative Control Techniques (ACT) documents. See *http://www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html* (URL dating August 17, 2014) for a listing of EPA-issued CTGs and ACTs. Any major source not covered by the presumptive CTG rule or a rule similar to the ACT must be controlled to meet RACT.

On March 27, 2008, the EPA revised the primary and secondary Ozone (O_3) standard to a level of 75 parts per billion (ppb). Promulgation of a NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the NAAs at the time of designation. On May 21, 2012, the EPA established initial area designations for most areas of the country with respect to the 2008 primary and secondary eight-hour O_3 NAAQS. The EPA published two rules addressing final implementation [1] and air quality designations.[2] The implementation rule established classifications, associated attainment deadlines, and revoked the 1997 O_3 standards for transportation conformity purposes. The designation rule finalized the NAA boundaries for areas that did not meet the 75 ppb standard. Furthermore, the finalized nonattainment areas were classified according to the severity of their O_3 air quality problems as determined by each area's design value.[3] The O_3 classification categories were defined as Marginal, Moderate, Serious, Severe, or Extreme.

The HGB area, which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in Texas, is currently designated as nonattainment for the 2008 8-hour ozone NAAQS with a ''moderate'' classification (81 FR 90207, December 14, 2016). Originally the HGB area was classified as ''marginal'' (77 FR 30088 and 77 FR 30160, May 21, 2012).[4] However, the HGB area did not meet the revised attainment deadline of July 20, 2016 and was reclassified to moderate. Based on the moderate classification of the HGB area for the 2008 ozone standard, under section 182(b) of the CAA, a major stationary source in the area is one that emits, or has the potential to emit, 100 tpy or more of VOCs or NO_X.

[1] See 77 FR 30160 ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes.''

[2] See 77 FR 30088, ''Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards.''

[3] The air quality design value for the 8-hour ozone NAAQS is the three-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, appendix I.

[4] Subsequently the attainment deadlines were revised under the marginal classification. 80 FR 12264, March 6, 2015; 81 FR 26697, May 4, 2016.

On December 29, 2016 Texas submitted its SIP demonstration that RACT for sources of VOC and NO_X emissions in the HGB area is met for the 2008 NAAQS, along rule revisions to 30 TAC, Chapter 115 (Control of Air Pollution from Volatile Organic Compounds). Texas, in its SIP analyses to identify major stationary sources of NO_X and VOC reviewed the TCEQ point source emissions inventory, NSR and Clean Air Act Title V databases to locate potential sources. All sources in the Title V database that were listed as a major source for NO_X or VOC emissions are included in the RACT analysis. TCEQ noted that they reviewed sources that reported actual emissions as low as 10 tpy of NO_X or VOC to account for the difference between actual and potential emissions. TCEQ also noted that sites from the emissions inventory database with emissions equal to or greater than a threshold of 25 tpy or more of NO_X or VOC definition that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis.

II. Evaluation

Reliance on Prior RACT Determination for HGB Area

In TCEQ's December 29, 2016 SIP, Table F–1 titled ''*State Rules Addressing VOC RACT Requirements in CTG Reference Documents*'' lists VOC CTG source categories, its reference document, and state rules addressing VOC RACT requirements. Table F–2 titled ''*State Rules Addressing VOC RACT Requirements in ACT Reference Documents,*'' in TCEQ's December 29, 2016 SIP, lists state rules addressing VOC RACT in ACT reference documents. The implementation rule of March 6, 2015 (80 FR 12279), explains that States should refer to existing CTG and ACT documents as well as all relevant technical information including recent technical information received during the public comment period to determine if RACT is being applied. States may conclude, in some cases, that sources already addressed by RACT determinations to meet the 1-hour and/or the 1997 8-hour ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement (80 FR 12264, March 6, 2015). The EPA has approved the 30 TAC Chapter 115 VOC rules as RACT for the HGB area under the 1-hour and1997 8-hour ozone NAAQS (71 FR, 52670, September 6, 2006;78 FR 19599, April 2, 2013; 79 FR 21144, April 15, 2014; 79 FR 45105, August 4, 2014; and 80 FR 16291, March 27, 2015). The EPA determined that VOC RACT is in place for all CTG and non-CTG major sources in the HGB area for the 1-hour and 1997 8-hour ozone NAAQS (71 FR 52676, September 6, 2006 and 79 FR 21144, April 15, 2014). Texas's SIP submittal relies on those EPA-approved Chapter 115 rules for the 1-hour and 1997 8-hour ozone NAAQS to fulfill RACT requirement for CTG and non-CTG VOC major sources for the 2008 8-hour ozone NAAQS. We are proposing to incorporate by reference the dockets for those decisions.[5]

We are proposing to find that the rules we approved as meeting RACT for the 1-hour and 1997 8-hour ozone NAAQS also meet RACT for the 2008 8-hour ozone NAAQS. We have determined this is appropriate because the fundamental control techniques described in the CTG and ACT documents, are still applicable and a new RACT determination by Texas would result in the same or similar control technology as the RACT determinations made for the 1-hour or 1997 standard. This view is supported by the implementing rule for the 2008 ozone NAAQS.[6] The Chapter 115 rules provide appropriate VOC emissions reductions that are equivalent to control options cited in the CTG and ACT documents and any non-CTG major sources are controlled. During the public comment period for the attainment demonstration the state received one suggestion to implement the new CTG for the Oil and Natural Gas Industry (EPA–453/B–16–001, October 2016) in the HGB area. EPA has issued a notice of proposed withdrawal; request for comment. See 83 FR 10478, March 9, 2018.

VOC RACT Analysis for Additional Controls or Newly Identified Sources

TCEQ found that the VOC storage tank category was partially controlled and evaluated whether additional controls would be feasible and economical. They revised the storage tank rules to add more controls to meet RACT. TCEQ also identified a Vegetable Oil Manufacturing Operations source emitting VOCs in a quantity greater than the major source definition required under the previous NAAQS standard for the HGB area. TCEQ's analysis showed that the source met control recommendations listed in an earlier CTG document for the Vegetable Oil Manufacturing Operations source category and therefore met RACT. We are proposing to fully approve the submitted rules as part of the SIP to assist in achieving the 2008 ozone NAAQS and finding the revised storage tank rules meet VOC RACT for the HGB area. Below, we discuss in more detail our proposed approval of the storage tank rule revisions and the vegetable oil manufacturing processing source as meeting RACT. Please see the Technical Support Document (TSD) for additional information.

Texas in its DFW RACT analyses for the 2008 ozone standard, found that the storage tank source category was partially controlled and additional controls were feasible and economical. We recently approved storage tank rule revisions as meeting the RACT requirement for the 2008 ozone NAAQS in the DFW area.[7] The SIP requirements controlling VOC emissions from storage tanks are found in 30 TAC, Chapter 115, Subchapter B, Division 1 (Storage of Volatile Organic Compounds) and Texas revised §§ 115.112, 115.114, 115.118 and 115.119 for the HGB area to match those EPA approved for the DFW area as RACT. The major changes are to § 115.112, Control Requirements, which increases control efficiency of control devices, other than vapor recovery units or flares, from 90% to 95% for VOC storage tanks in the HGB area and expands the requirement to control VOC emissions to sources not previously covered; § 115.114, Inspection Requirements, which adds the requirement to inspect closure devices on fixed roofs tanks to prevent VOC flash gassing; § 115.118, Recordkeeping Requirements, which expands recordkeeping requirements for fixed roof crude oil and condensate storage tanks with uncontrolled VOC emissions of at least 25 tpy to the HGB area, as well as extends record retention for affected VOC storage tanks and expands the rule applicability to include the aggregate of fixed roof crude oil and condensate storage tanks at pipeline breakout stations in the HGB area; and, § 115.119, Compliance Schedules, which clarifies the responsibility for sources in the HGB area to comply and defines July 20, 2018 as the final date for owners and operators to comply with the new standards for the area. The increased control efficiency requirements; inspection, repair, and recordkeeping requirements; and expanded applicability for fixed roof

[5] See EPA–R06–OAR–2005–TX–0018 and EPA–R06–OAR–2012–0100, available through the *Regulations.gov* website at: *https://www.regulations.gov/.*

[6] See 80 FR 12279, final action and rationale and 80 FR 12280, first column, comments and responses.

[7] We approved those rules on December 21, 2017. See 82 FR 60546. The codification of the Texas SIP approved by EPA can be found at 40 CFR 52.2270(c).

crude oil and condensate storage tanks are already in place for VOC storage tanks in the DFW area. We have approved the rule changes into the state SIP and found they meet VOC RACT for the DFW area. We are proposing to incorporate by reference the docket for that decision.[8]

The adopted rule revisions address RACT for both CTG and non-CTG major VOC storage tanks in the HGB area. We propose to approve the Texas submitted revisions, as described in detail in the TSD to this proposal, to the storage tank rule for the HGB area as part of the SIP and as meeting RACT for the HGB area for the 2008 8-hour NAAQS.

In the Texas submittal, the State identified a vegetable oil manufacturing operation category in the HGB area as a major source.[9] Previously, EPA had approved Texas' negative declaration for vegetable oil manufacturing operation for the HGB area for the VOC RACT for the 1997 8-hour ozone NAAQS (79 FR 21144, April 15, 2014). In its RACT analysis for the 2008 8-hour ozone standard, Texas determined that existing SIP-approved Chapter 115 rules for existing process vents and the bulk loading operations already approved as RACT for the 1997 8-hour ozone standard satisfy VOC RACT requirements for this single vegetable oil manufacturing operations source. The SIP rules are consistent with the EPA approved RACT requirements for vegetable oil processing operations in the San Joaquin Valley Unified Air Pollution Control District Rule 461.2 (current rule number 4691) (59 FR 2535, January 18, 1994). Also this source category is covered under 40 CFR part 63, subpart GGGG. EPA agrees with Texas that the controls for vegetable oil manufacturing operations meet RACT. Thus, we propose to approve Texas's analysis that RACT is met for the vegetable oil manufacturing operation source. For further details of the San Joaquin rule, please see the TSD.

During the public comment period for the attainment demonstration, the state did receive a suggestion that it include the October, 2016 Oil and Natural Gas CTG[10] in their RACT analysis. A review of EPA's implementing memo[11] for this CTG shows Texas is required to submit revisions to the SIP two years, or sooner, after the availability of the CTG. In this case, the date of the notice of availability was October 27, 2016 (See 81 FR 74798) which did not allow adequate time for Texas to incorporate the Oil and Natural Gas CTG controls into their state rules and submit them as part of this RACT analysis. Texas therefore was not required to consider this newly issued CTG in their analysis.

VOC RACT Negative Declarations

States are not required to adopt RACT limits for source categories for which no major sources exist in a nonattainment area and can submit a negative declaration to that effect. The negative declaration would need to assert that there are no major CTG sources in the area, and the accompanying analysis would need to support that conclusion. Texas has reviewed its emission inventory and determined that its previous negative declarations for fiberglass boat manufacturing materials, surface coating for flat wood paneling, letterpress printing, automobile and light-duty truck assembly coating, and rubber tire manufacturing submitted as part of its HGB Area VOC RACT SIP for the 1997 ozone NAAQS are still applicable (79 FR 21144, April 15, 2014). We also are unaware of any sources in these CTG source categories in the area and therefore we propose to approve these negative declarations. See Table F–2 titled ''*State Rules Addressing VOC RACT Requirements in ACT Reference Documents.*'' We are also not aware of any major sources in the ACT source categories in the area and therefore we propose to agree with TCEQ's negative declaration for the ACT categories.

HGB Area NO_X RACT TCEQ Analysis

Under CAA section 182(f) RACT is required for major sources of NOx. For NO_X, the EPA has issued ACT documents that describe available control technologies but do not define presumptive RACT levels. In TCEQ's December 29, 2016 SIP, Table F–3: *State Rules Addressing NO_X RACT Requirements in ACT Reference Documents* provides the emission source categories, the ACT reference documents, and the state rules addressing the RACT requirements for sources in the NO_X ACT documents. TCEQ also identified other major NOx sources than those covered by the ACT and how the RACT requirement is addressed for them. The RACT analysis is contained in Appendix F of the TCEQ's December 29, 2016 SIP submittal as a component of the HGB 2008 8-hour ozone attainment demonstration plan.

In 2013, EPA determined that NO_X control measures in 30 TAC Chapter 117 met 1997 8-hour RACT requirements for major sources of NO_X in the HGB area under the 1-hour and 1997 8-hour ozone NAAQS (78 FR 19599, April 2, 2013). Texas's SIP relies on those EPA-approved Chapter 117 rules to fulfill RACT requirements for NO_X source categories that exist in the HGB area with the exception of a glass furnace. We are proposing to incorporate by reference the docket for that decision.[12]

In our implementation rule for the 2008 ozone NAAQS we made clear we believed that, in some cases, new RACT determinations would ''result in the same or similar control technology as the RACT determinations made for the 1-hour or 1997 standards.'' This is because the fundamental control techniques, as described in the CTG and ACT documents, are still applicable. Following this line of reasoning, Texas determined the existing Chapter 117 NO_X reduction regulations provide appropriate NO_X emissions reductions that meet RACT emission reduction requirements and adequately incorporate ACT document controls where appropriate. As noted above, during the public comment period for the attainment demonstration, the state did receive a suggestion that it include the October, 2016 Oil and Natural Gas CTG in their RACT analysis. A review of the controls in the CTG indicated NO_X emissions were not considered in this CTG. Texas, therefore, is not required to consider this newly issued CTG in their NO_X analysis. We are proposing to find that the existing Chapter 117 rules meet the RACT requirement in the HGB area for the 2008 ozone NAAQS.

Texas noted their review of NO_X sources in the HGB area identified a facility falling under the Glass manufacturing ACT category. The source has existing controls consistent

[8] See is EPA–R06–OAR–2015–0832, available through the *Regulations.gov* website at: *https://www.regulations.gov/.*

[9] The Vegetable Oil Control Techniques Guideline was deferred regarding implementation in 1979 and it is not currently listed as an applicable source category. The Solvent Extraction for Vegetable Oil Production NESHAP (40 CFR part 63 Subpart GGGG) applies controls to the same manufacturing category and emission sources, has been adopted by reference into TCEQ's Chapter 113 regulations and applies to this facility.

[10] EPA has issued a ''notice of proposed withdrawal: request for comment'' indicating the agency is considering withdrawing the Oil and Natural Gas CTG. See 83 FR 10478, March 9, 2018.

[11] See ''Implementing Reasonably Available Control Technology Requirements for Sources Covered by the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry'' Memorandum from Anna Marie Wood, October 20, 2016. *https://www.epa.gov/sites/production/files/2016-10/documents/implementing_reasonably_available_control_technology_requirements_for_sources_covered_by_the_2016_control_techniques_guidelines_for_the_oil_and_natural_gas_industry.pdf.*

[12] See is EPA–R06–OAR–2012–0100, available through the *Regulations.gov* website at: *https://www.regulations.gov/.*

with RACT. For a full discussion of the source and the rationale for including existing controls as RACT for the HGB area please see the TSD to this proposal. Texas did not locate any major sources subject to the NO_X Emission from Cement Manufacturing ACT. For all the other NO_X ACT sources, excepting the glass manufacturing facility mentioned above, the state has established Chapter 117 regulations we have previously approved as RACT for the 1997 8-hour ozone NAAQS and as discussed above are proposing to find meet RACT for the 2008 ozone NAAQS.

CAA 110(l) Analysis

CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

The TCEQ provided copies of the Public Notice of proposed changes to Chapter 115 (Control of VOC Emissions), including the text published in the Texas Register and local newspapers. The TCEQ also held a public hearing on the revisions to Chapter 115 on October 24, 2016 in Houston, Texas. (More information on the public comments the state received is available in the TSD to this proposal.)

The only change in control requirements in these revisions are the additional controls for VOC storage tanks. The remainder of the revisions provide an evaluation that with new controls on VOC storage tanks, existing controls on NO_X and VOC are sufficient to meet the RACT requirements for the HGB area. The changes to the VOC storage tank rules will enhance the state's ability to come into compliance with the 2008 O_3 standard. The institution of the additional control requirements would not be expected to interfere with attainment or maintenance of any other NAAQS. In sum, Texas adopted the SIP revision after reasonable notice, a public hearing, and an opportunity for public comment. We propose that the revisions enhance the SIP by providing VOC emission reductions through new requirements on storage tanks and continuing NO_X and VOC RACT controls for the HGB area. The CAA 110(l) requirements are met.

III. Proposed Action

We are proposing to approve revisions to the Texas SIP addressing the 2008 ozone NAAQS and the RACT requirements for sources in the HGB area. Specifically, we are proposing to: (1) Find previous VOC and NO_X RACT determinations made for the HGB area under the 1-hour ozone NAAQS and the 1997 8-hour NAAQS meet RACT for the 2008 ozone NAAQS; (2) approve revisions to 30 TAC Chapter 115 sections described in Table 1 below into the state SIP because they assist in meeting the 2008 ozone NAAQS; (3) find the revisions described in Table 1 below meet VOC RACT for the HGB area; and (4) find that the HGB area meets VOC and NO_X RACT for the 2008 ozone NAAQS.

TABLE 1—SUMMARY OF SUBSTANTIVE REVISIONS TO 30 TAC § 115 PROPOPED FOR APPROVAL

[Subchapter B, Division 1, Storage of Volatile Organic Compounds]

Section amended	Amendment	Comments
115.112 Control Requirements	115.112(a)(3)—minor clerical changes, changes § 60.18(b–f) to read § 60.18(b)–(f).	Non substantive.
	115.112(d)(5)—Minor word changes, changes ''subparagraphs'' to read ''subparagraph''.	Non substantive.
	115.112(d)—adds reference to compliance dates and efficiencies cited in 115.112(e)(3).	Clarifies duty to comply in HGB area by July 20, 2018.
	115.112(e)(3)(A)(*i-iii*)—increases control efficiency requirements for VOC control devices, other than flares or vapor recovery devices, from 90% efficiency to 95% efficiency as of July 20, 2018.	Represents an increased level of VOC control in the HGB area on the date of implementation.
	115.112(e)(5)—Word change applies the requirement to control VOC emissions from aggregated storage tanks at pipeline breakout stations in the HGB NA area.	Change will reduce VOC emissions in the HGB area by requiring greater control of VOC emissions from pipeline break out stations in the area.
	115.112(e)(6)—Minor word changes, changes ''subparagraphs'' to read ''subparagraph''.	Non substantive.
	115.112(e)(7)—Adds crude oil and condensate storage tanks in HGB area to sources required to maintain flash emission control devices per manufacturer recommendations or good Engineering Practice.	Will aid in compliance and VOC emissions reductions.
115.114 Inspection Requirements	115.114(a)(5), adds inspection requirement of closure devices controlling VOC flash gassing on fixed roof storage tanks storing crude oil or condensate prior to custody transfer or at pipeline breakout stations in the HGB area.	Will reduce potential for VOC emissions in the HGB area.
115.118 Recordkeeping Requirements	Changes to 115.118(a)(6)(D)—Expands the requirement to keep records detailing standards used to maintain tanks and tank closure devices to sources in the HGB NA area. This recordkeeping requirement now applies to owner/operators (O/Os) of storage tanks used to store crude oil or condensate prior to custody transfer, or at a pipeline breakout station, in the HGB area and required to control flash emissions via 115.112(e).	Recordkeeping will enhance compliance and enforcement of control requirements.
	Changes to 115.118(a)(6)(E) expands requirement to maintain record of inspection results and required repairs in 115.112(e)(7) or 115.114(a)(5) to sources in HGB area by eliminating the phrase limiting this requirement to the Dallas-Fort Worth area and making a minor wording change to the paragraph.	Recordkeeping will enhance compliance and enforcement of control requirements.
	New requirement in 115.118(a)(7) for O/Os to maintain any record created after January 1, 2017, in the HGB NA area, for five years at a minimum.	Applies five-year recordkeeping requirement to affected sources in the HGB area. This is expected to enhance compliance and enforcement of the rules.
115.119 Compliance Schedules	Changes to 115.119(a)(1), clarifies existing sources in HGB NA area should comply with control requirements in 115.112(e)(1)–(6), rather than the earlier reference to 115.112(e) in its entirety. The changes to the language distinguish between compliance dates for exiting requirements in the HGB NA area under 115.112(e)(1)–(6) and the new requirement for the HGB NA area under 115.112(e)(7).	Clarifies applicability and will result in increased compliance and reduced regulatory confusion.

TABLE 1—SUMMARY OF SUBSTANTIVE REVISIONS TO 30 TAC § 115 PROPOPED FOR APPROVAL—Continued
[Subchapter B, Division 1, Storage of Volatile Organic Compounds]

Section amended	Amendment	Comments
	Additional sentence expressly states the requirement to comply with 90% control efficiency requirement [see 115.112(e)(3)(A)(i)] in the HGB area no longer applies beginning July 20, 2018. Therefore, all control devices in the area must meet the 95% DRE requirement after that date. Also, some ministerial changes to conform with current formatting practices for state rules were made.	Represents an increased level of VOC control in the HGB area on the date of implementation. Ministerial changes are non-substantive.
	Changes to 115.119(a)(2) clarifies existing sources in HGB area should comply with control requirements in 115.112(e)(1)–(6), rather than the earlier reference to 115.112(e) in its entirety. The changes to the language distinguish between compliance dates for exiting requirements in the HGB NA area under 115.112(e)(1)-(6) and the new requirement for the HGB NA area under 115.112(e)(7).	Clarifies applicability and should result in increased compliance and reduced regulatory confusion.
	Additional wording expressly states the requirement to comply with 90% DRE [see 115.112(e)(3)(A)(i)] is in effect in the HGB area for an affected source until the source complies with the 95% control efficiency stated in 115.112(e)(3)(A)(ii) or July 20, 2018 at the latest.	Full compliance represents an increased level of VOC control in the HGB NA area and will result in reduced VOC emissions in the area on the date of implementation.
	New paragraph 115.119(a)(3) is added requiring compliance with new control standards, inspection and record keeping requirements for affected sources in the HGB NA area as soon as practicable, but not later than July 20, 2018.	Clarifies early compliance is desirable and establishes a final date to comply. Expected to simplify compliance and enforcement.

IV. Incorporation by Reference

In this action, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office.

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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, 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 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 proposed 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 20, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–13651 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2003–0010; FRL–9979–86—Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete 101 residential parcels of the Omaha Lead Superfund site located in Omaha, Nebraska, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, is

an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state of Nebraska, through the Nebraska Department of Environmental Quality, determined that all appropriate response actions under CERCLA were completed at the identified parcels. However, this deletion does not preclude future actions under CERCLA.

This partial deletion pertains to 101 residential parcels. The remaining parcels will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received on or before July 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2003–0010, by one of the following methods:

- *https://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email: hagenmaier.elizabeth@epa.gov* or *freeman.tamara@epa.gov.*
- *Mail:* Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 Attention: Elizabeth Hagenmaier, SUPR Division or Tamara Freeman, ECO Office.
- *Hand delivery:* Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2003–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The docket contains the information that was the basis for the partial deletion, specifically the documentation regarding the results of soil cleanup activities. Information regarding the optional voluntary cleanup activities such as the lead-based paint stabilization and interior dust sampling is not provided in the docket but is available from EPA on a case-by-case basis. Certain other material, such as copyrighted material, will be publicly available only in the hard copy.

All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at: USEPA Region 7 Records Center at 11201 Renner Boulevard, Lenexa, Kansas 66219, between 8:00 a.m. and 4:00 p.m.

The Omaha public libraries also have computer resources available to assist the public. The W Dale Clark Library, located at 215 S 15th Street, Omaha, NE 68102 is centrally located within the site boundary.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hagenmaier, Remedial Project Manager, Environmental Protection Agency, Region 7, SUPR/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7939, email: *hagenmaier.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Background and Basis for Intended Partial Site Deletion

I. Introduction

EPA Region 7 is proposing to delete 101 residential parcels of the Omaha Lead Superfund site, from the NPL and is requesting public comment on this proposed action. The table of 101 Properties Proposed for the Third Partial Deletion of Properties from the Omaha Lead Superfund site 2018 (EPA–HQ–SFUND–2003–0010–1900) identifies specific properties included for this proposed partial deletion. The location of the 101 properties are shown on Figure 1 ''2018 Partial Deletion Omaha Lead Site'' (EPA–HQ–SFUND–2003–0010–1895). The NPL constitutes appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERLA as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund, or Fund. This partial deletion of the Omaha Lead Superfund site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List and 60 FR 55466 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete this site for

thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the 101 residential parcels of the Omaha Lead Superfund site and demonstrates how they meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the 101 residential parcels of the Site:

(1) EPA consulted with the state before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the state 30 working days for review of this action prior to this publication.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The state of Nebraska, through the Nebraska Department of Environmental Quality, has concurred with the deletion of the 101 residential parcels of the Omaha Lead Superfund site, from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, Omaha World Herald. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, and made these items available for public inspection and copying at the site information repositories identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete the 101 residential parcels. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the 101 residential parcels of the Omaha Lead Superfund site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Background and Basis for Intended Partial Site Deletion

The following information provides EPA's rationale for deleting the 101 residential parcels of the Omaha Lead Superfund site from the NPL, as previously identified.

Site Background and History

The Omaha Lead Superfund site, or OLS, [CERCLIS ID #NESFN0703481]) includes surface soils present at residential properties, child-care centers, and other residential-type properties in the city of Omaha, Douglas County, Nebraska. The properties were contaminated as a result of deposition of aerial emissions from historic lead smelting and refining operations. The OLS encompasses the eastern portion of the greater metropolitan area in Omaha, Nebraska. The site extends from the Douglas-Sarpy County line on the south, north to Read Street and from the Missouri River on the east to 56th Street on the west. The site is centered around downtown Omaha, Nebraska, where two former lead-processing facilities operated. American Smelting and Refining Company, Inc., or ASARCO, operated a lead refinery at 500 Douglas Street in Omaha, Nebraska, for over 120 years. Aaron Ferer & Sons Company, and later Gould Electronics, Inc., operated a lead battery recycling plant located at 555 Farnam Street. Both ASARCO and Aaron Ferer/Gould facilities released lead-containing particulates into the atmosphere from their smokestacks. The lead particles were subsequently deposited on surrounding residential properties.

Beginning in 1984, the Douglas County Health Department, or DCHD monitored ambient air quality around the ASARCO facility. This air monitoring routinely measured ambient air lead concentrations in excess of the ambient air standard. Between 1972 and 1998 the DCHD measured the blood lead level in children within the county. The results of the measurements indicated a high incidence of elevated blood lead level in children. Blood lead screening of children living in zip codes located east of 45th Street consistently exceeded 10 micrograms per deciliter (μg/dl) more frequently than children living elsewhere in the county.

In 1998, the Omaha City Council requested assistance from the EPA to address the high incidence of children found with elevated blood lead levels by the DCHD. In 1999, the EPA initiated an investigation into the lead contamination under the authority of CERCLA. On April 30, 2003, the OLS was listed on the NPL (68 FR 23077).

The OLS includes those residential properties where EPA determined through soil sampling that soil lead levels represent an unacceptable risk to human health. Residential properties where soil sampling indicates that lead concentrations in the soil are below a level that represent an unacceptable risk

are not included in the Site. Residential properties include those with high accessibility to sensitive populations (children seven years of age and younger [0 to 84 months] and pregnant or nursing women). The properties include single and multi-family dwellings, apartment complexes, child daycare facilities, vacant lots in residential areas, schools, churches, community centers, parks, greenways, and any other areas where children may be exposed to site-related contaminated media. Commercial and industrial properties are excluded from the definition of the Site.

The residential properties proposed for deletion from the NPL site were cleaned up under both CERCLA removal and remedial authority. Regardless of the authority used for the remediation of yards, the cleanup levels for soils for all the properties proposed for deletion were the same.

Response Actions

The initial EPA response was conducted under CERCLA removal authority. Due to the size of the site and the very large number of individual properties, it was necessary to prioritize sites for cleanup. The prioritization was based on factors such as the elevated blood level of children at each property and the lead concentration in the soil at each property. The result was a series of action levels that reflected the priority of categories of sites. Consequently, the action level for the site changed over time from 2,500 mg/kg to 400 mg/kg, as the highest priority sites were cleaned up first. The cleanup level was established using the Integrated Exposure Uptake Biokinetic, or IEUBK model to determine the concentration to which the lead is cleaned up at each property within the site. The cleanup level for the OLS is 400 mg/kg of lead in the soil. The cleanup level of 400 mg/kg was selected to allow for unlimited use and unrestricted exposure. The cleanup level has not changed, and all properties, regardless of the action level, were cleaned up to 400 mg/kg.

Removal Activities

Beginning in March 1999, the EPA began collecting soil samples from properties that provided licensed child daycare services. The initial removal action dated August 2, 1999, consisted of excavation and replacement of contaminated soil where the lead concentration exceeded the action levels identified in the Action Memorandum. Response actions were implemented at properties that met either of the following criteria:

- A child seven years of age or younger (0 to 84 months) residing at the property was identified with an elevated blood level, or EBL exceeding 15 µg/dl (this EBL was reduced to 10 µg/dl in August 2001) and a soil sample collected from a non-foundation quadrant exhibited lead concentrations greater than 400 mg/kg, or
- A property was a used as a child-care facility and a soil sample collected from a non-foundation quadrant exhibited a lead concentration greater than 400 mg/kg.

On August 22, 2002, EPA initiated a second removal action. This second removal action included all other residential type properties where the maximum non-foundation soil lead concentration exceeded an action level of 2,500 mg/kg. The 2002 Action Memorandum explicitly identifies the possibility of lead-based paint as a potential contributor to lead contamination of soils within thirty inches of the foundation of a painted structure. Due to the potential contribution of deteriorating lead-based paint near the foundations of structures, a lead concentration greater than 400 mg/kg in the soil in the drip zone (areas near structure foundations) was not, in itself, sufficient to trigger soil removal. However, if a soil sample from any mid-yard quadrant exceeded the action level, soil was removed from all areas of the property exceeding the 400 mg/kg cleanup level, including the drip zone. In November 2003, EPA amended the second removal action to reduce the action level to 1,200 mg/kg. In March 2004, EPA amended the second removal action to combine the two removal actions. In March 2005, EPA amended the removal action to reduce the action level from 1,200 mg/kg to 800 mg/kg.

At properties determined to be eligible for response under either of the Action Memoranda soil with lead concentrations greater than the cleanup level was excavated and replaced with clean soil and the excavated areas were revegetated.

Beginning with the construction season of 2005, the scope of the removal action was expanded to address the requirements of the 2004 Interim ROD to include: (1) Stabilization of deteriorating exterior lead-based paint at properties where the continued effectiveness of the soil remediation was threatened; (2) response to interior dust at properties where interior dust lead levels exceeded applicable criteria; (3) public health education; and (4) participation in a comprehensive remedy with other agencies and organizations that addresses all identified lead hazards in the Omaha community.

Remedial Investigation/Feasibility Study (RI/FS)—Human Health Risk Assessment

As part of the RI/FS EPA developed a Human Health Risk Assessment, or HHRA for the site using site-specific information collected during the OLS Remedial Investigation. Lead was identified as the primary contaminant of concern. The HHRA also identified arsenic as a potential contaminant of concern, but arsenic was eliminated based on its relatively low overall risk to residents and lack of connection to the release from the industrial sources being addressed by this Superfund action.

The risk assessment for lead focused on young children under the age of seven (0 to 84 months) who are site residents. Young children are most susceptible to lead exposure because they have higher contact rates with soil or dust, absorb lead more readily than adults, and are more sensitive to the adverse effects of lead than are older children and adults. The effect of greatest concern in children is impairment of the nervous system, including learning deficits, reduced intelligence, and adverse effects on behavior. The IEUBK model for lead in children was used to evaluate the risks posed to young children (0 to 84 months) resulting from the lead contamination at the site. Because lead does not have a nationally-approved reference dose (RfD), cancer slope factor, or other accepted toxicological factor which can be used to assess risk, standard risk assessment methods cannot be used to evaluate the health risks associated with lead contamination. The modeling results determined that there was an unacceptable risk to young children from exposure to soils above 400 mg/kg.

In October 2008, EPA released a draft Final Remedial Investigation. Based on the 2008 data set, EPA established the boundary of the Final Focus Area for the Site. The Final Focus Area is generally bounded by Read Street to the north, 56th Street to the west, Harrison Street (Sarpy County line) to the south, and the Missouri River to the east, and encompasses 17,280 acres (27.0 square miles). By the time the Final Remedial Investigation was completed, EPA had collected soil samples from 37,076 residential properties, including 34,565 properties within the Final Focus Area's boundary. In total, 34.2 percent of properties sampled through completion of the 2008 RI had at least one mid-yard sample with a soil lead level exceeding

400 mg/kg. In addition to soil sampling, EPA collected dust samples from the interior of 159 residences to support the OLS Human Health Risk Assessment.

Record of Decision

EPA completed the Final Record of Decision, or ROD for the OLS in May 2009. The Remedial Action Objective is to reduce the risk of exposure of young children to lead such that an individual child, or group of similarly exposed children, have no greater than a 5 percent chance of having a blood-lead concentration exceeding 10 µg/dl. The selected remedy includes the following components:

- Excavation and Replacement of Soils Exceeding 400 mg/kg Lead
- Stabilization of Deteriorating Exterior Lead-Based Paint
- Response to Lead-Contaminated Interior Dust
- Health Education
- Operation of a Local Lead Hazard Registry as a type of Institutional Control

Each of these components is described below.

Remedial Actions

Excavation and Replacement of Soils Exceeding 400 mg/kg Lead

Excavation of soils was accomplished using lightweight excavation equipment and hand tools in the portions of the yard where the concentration of lead in the surface soil exceeded 400 mg/kg. Excavation continued in all quadrants, play zones, and drip zone areas exceeding 400 mg/kg lead until the residual lead concentration measured at the exposed surface of the excavation was less than 400 mg/kg in the upper foot, or less than 1,200 mg/kg at depths greater than one foot. Typically, soil excavation depths were between six and ten inches in depth. Soils in garden areas were excavated until reaching a residual concentration of less than 400 mg/kg in the upper two feet measured from the original surface, or less than 1,200 mg/kg at depths greater than two feet.

After confirmation sampling verified that cleanup goals were achieved, the excavated areas were backfilled with clean soil to original grade and sod was placed over the remediated areas.

EPA's remediation contractors stockpiled contaminated soil in staging areas, collected samples, and subsequently transported soil to an off-site subtitle D solid waste disposal landfill for use as daily cover and/or disposal.

Stabilization of Deteriorating Exterior Lead-Based Paint

EPA used the lead-based paint assessment protocol, presented in the Final Lead-Based Paint Recontamination Study Report prepared for the OLS, to determine eligibility for exterior lead-based paint stabilization at those properties where soil lead concentrations exceeded 400 mg/kg. At those properties where the exterior lead-based paint assessment identified a threat from deteriorating paint to the continued protectiveness of the soil remedy, the owner of the property was offered stabilization of painted surfaces on structures located on the property. Exterior lead-based paint stabilization is not mandatory and was provided to those qualifying property owners who chose to have their exterior paint stabilized. Removal of loose and flaking lead-based paint was performed using lead-safe practices as described in EPA's Renovate, Repair and Painting Rule. The practices include wet scraping, and collection of paint chips using plastic sheeting. Scraped areas were primed and all previously painted surfaces had two coats of paint applied.

Response to Lead-Contaminated Interior Dust

As part of the final remedy, residents at eligible properties are provided the opportunity to have interior dust sampled. The interior dust response is not mandatory, and the resident may choose to decline. If the property owner agrees, EPA collects samples of dust from interior surfaces. The analytical data is provided to the resident/tenant in a letter and the letter informs them whether any HUD criteria are exceeded. The DCHD conducts follow up activities at any residence where the concentration of lead in the interior dust levels exceed the HUD criteria. For those residences that qualify and where the resident agrees, the residents are provided with a high-efficiency household vacuum cleaner, training on the maintenance and the importance of proper usage of the vacuum, and education on mitigation of household lead hazards. The DCHD also provides training and education regarding the need to mitigate interior dust.

Exterior lead-based paint stabilization and interior dust response were conducted retroactively at properties where soil cleanups were performed under CERCLA removal authority, as well as to properties addressed under CERCLA remedial authority.

Health Education

There are a number of identified lead hazards within the OLS, not all of which are connected to the contaminant source of the OLS. To better address all potential lead sources within the OLS, a health education program was developed and continues to be implemented to increase public awareness and mitigate exposure. An active educational program continues in cooperation with agencies and organizations that include ATSDR, the Nebraska Department of Health and Human Services, or NDHHS, DCHD, local non-governmental organizations, and other interested parties. The following, although not an exhaustive list, indicate the types of educational activities provided at the Site:

- Support for in-home assessments for children identified with elevated blood lead levels.
- Development and implementation of lead poisoning prevention curriculum in schools.
- Support for efforts to increase community-wide blood lead monitoring.
- Physicians' education for diagnosis, treatment, and surveillance of lead exposure.
- Operation of Public Information Centers to distribute information, and respond to questions about the EPA response activities and lead hazards in the community.
- Use of mass media (television, radio, internet, print media, etc.) to distribute health education messages.
- Development and distribution of informational tools such as fact sheets, brochures, refrigerator magnets, etc., to inform the public about lead hazards and measures that can be taken to avoid or eliminate exposure.

Institutional Controls

The Omaha Lead Registry, (available at *www.omahalead.org*) is a geographic information system, or GIS, based database that provides the public with on-line access to the status of the EPA investigation and response actions. EPA notifies residents and property owners about the information that is available through the lead hazard registry as part of the transmittal sent at the completion of soil remediation at each individual property.

Community Involvement

EPA worked extensively with the Omaha community through a variety of communication vehicles including, but not limited to: Local speaking engagements, participation in citizens' groups and city council meetings, local public access television, public service

announcements on local cable television, coverage on radio, television, in local and national newspapers, mass mailings of informational materials, public outreach by telephone, conducting public meetings, and through the EPA website.

EPA has been performing outreach to Omaha citizens, elected officials, school officials, health officials, the media, nonprofit groups, and others since becoming involved in the project in an effort to convey information about the hazards of lead poisoning, particularly the ways that lead affects the health of children. The EPA participated in numerous formal and informal meetings to explain EPA's role and commitment in Omaha, convey information about the Superfund process, and provide general information about the site and lead contamination. EPA responds to inquiries on a daily basis regarding the site and individual property owner's sampling results.

In January 2004, a Community Advisory Group, or CAG was formed for the OLS site. A CAG is a committee, task force, or board made up of residents affected by a Superfund site. They provided a public forum where representatives with diverse community interests could present and discuss their needs and concerns related to the site and the cleanup process. The CAG was discontinued after the last meeting was held in October 2011. A new group, Child Lead Poisoning Prevention Group, formed. The first meeting of the Child Lead Poisoning Group was held at City Hall in May 2012. The Group is no longer active.

Five-Year Review

EPA completed the first Five-Year Review for the site in September 2014. Five-Year Reviews for the site are statutory. The triggering action for the Five-Year Review is the completion of the Final Record of Decision for Operable Unit 2, completed in May 2009.

The protectiveness of the remedy was deferred in the Five-Year Review because the remedy had not been completed at all of the properties within the site boundary. However, cleanup activities at the 101 residential parcels included in this partial deletion action are complete and protective of human health. There are no issues or recommendations in the Five-Year Review related to these 101 residential parcels proposed for deletion.

The next Five-Year Review will be completed in 2019.

Summary of EPA Work Completed

Soil Testing and Remediation

EPA Region 7 completed the EPA lead portion of the remedial action on December 29, 2015. The city of Omaha and the DCHD will be performing the remaining field work. As of December 29, 2015, EPA collected soil samples from 42,047 properties. There are 489 remaining properties to be sampled. The EPA has obtained access to collect samples from 163 of the 489 properties.

Based on the soil sampling results, 14,019 properties were eligible for soil remediation. The EPA remediated lead contaminated soil at 13,090 properties (93 percent) of the properties that were eligible for remediation. There are approximately 929 remaining properties that are eligible for soil remediation. The EPA obtained access to remediate fifty-one of the remaining properties.

Lead-Based Paint Testing and Stabilization

The EPA tested 12,057 properties for the presence of lead-based paint, or LBP. 6,782 properties qualify for LBP stabilization. The EPA completed LBP stabilization on 6,249,(92 percent) of the eligible properties.

Dust Sampling

The EPA collected dust samples from 3,933 properties consisting of 4,477 residences for lead contaminated dust. These numbers reflect the fact that some of the properties are multi-residence properties.

Continuing Remedial Action

EPA completed Cooperative Agreements with the city of Omaha and the DCHD that provide funds to allow these local government agencies to continue efforts to obtain access to the remaining properties and conduct sampling and remediation activities at those properties where they obtain access.

Determination That the Criteria for Deletion Has Been Achieved

In accordance with 40 CFR 300.425(e), Region 7 of the EPA finds that the 101 residential parcels of the Omaha Lead Superfund site (the subject of this deletion) meet the substantive criteria for deletion from the NPL. EPA has consulted with and has the concurrence of the state of Nebraska. All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

The implemented remedy at the 101 residential parcels have achieved the degree of cleanup specified in the ROD for all pathways of exposure. All selected remedial action objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental Protection, Air Pollution Control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 13, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2018–13720 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 13, 18, and 26

[FAR Case 2017–009; Docket No. 2017–0009, Sequence No. 1]

RIN 9000–AN45

Federal Acquisition Regulation: Special Emergency Procurement Authority

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 to expand special emergency procurement authorities for acquisitions of supplies or services that facilitate defense against or recovery from cyber attack, provide international disaster assistance under the Foreign Assistance Act of 1961, or support response to an emergency or major disaster under the

Robert T. Stafford Disaster Relief and Emergency Assistance Act.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 27, 2018 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2017–009 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2017–009'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–009''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–009'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite ''FAR Case 2017–009'' in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite ''FAR Case 2017–009''.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this proposed rule is to implement sections 816 and 1641 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). Sections 816 and 1641 modify 41 U.S.C. 1903, Special Emergency Procurement Authority. The revisions to 41 U.S.C. 1903 establish special emergency procurement authorities to allow for higher micro-purchase and simplified acquisition thresholds for acquisitions of supplies or services that facilitate defense against or recovery from cyber attack; support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 *et seq.;* or support responses to an emergency or major disaster (42 U.S.C. 5122), except that this new authority allows treatment of acquisitions, for property or a service, as a commercial item only for acquisitions to facilitate the defense against or recovery from a cyber attack against the United States.

II. Discussion and Analysis

This proposed rule provides for the following:

1. Definitions.

At FAR 2.101, definitions of ''emergency'' and ''major'' disaster'' were added to explain two of the new circumstances that can trigger the new emergency procurement authorities. The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council (the Councils) did not add a definition of ''cyber attack'' because there was no statutory definition, and the Councils did not want to limit the authority of the head of the agency to determine what constituted a cyber attack that should trigger the new authorities. There was also no statutory definition of ''international disaster assistance''; however, the reference to 22 U.S.C. 2292 *et seq.* provides additional guidance.

Under the micro-purchase threshold, paragraph (3), and simplified acquisition threshold, paragraph (1), new language was added to include the expanded special emergency procurement authorities.

2. The new circumstances that allow exercise of the special emergency procurement authorities were added to the relevant provisions that govern the micro-purchase threshold at FAR 13.201(g)(1) and the simplified acquisition procedures for certain commercial items at FAR 13.500(c). However, only the new circumstance of acquiring supplies or services to facilitate defense against or recovery from a cyber attack was added at FAR 12.102(f)(1), because acquisitions of supplies or services under the other new circumstances are not to be treated as an acquisition of commercial items.

3. FAR part 18 provides a summary of emergency acquisition flexibilities throughout the FAR, so the changes in parts 2, 12, and 13 are reflected in conforming changes to part 18.

4. Other conforming changes.

- Cyber attack was added to the policy on market research at FAR 10.001. This section already addresses market research in furtherance of disaster or emergency relief activities.
- At FAR subpart 26.2, Disaster or Emergency Assistance Activities, a new paragraph (b) was added at FAR 26.202 to clarify the link between the Stafford Act and the increased micro-purchase and simplified acquisition thresholds.

III. Expected Impact of the Proposed Rule and Proposed Cost Savings

Prior to enactment of the NDAA for FY 2017, for acquisitions of supplies or services that are to be used to support a contingency operation, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, agencies had the authority, as provided in FAR part 13, to utilize the higher micro-purchase threshold (MPT) of $20,000 in lieu of $3,500 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States (except for acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate requirements (Construction)). Additionally, prior to the enactment of the NDAA for FY 2017, agencies had the authority, as provided in FAR part 13, to utilize the higher simplified acquisition threshold (SAT) of $750,000 in lieu of $150,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and $1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and utilize the higher threshold of $13 million in lieu of $7 million for use of simplified acquisition procedures (SAP) for the acquisition of commercial items (including acquisitions treated as acquisitions of commercial items to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack).

This proposed rule expands the use of the special emergency procurement authorities to apply to acquisitions of supplies or services that facilitate defense against or recovery from a cyber attack; support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 *et seq.;* or support a response to an emergency or major disaster (42 U.S.C. 5122).

DoD, GSA, and NASA have performed a regulatory cost analysis on this proposed rule. The following is a summary of the estimated public and Government cost savings, which are

calculated in 2016 dollars at a 7 percent discount rate.

Public Cost Savings

This rule will impact all businesses that submit offers in response to Federal solicitations issued for acquisitions below the MPT and SAT, if the solicitation is for an estimated value that falls within the range between the basic MPT or SAT and the higher threshold now authorized, thereby reducing the requirements imposed on the offerors when responding to the solicitation.

The estimated annualized public savings, using a discount rate of 7 percent is $1,327,836 (approximately $677,506 to other than small businesses and $650,330 to small business), with a present value savings of $18,969,086.

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''FAR Case 2017–009,'' click ''Open Docket,'' and view ''Supporting Documents.''

DoD, GSA, and NASA welcome comments on both the methodology and the analysis during the public comment period for this rule.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is considered to be an E.O. 13771 deregulatory action. Details on the estimated cost savings can be found in Section III of this preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act codified at 5 U.S.C. 601 *et seq.* because the rule reduces compliance burdens on small entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

This rule implements sections 816 and 1641 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), which amend 41 U.S.C. 1903.

This rule expands special emergency procurement authorities for acquisitions of supplies or services that—

- Facilitate defense against or recovery from a cyber attack;
- Provide international disaster assistance under the Foreign Assistance Act of 1961; or
- Support response to an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The legal authority for this rule is sections 816 and 1641 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), which amend 41 U.S.C. 1903.

Based on an average of contract actions reported in the Federal Procurement Data System for fiscal years 2014–2016, this rule applies to less than 100 small entities that submit offers in response to solicitations for the acquisition of supplies or services—

- Between $3,500 and $20,000 or between $150,000 and $750,000, to support response to emergencies or major disasters in the U.S.;
- Between $3,500 and $30,000 or between $150,000 and $1.5 million, to provide international disaster assistance under the Foreign Assistance Act of 1961; and
- Between $150,000 and $750,000 to facilitate defense against or recovery from cyber attacks.

This rule reduces compliance requirements on small entities, resulting in estimated savings to affected small entities of approximately $650,330 in the first year. The professional skill-sets previously required before these threshold increases were mid-level journeyman.

This rule reduces burdens on small entities, based on statutorily increased special emergency procurement authority. There are no alternatives consistent with the statute that would further reduce burdens on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–009) in correspondence.

VIII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that would require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 18, and 26

Government procurement.

Dated: June 21, 2018.

William F. Clark,

Director, Office of Government-wide, Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 2, 10, 12, 13, 18, and 26 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 10, 12, 13, 18, and 26 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by—

■ a. Adding in alphabetical order the definitions ''*Emergency*'' and ''*Major disaster*'';

■ b. Revising paragraph (3) of the definition ''*Micro-purchase threshold*'';

and

■ c. Revising paragraph (1) of the definition ''*Simplified acquisition threshold*''.

The additions and revisions read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Emergency, as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2, means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122).

* * * * *

Major disaster, as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2, means any natural

catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).

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Micro-purchase threshold * * *

* * * * *

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 *et seq.;* or to support response to an emergency or major disaster (42 U.S.C. 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

(i) $20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

Simplified acquisition threshold means $150,000 (41 U.S.C. 134), except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 *et seq.;* or to support response to an emergency or major disaster (42 U.S.C. 5122), (41 U.S.C. 1903), the term means—

(i) $750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

* * * * *

PART 10—MARKET RESEARCH

10.001 [Amended]

■ 3. Amend section 10.001 by removing from paragraph (a)(2)(vi)(A) ''recovery from'' and adding ''recovery from cyber,'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 4. Amend section 12.102 by removing from paragraph (f)(1) ''recovery from'' and adding ''recovery from cyber,'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.201 by revising paragraph (g) to read as follows:

13.201 General.

* * * * *

(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 *et seq.;* or to support response to an emergency or major disaster (42 U.S.C. 5122), the micro-purchase threshold is—

(i) $20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation; or the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; international disaster assistance; or an emergency or major disaster.

* * * * *

■ 6. Amend section 13.500 by revising paragraph (c)(1) to read as follows:

13.500 General.

* * * * *

(c) * * *

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation; to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster; or

* * * * *

PART 18—EMERGENCY ACQUISITIONS

■ 7. Amend section 18.001 by—

■ a. Revising paragraph (b);

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

■ c. Adding a new paragraph (c).

The revision and addition read as follows:

18.001 Definition.

* * * * *

(b) To facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States;

(c) In support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance; or

* * * * *

■ 8. Revise section 18.202 to read as follows:

18.202 Defense or recovery from certain events.

(a) *Micro-purchase threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster. (See 2.101.)

(b) *Simplified acquisition threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster. (See 2.101.)

(c) *Treating certain items as commercial.* Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack. (See 12.102(f)(1) and 13.500(c)(2).)

(d) *Simplified procedures for certain commercial items.* The threshold limits authorized for use of this authority may be increased when it is determined the acquisition is to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster. (See 13.500(c).)

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 9. Revise the heading for subpart 26.2 to read as follows:

Subpart 26.2—Major Disaster or Emergency Assistance Activities

* * * * *

■ 10. Amend section 26.202 by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

26.202 Local area preference.

* * * * *

(b) When using the authority under the Stafford Act, see the definitions of ''micro-purchase threshold'' and ''simplified acquisition threshold'' in 2.101 for the authority to use an increased micro-purchase threshold and simplified acquisition threshold.

[FR Doc. 2018–13730 Filed 6–25–18; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 83, No. 123

Tuesday, June 26, 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

June 21, 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 July 26, 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.

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.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Summary of Collection: Commodity Credit Corporation and the Farm Service Agency (FSA) programs require loans be secured with collateral. The security interest is created and attaches to the collateral when: (1) Value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. In order to perfect the security interest in collateral, a financing statement must be filed according to a State's Uniform Commercial Code. The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 affects the manner in which the CCC and FSA, as well as any other creditor, perfect and liquidate security interests in collateral.

Need and Use of the Information: FSA will collect information using form CCC–10. The information obtained on CCC–10 is needed to not only obtain authorization from loan applicants to file a financing statement without their signature, but also to verify the exact legal name and location of the debtor. If this information is not collected, CCC and FSA will not be able to disburse loans because a security interest would not be perfected.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 2,868.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 238.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–13676 Filed 6–25–18; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 21, 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 July 26, 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.

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.

Rural Housing Service

Title: Community Facilities Grant Program—7 CFR 3570–B.

OMB Control Number: 0575–0173.

Summary of Collection: The Rural Housing Service is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926), as amended, to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are available to all rural communities.

Need and Use of the Information: Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect the information could result in improper determinations of eligibility, improper use of funds, and or unsound loans.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 1,272.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,462.

Rural Housing Service

Title: Rural Rental Housing Program, 7 CFR part 3560.

OMB Control Number: 0575–0189.

Summary of Collection: The purpose of the Rural Rental Housing Program is to provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas. The Rural Housing Service (RHS) is authorized to collect the information needed to administer these various programs under Title V of the Housing Act of 1949, Section 515 Rural Rental Housing, Sections 514 and 516 Farm Labor Housing loans and grants, and Section 521 Rental Assistance.

Need and Use of the Information: Information is completed by developers and potential borrowers seeking approval of rural rental housing loans with assistance of professional such as attorneys, architects, and contractors and the operation and management of MFH properties in an affordable, decent, safe, and sanitary manner. The forms and information provide the basis for making determinations of eligibility and the need and feasibility of the proposed housing. The information collected by RHS is used to plan, manage, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

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

Number of Respondents: 507,200.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly, Annually.

Total Burden Hours: 1,113,828.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–13697 Filed 6–25–18; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0096]

Nuseed Americas Inc.; Availability of a Draft Plant Pest Risk Assessment and Draft Environmental Assessment for Canola Genetically Engineered for Altered Oil Profile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making available for public comment a draft plant pest risk assessment (PPRA) and draft environmental assessment (EA) for canola designated as event B0050–027, which has been genetically engineered to accumulate the long chain omega-3 fatty acid known as docosahexaenoic acid in seed. We are making the draft PPRA and draft EA available for public review and comment.

DATES: We will consider all comments that we receive on or before July 26, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0096.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents for this petition and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0096* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents for this petition are also available on the APHIS website at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS Petition Number 17–236–01p.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 17–236–01p) from Nuseed Americas Inc. (Nuseed) of Breckenridge, MN, seeking a determination of nonregulated status of canola (*Brassica* spp.) designated as event B0050–027, which has been genetically engineered to accumulate the long chain omega-3 fatty acid known as docosahexaenoic acid (DHA) in seed. The Nuseed petition states that information collected during field trials and laboratory analyses indicates that B0050–027 canola is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on December 11, 2017 (82 FR 58167–58168, Docket No. APHIS–2017–0096), APHIS announced the availability of the Nuseed petition for public comment. APHIS solicited comments on the petition for 60 days ending on February 9, 2018, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. APHIS received four comments on the petition. Two of the comments were from individuals and two were from the canola industry. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our draft environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its draft EA, preliminary finding of no significant impact (FONSI), and its draft plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and draft PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). For this petition, we are using Approach 2.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA, to provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS has prepared a draft PPRA and has concluded that canola designated as event B0050–027, which has been genetically engineered to accumulate the long chain omega-3 fatty acid known as docosahexaenoic acid (DHA) in seed, is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data submitted by Nuseed, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of canola designated as event B0050–027, or (2) make a determination of nonregulated status of canola designated as event B0050–027.

The draft EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) U.S. Department of Agriculture regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments on our draft EA and our draft PPRA regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 30 days from the date of this notice. Copies of the draft EA and the draft PPRA, as well as the previously published petition, are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the 30-day comment period closes, APHIS will review and evaluate any information received during the comment period and any other relevant information. After reviewing and evaluating the comments on the draft EA and the draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA. Based on the final EA, APHIS will prepare a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). If a FONSI is reached, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of the GE organism and the availability of APHIS' final EA, PPRA, FONSI, and our regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of June 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–13589 Filed 6–25–18; 8:45 am]

BILLING CODE 3410–34–P

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, the petition, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0096.*

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2012–0003]

RIN 3014–AA40

Proposed Information Collection; Comment Request; Wheelchair Seat Height Survey

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board or Board), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the public and other Federal agencies to comment on a proposed, new information collection, as required by the Paperwork Reduction Act of 1995 (PRA). With this notice, the Access Board solicits comments on its proposal to survey adult wheelchair users to gather data on their wheelchair seat heights and related demographics. Following review of comments received in response to this 60-day notice, the Access Board intends to submit a request to the Office of Management and Budget for approval of this information collection.

DATES: Submit Comments by August 27, 2018.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: marshall@access-board.gov.* Include docket number ATBCB–2012–0003 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Deliver/Courier:* Wendy Marshall, Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: To review submitted comments or other materials in the docket, go to *http://www.regulations.gov,* insert docket number ''ATBCB–2012–0003'' into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, Attorney Advisor, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111. Telephone: (202) 272–0043; Email address: *marshall@access-board.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA and its implementing regulations, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each ''collection of information'' they conduct or sponsor. See 44 U.S.C. 3501–3520; 5 CFR part 1320. ''Collection of Information,'' within the meaning of the PRA, includes agency-sponsored surveys that pose identical questions to ten or more persons, regardless of whether responses are mandatory or voluntary. *See* 44 U.S.C. 3502(3); *see also* 5 CFR 1320.3(c). Before seeking clearance from OMB, agencies are generally required to, among other things, publish a 60-day notice in the **Federal Register** concerning any proposed information collection and provide an opportunity for comment. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1). Accordingly, the Access Board is publishing notice of the proposed PRA-covered information collection discussed below.

A. Background: Access Board Final Rule Establishing Accessibility Standards for Medical Diagnostic Equipment

In January 2017, the Access Board issued a final rule that established accessibility standards for medical diagnostic equipment (MDE) used by health care providers—such as, examination tables, examination chairs, weight scales, mammography equipment, and other imaging equipment—to ensure that such equipment is accessible to, and usable by, persons with disabilities. 82 FR 2810. *See* Final Rule—Standards for Accessible Medical Diagnostic Equipment, 82 FR 2810 (Jan. 9, 2017) (codified at 36 CFR part 1195) (hereafter, ''MDE Standards'').

Among other things, the MDE Standards establish accessibility criteria relating to the height and adjustability of transfer surfaces on medical diagnostic equipment. Diagnostic equipment used by patients in supine, prone, side-lying or seated positions generally must have height-adjustable transfer surfaces with at least six specified positions: A low transfer height position (at 17–19 inches), A high transfer height position (at 25 inches), and four intermediate positions (separated by at least 1 inch). *See* 36 CFR 1195.1, Appendix, M301.2, M302.1. Height adjustability is critical for diagnostic equipment because research studies have shown that level (or near-level) transfer—that is, transfer to/from a wheeled mobility device to a surface that is at or near the same level vertically as the seat/seat cushion of that device—are easiest and require less exertion compared with ''uphill'' or ''downhill'' transfers. Specification of a height-adjustable range for transfer surfaces in the MDE Standards thus facilitates independent and semi-independent transfer to and from medical diagnostic equipment by patients with disabilities, enhances patient safety, and reduces the risk of injury for medical staff and caregivers.

Notably, as stated in the preamble to the final rule, the 17-to-19-inch height range for the low transfer height position is intended to be an interim standard only. *See* Final Rule, 82 FR at 2816 & 2831. The Access Board established an interim height-range specification for the low transfer position—as compared to a height-specific standard such as that specified for the high transfer height position—due to divergent views expressed by commenters (including disability advocates, academics, medical equipment manufacturers) concerning the appropriate minimum height for the low transfer position for medical diagnostic equipment. *Id.* at 2814–16 & 2831. Several academics and disability advocates opined that a 17-inch low height would provide the greatest number of individuals the opportunity to transfer independently. *Id.* at 2814–15. Manufacturers of medical diagnostic equipment, on the other hand, expressed a strong preference for a 19-inch low height because this transfer height was viewed as cost effective and consistent with the Board's other existing accessibility guidelines. *Id.* The advisory committee empaneled by the Access Board to provide recommendations for final MDE Standards also failed to reach consensus on a recommendation for a specific low transfer height. *Id.* at 2815–16.

Therefore, in the final rule, the Access Board declined to specify a single minimum-low-height requirement in the MDE Standards, explaining that ''there is insufficient data on the extent to which and how many individuals would benefit from a transfer height lower than 19 inches.'' *Id.* at 2816. Consequently, the MDE Standards specify a 17-to-19-inch height range as a ''temporary solution'' for the low height transfer position, with this height-range specification ''sunsetting'' five years after publication of the final rule (*i.e.*, January 2022). *Id.* at 2816 &

2831. We also noted, at that time, our intent to use this intervening period to commission research studies or otherwise garner additional information aimed at better elucidating the number of wheelchair users for whom a transfer surface positioned at a height less than 19 inches would likely provide improved access relative to higher transfer surfaces. *Id.* Informed by this additional information, the Access Board intends to initiate rulemaking—before the end of the sunset period—to revise the existing provisions in the MDE Standards that specify minimum height ranges for the low transfer position on medical diagnostic equipment. *Id.*

B. Wheelchair Seat Height Survey

The Access Board is authorized under section 510 of the Rehabilitation Act to develop (and periodically revise, as needed) minimum technical criteria for accessible medical diagnostic equipment used in healthcare settings. *See* 29 U.S.C. 794f. More generally, section 502 of the Rehabilitation Act also tasks the agency with promoting accessibility throughout society, as well as investigating and examining alternative approaches to various types of barriers confronting Americans with disabilities. *Id.* §§ 792(b)(4) & (b)(5).

In keeping with its statutory responsibilities under the Rehabilitation Act, the Access Board intends to conduct a national survey of adult wheelchair users to gather data on the seat height of their respective wheelchairs, as well as related demographic information. Data from this survey will be used to help inform the Board's subsequent rulemaking to update the MDE Standards through establishment of a minimum low transfer height position for medical diagnostic equipment. Additionally, the data and other information garnered from this survey will give the agency a better understanding of the adult, wheelchair-using population in the United States, and, thereby, aid our efforts to promote accessibility throughout American society and provide leadership in accessible design. To our knowledge, no published research or statistical compilations exist that examine adult wheelchair users' respective seat heights on a nationally-representative basis. The Access Board's wheelchair seat height survey aims to address this knowledge and statistical gap.

The Access Board has contracted with the Center for Inclusive Design and Environmental Access (IDeA Center) at the State University of New York at Buffalo to administer this wheelchair seat height survey and analyze the resulting data. The survey instrument is designed to capture the compressed seat height of each respondent's wheelchair, as well as basic demographic information about each respondent (*e.g.,* age, gender, geographic location, wheelchair type, nature of disability). The IDeA Center will use the results from this survey to, among other things, complete a cross-sectional study designed to estimate the prevalence of wheelchair users in the United States with seat heights below 19 inches.

The survey instrument will be distributed primarily via electronic mail, with an embedded link to a web-based survey. (Email and/or regular mail will be used to follow-up with individuals who have not completed the survey.) Targeted field studies may also be employed, as needed, to supplement the pool of survey respondents. Electronic invitations to participate in the survey will be sent to approximately 20,000 self-identified wheelchair users around the country using email addresses from a commercial database. Participation in the survey will be completely voluntary, and individuals may complete the survey at their own convenience. All survey responses will be anonymous.

C. Burden Estimates

The Access Board estimates that it will take respondents approximately 15 minutes to complete the brief, one-time survey instrument. This estimate includes the needed for reviewing survey instructions, locating a measuring device and helper/assistant, measuring seat height, and completing the survey instrument. We project that about 2,000 individuals will submit responses to this survey. Total estimated annual burden hours for this survey is, therefore, 500 hours (.25 hours × 2,000).

D. Request for Comments

The Access Board seeks comment on any aspect of its proposed wheelchair seat height survey, including: (a) The necessity of this survey to the Access Board's performance; (b) the accuracy of our burden estimates; (c) methods of minimizing this burden without reducing the quality of the collected data; and (d) suggestions to enhance the quality, utility, or clarity of the survey instrument. All relevant comments submitted to the Access Board will be summarized and included in our request for OMB approval of this information collection, as required under the PRA.

David M. Capozzi,

Executive Director.

[FR Doc. 2018–13625 Filed 6–25–18; 8:45 am]

BILLING CODE 8150–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: July 11, 2018, 1:00 p.m. EDT.

PLACE: U.S. Chemical Safety Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Wednesday, July 11, 2018 at 1:00 p.m. EDT in Washington, DC, at the CSB offices located at 1750 Pennsylvania Avenue NW, Suite 910. The Board will discuss open investigations, the status of audits from the Office of the Inspector General, financial and organizational updates, and a review of the agency's action plan. New business will include the release of the 2018–2021 Human Capital Plan.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the **CONTACT PERSON FOR FURTHER INFORMATION**, at least three business days prior to the meeting.

A conference call line will be provided for those who cannot attend in person. Please use the following dial-in number to join the conference:

Dial-In: (888) 862–6557
Confirmation Number: 47179969

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their

presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

CONTACT PERSON FOR FURTHER INFORMATION: Amy McCormick Driver, at *public@csb.gov* or (202) 261–7630. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

Dated: June 22, 2018.

Raymond Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2018–13872 Filed 6–22–18; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Charter Renewal of the U.S. Investment Advisory Council and Soliciting Nominations for Members

AGENCY: International Trade Administration, Global Markets, U.S. Department of Commerce.

SUMMARY: On April 6, 2018, the Department of Commerce Acting Chief Financial Officer and Assistant Secretary for Administration renewed the charter for the United States Investment Advisory Council (Council) for a two-year period, ending April 5, 2020. The Council is a federal advisory committee under the Federal Advisory Committee Act.

DATES: All applications for immediate consideration for appointment must be received by 5:00 p.m. Eastern Daylight Time (EDT) on Friday, July 27, 2018. After that date, applications will be accepted under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please submit applications by email to *IAC@trade.gov,* attention: Steven Meyers, SelectUSA, United States Investment Advisory Council Executive Secretariat, or by mail to Steven Meyers, SelectUSA, United States Investment Advisory Council, Room 30032, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Steven Meyers, Designated Federal Officer, SelectUSA, Room 30032, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: 202–482–2612 email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The United States Investment Advisory Council (Council) was established by the Secretary of Commerce (Secretary) pursuant to duties imposed by 15 U.S.C. 1512 upon the Department and in compliance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The Council functions solely as an advisory committee in accordance with the provisions of FACA. In particular, the Council advises the Secretary on government policies and programs that affect foreign direct investment (FDI), identifies and recommends programs and policies to help the United States attract and retain FDI, and recommends ways to support the United States in remaining the world's preeminent destination for FDI. The Council acts as a liaison among the stakeholders represented by the membership and provides a forum for the stakeholders on current and emerging issues regarding FDI.

The Council reports to the Secretary of Commerce on its activities and recommendations regarding FDI. In creating its reports, the Council is to survey and evaluate the investment and investment-facilitating activities of stakeholders, identify and examine specific problems facing potential foreign investors, and examine the needs of stakeholders to inform the Council's efforts. The Council is to recommend specific solutions to the problems and needs that it identifies.

Each member is to be appointed for a term of two years and serves at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the Council and his/her knowledge and advice is still needed.

The Council consists of no more than twenty members appointed by the Secretary. Members are to represent companies and organizations investing, seeking to invest, seeking foreign investors, or facilitating investment across many sectors, including but not limited to:

- U.S.-incorporated companies that are majority-owned by foreign companies or by a foreign individual or individuals, or that generate significant foreign direct investment (*e.g.,* through their supply chains);
- Companies or entities whose business includes FDI-related activities or the facilitation of FDI; and
- Economic development organizations and other U.S. governmental and non-governmental organizations and associations whose missions or activities include the promotion or facilitation of FDI.

Members are selected based on their ability to carry out the objectives of the Council, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the Council is balanced in terms of points of view, industry subsector, organization type, geography of the source and the destination of the FDI, and company size. Members are to represent a broad range of products and services and be drawn from large, medium, and small enterprises, private-sector organizations involved in investment, and other investment-related entities including non-governmental organizations, associations, and economic development organizations.

In selecting members, priority may be given to the selection of executives, *i.e.,* Chief Executive Officer, Executive Chairman, President, or an officer with a comparable level of responsibility. Members serve in a representative capacity, representing the views and interests of their sponsoring entity and those of their particular sector (if applicable). Members are not special government employees and will receive no compensation for their participation in Council activities. Members will not be reimbursed for travel expenses related to Council activities. Appointments to the Council shall be made without regard to political affiliation. All members must be a U.S. national.

The Secretary designates a Chair and Vice Chair from among the members. The Council will meet a minimum of two times a year, to the extent practical, with additional meetings called at the discretion of the Secretary or his/her designee. Meetings will be held in Washington, DC or elsewhere in the United States, or by teleconference, as feasible. Members are expected to attend a majority of Council meetings.

To be considered for membership, submit the following information by 5:00 p.m. EDT on Friday, July 27, 2018 to the email address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on the sponsoring entity's letterhead containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's experience and leadership related to foreign direct investment.
3. The applicant's personal resume and short bio (less than 300 words).
4. An affirmative statement that the applicant meets all eligibility criteria, including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. Information regarding the ownership and control of the sponsoring entity, including the stock holdings as appropriate.

6. The sponsoring entity's size, place of incorporation, product or service line, major markets in which the entity operates, and the entity's export or import experience.

7. A profile of the entity's foreign direct investment activities, including investment activities, investment plans, investment-facilitation activities, or other foreign direct investment activities.

8. Brief statement describing how the applicant will contribute to the work of the Council based on his or her unique experience and perspective (not to exceed 100 words).

9. All relevant contact information, including mailing address, fax, email, phone number, and support staff information where relevant.

Anthony Diaz,

Program Analyst, Global Markets, International Trade Administration.

[FR Doc. 2018–13546 Filed 6–25–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: On April 16, 2018, the Department of Commerce (Commerce) published a notice of initiation of an administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (China). Based on the timely withdrawal of the requests for review of certain companies, we are now rescinding this administrative review for the period February 1, 2017, through January 31, 2018, with respect to 191 companies.

DATES: Applicable June 26, 2018.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Anwesen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–0131, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2009, Commerce published in the **Federal Register** the antidumping duty order on small diameter graphite electrodes from China.[1] On February 1, 2018, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on small diameter graphite electrodes from China for the period of review February 1, 2017, through January 31, 2018.[2]

On February 28, 2018, Tokai Carbon GE LLC (the petitioner)[3] requested an administrative review of the order for 192 producers and/or exporters of the subject merchandise, including Fushun Jinly Petrochemical Carbon Co., Ltd.[4] In addition, on February 28, 2018, producer and exporter Fushun Jinly Petrochemical Carbon Co., Ltd. requested a review of itself.[5] On April 16, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on small diameter graphite electrodes from China with respect to 193 companies.[6] On May 4, 2018, the petitioner withdrew its administrative review request for 191 out of the 192 companies for which it requested a review.[7] See the *Initiation Notice* for the full list of companies for which Commerce initiated a review.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, the petitioner timely withdrew its review request, in part, by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order for the companies for which the petitioner withdrew its review request. Therefore, we are rescinding the administrative review of the antidumping duty order on small diameter graphite electrodes from China for the period February 1, 2017, through January 31, 2018, with respect to the 191 companies for which all review requests were withdrawn. The review will continue only with respect to the remaining company Fushun Jinly Petrochemical Carbon Co., Ltd, *aka* Fushun Jinli Petrochemical Carbon Co., Ltd.[8]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed on the subject merchandise at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could

[1] *See Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 8775 (February 26, 2009).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 4639 (February 1, 2018).

[3] Formerly, SGL Carbon LLC and Superior Graphite Co.

[4] *See* the petitioner's submission, ''Small Diameter Graphite Electrodes from the People's Republic of China—Request for Initiation of Antidumping Administrative Review,'' dated February 28, 2018. The petitioner's review request included Fushun *Jinli* Petrochemical Carbon Co., Ltd. (emphasis added).

[5] *See* Fushun Jinly Petrochemical Carbon Co., Ltd.'s, ''Small Diameter Graphite Electrodes from the People's Republic of China: Request for an Administrative Review,'' dated February 28, 2018. For purposes of this review, we are treating Fushun Jinli Petrochemical Carbon Co., Ltd. and Fushun Jinly Petrochemical Carbon Co., Ltd. as the same respondent company.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

[7] *See* the petitioner's submission, ''Small Diameter Graphite Electrodes from the People's Republic of China—Petitioner's Withdrawal of Certain Requests for Review,'' dated May 4, 2018. The petitioner withdrew its review request with respect to all companies except for Fushun Jinli Petrochemical Carbon Co., Ltd.

[8] In a prior administrative review of electrodes from China, we found that Fushun Jinly Petrochemical Carbon Co., Ltd. is the same entity as Fushun Jinli Petrochemical Carbon Co., Ltd. *See, e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review,* 77 FR 40854, 40856 n.3 (July 11, 2012). Consistent with this determination, and in the absence thus far of contrary evidence, we are treating these companies as the same entity. *See also* Memorandum, ''Antidumping Duty Administrative Review: Small Diameter Graphite Electrodes form the People's Republic of China—Respondent Selection,'' dated May 15, 2018.

result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 19, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–13671 Filed 6–25–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–864]

Steel Propane Cylinders From Taiwan: Termination of Less-Than-Fair-Value Investigation

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

SUMMARY: Based on Worthington Industries and Manchester Tank & Equipment Co.'s (the petitioners) withdrawal of the antidumping duty (AD) petition on steel propane cylinders from Taiwan, we are terminating the less-than-fair-value (LTFV) investigation.

DATES: Applicable June 26, 2018.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2018, Commerce received AD petitions concerning imports of steel propane cylinders from China, Taiwan and Thailand, filed on behalf of the petitioners.[1] On June 11, 2018, Commerce initiated the LTFV investigations of steel propane cylinders from China, Taiwan and Thailand, which were published in the **Federal Register** on June 18, 2018.[2] On June 14, 2018, the petitioners submitted a letter withdrawing the AD petition with respect to Taiwan.[3] Section 351.207(b)(1) of Commerce's regulations stipulates that the Secretary may terminate an investigation, provided it has concluded that termination of the investigation is in the public interest.[4] Because the petitioners have withdrawn their May 22, 2017, AD petition with respect to Taiwan, and have requested that Commerce terminate this investigation, we determine that termination of this investigation is in the public interest, pursuant to 19 CFR 351.207(b)(1).[5] Accordingly, pursuant to section 734(a)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.207(b)(1), we are terminating the LTFV investigation with respect to Taiwan.

Termination of Investigation

In accordance with section 734(a)(1)(A) of the Act and 19 CFR 351.207(b)(1), upon the petitioners' withdrawal of the Taiwan petition, we are terminating the LTFV investigation of steel propane cylinders from Taiwan.

Dated: June 20, 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.

[FR Doc. 2018–13675 Filed 6–25–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* the petitioners' letter, ''Steel Propane Cylinders from the People's Republic of China, Taiwan, and Thailand: Petition for the Imposition of Antidumping and Countervailing Duties,'' dated May 22, 2018 (the Petition). For the purposes of the instant notice, all references to 'the Petition' refer specifically to the AD Petition with respect to Taiwan.

[2] *See Steel Propane Cylinders from the People's Republic of China, Taiwan, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 28196 (June 18, 2018).

[3] *See* the petitioners' letter, ''Steel Propane Cylinders from the People's Republic of China, Taiwan, and Thailand: Withdrawal of Taiwan Antidumping Duty Petition,'' dated June 14, 2018.

[4] *See* 19 CFR 351.207(b)(1).

[5] *See* Withdrawal Letter at 1–2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–069, A–549–835]

Rubber Bands From the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable June 26, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger at (202) 482–2483 (People's Republic of China (China)) and Laurel LaCivita at (202) 482–4243 (Thailand), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 2018, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of rubber bands from China, Sri Lanka, and Thailand.[1] On March 19, 2018, the U.S. International Trade Commission (ITC) notified Commerce of its affirmative preliminary determination with respect to China and Thailand, its negligibility determination concerning imports of rubber bands from Sri Lanka, and its termination of its investigation of imports from Sri Lanka.[2] On March 22, the ITC published in the **Federal Register** a notice of its preliminary determination with respect to China and Thailand, and its determination that imports of rubber bands from Sri Lanka are negligible.[3] Because the ITC has terminated its investigation of rubber bands from Sri Lanka, Commerce's investigation is also terminated.[4] The preliminary determinations for China and Thailand

[1] *See Rubber Bands from the People's Republic of China, Sri Lanka, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 8424 (February 27, 2018).

[2] *See* the ITC's letter dated March 19, 2018 (Notification of ITC Preliminary Determinations); *see also Rubber Bands from China, Sri Lanka, and Thailand; Determinations,* 83 FR 12594 (March 22, 2018); *see also* ITC publication 4770 (March 2018), *Rubber Bands from China, Sri Lanka, and Thailand, Investigation Nos. 701–TA–598–600 and 731–TA–1408–1410* (*Preliminary*) at page 1.

[3] *See Rubber Bands from China, Sri Lanka, and Thailand; Determinations,* 83 FR 12594 (March 22, 2018).

[4] *See* 19 CFR 351.207(d) (stating that Commerce's investigation terminates automatically upon the publication in the **Federal Register** of the ITC's negative preliminary determination).

are currently due no later than July 10, 2017.

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[5]

On June 11, 2018, Alliance Rubber Co. (the petitioner) submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations in these LTFV investigations.[6] The petitioner stated that it requested postponement because Commerce is still conducting its antidumping investigations, and additional time is necessary for interested parties to respond to additional requests from Commerce.

For the reasons stated above and because there are no compelling reasons to deny the petitioner's request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than August 29, 2018. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of publication of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 20, 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.

[FR Doc. 2018–13672 Filed 6–25–18; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* 19 CFR 351.205(e).

[6] *See* letter from the petitioner, ''Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand and China—Petitioner's Request for Postponement of the Preliminary Determinations in the Antidumping Duty Cases,'' dated June 11, 2018.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF830

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction at the City Dock and Ferry Terminal, in Tenakee Springs, Alaska

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

ACTION: Notice; Issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with a city dock and ferry terminal improvement project in Tenakee Springs, Alaska.

DATES: This Authorization is applicable from June 1, 2019 through May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Molineaux, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-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.

An authorization for incidental takings shall be granted if NMFS finds that the taking shall have a negligible impact on the species or stock(s), shall 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.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On October 23, 2017, NMFS received a request from ADOT&PF for an IHA to take marine mammals incidental to conducting improvements at the Tenakee Springs city dock and ferry terminal, in Tenakee Springs, Alaska. The application was considered adequate and complete on January 30, 2018. ADOT&PF's request is for take of seven species of marine mammals by Level B harassment only. Neither ADOT&PF nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA IHAs to be issued for this particular activity.

Description of Activity

The ADOT&PF plans to make improvements to the Tenakee Springs Ferry Terminal located in Tenakee Springs, Alaska, on Chichigof Island in southeast Alaska (Figure 1–1 of the application). The facility is a multi-function dock and active ferry terminal located in the center of town (see Figure 1–2 and Figure 1–3 in application). The project's activities that have the potential to take marine mammals include vibratory and impact pile driving, drilling operations for pile installation (down-hole hammer), and vibratory pile removal.

The purpose of the project is to replace the existing, aging mooring and transfer structures nearing the end of their operational life due to corrosion and wear with modern facilities that provide improved operations for Alaska Marine Highway System (AMHS) ferry vessels, as well as freight and fueling operators, servicing the community of Tenakee Springs. Planned improvements include the installation of new shore side facilities and marine structures and the renovation of existing structures. This shall accommodate cargo and baggage handling, vessel mooring, passenger and vehicle access gangways, and re-establish existing electrical and fuel systems. Improvements shall enhance public safety and security.

In-water project construction activities shall begin no sooner than June 1, 2019. Pile installation and removal is expected to be completed in 93 working days within a 4-month window beginning sometime after June 1, 2019. Pile installation shall be intermittent and staggered depending on weather, construction and mechanical delays, marine mammal shutdowns, and other potential delays and logistical constraints. Given the possibility of schedule delays and other unforeseen circumstances, an IHA is being requested for a full year, from June 1, 2019 through May 31, 2020.

A detailed description of the planned activities is provided in the proposed IHA for this action found in the following **Federal Register** notice (83 FR 12152, March 20, 2018). Since that time, the only alteration that has been made to the planned activities is the addition of two pile removals with a vibratory hammer. This additional activity has no impact on the take numbers or duration of the project originally in the **Federal Register** notice (83 FR 12152, March 20, 2018). Therefore, a detailed description of the action is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA was published in the **Federal Register** on March 20, 2018 (83 FR 12152). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter on April 2, 2018. The Commission recommended that NMFS issue the IHA, subject to inclusion of the mitigation, monitoring, and reporting measures.

Comment 1: The Commission recommends NMFS (1) clarify that action proponents should use linear averaging rather than simple arithmetic means to estimate source levels both as reported in hydroacoustic monitoring reports and for use in applications, (2) continue to require that minimum, mean, median, and maximum values be reported in all hydroacoustic monitoring reports, (3) base proxy source levels on median rather than mean values and (4) continue to require action proponents to use practical spreading unless site-specific transmission loss data are available from the project site.

Response: At this moment, there are no studies or data that support the use of either the linear mean, arithmetic mean, or median when determining appropriate proxy source levels. However, NMFS is considering the Commission's recommendation at this time and may choose to use the linear mean or median proxy source levels for future actions. In addition, NMFS shall continue to require the reporting of minimum, mean, median, and maximum values in hydroacoustic monitoring reports and the use of practical spreading when site-specific transmission loss data are not available.

Comment 2: The Commission recommends NMFS promptly revise its draft rounding criteria in order to share them with the Commission in a timely manner

Response: NMFS appreciates the Commission's interest in this matter and looks forward to further discussion.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS website (*www.nmfs.noaa.gov/pr/species/mammals/*). We provided a description of the specified activity in our **Federal Register** notice announcing the authorization (83 FR 12152; March 20, 2018). Since that time, it was noted that the section detailing Steller sea lions did not include updated non-pup counts conducted between October and March from 2004 to 2017 by the Alaska Department of Fish and Game at the Tenakee Cannery Point haulout (the closest Steller sea lion haulout to the project area). These counts averaged 140 individuals at the haulout (Jemison 2017, unpubl. data) which were reflected in the Estimated Take Section of our **Federal Register** (83 FR 12152; March 20, 2018). All other information within these sections remain the same. Please refer to that document (83 FR 12152; March 20, 2018); we provide only a summary table here (Table 1).

TABLE 1—MARINE MAMMALS THAT OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	MMPA stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	E, D,Y	10,103 (0.3, 7,890, 2006).	83	21

TABLE 1—MARINE MAMMALS THAT OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY—Continued

Common name	Scientific name	MMPA stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Minke whale	*Balaenoptera acutorostrata.*	Alaska	-, N	N.A	N.A	N.A.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	*Orcinus orca*	Alaska Resident	-, N	2,347 (N.A., 2,347, 2012) [4].	23.4	1
		West Coast Transient	-, N	243 (N/A, 243, 2009) [4]	2.4	1
		Northern Resident	-, N	290 (N/A, 290, 2014) [6]	1.96	0
Family Phocoenidae						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, Y	975 (0.10, 896, 2012) [5]	[5] 8.9	[5] 34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, N	83,400	N.A	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumatopia jubatus*	Western U.S. [7]	E, D, Y	50,983 (N.A., 50,983, 2016).	320	241
		Eastern U.S.	-,-, N	41,638 (N/A, 41,638, 2015).	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina richardii*	Glacier Bay/Icy Strait	-, N	7,210 (N.A., 5,647, 2011).	169	104

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

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise (NMFS 2017), NMFS identified population estimates and PBR for porpoises within inland Southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative). The calculated PBR is considered unreliable for the entire stock because it is based on estimates from surveys of only a portion (the inside waters of Southeast Alaska) of the range of this stock as currently designated. The Annual M/SI is for the entire stock, including coastal waters.

[6] Abundance estimates obtained from Towers *et al.* 2015.

[7] Abundance, PBR, and Annual M/SI derived from draft 2017 SARs (Muto2017b).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effect of stressors associated with the specified activities (*e.g.,* pile driving and drilling) has the potential to result in behavioral harassment of marine mammals in the vicinity of the action areas. The **Federal Register** notice for the proposed IHA (83 FR 12152; March 20, 2018) included a discussion of the effects of such disturbance on marine mammals, therefore that information is not repeated here.

NMFS described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (83 FR 12152; March 20, 2018). In summary, the project activities are not expected to modify existing marine mammal habitat. Because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which shall inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are expected to be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving and drilling. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdowns—discussed in detail below in Mitigation section), Level A harassment is neither anticipated nor

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

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals shall be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that shall 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 take estimate.

Acoustic Thresholds

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

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

ADOT&PF's activity includes the use of continuous (vibratory pile driving and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—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) because of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds 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 Table 2 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 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds [1] (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-frequency cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-frequency cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

[1] NMFS 2016.

Although ADOT&PF's construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and drilling) sources, the shutdown zones set by the applicant are large enough to ensure Level A harassment will be prevented. The Level A harassment zones for the project are illustrated in Table 4. The highest Level A harassment zones shown (176 meters for high-frequency cetaceans and 148 meters for low-frequency cetaceans) are less than the total distance of the largest shutdown zone (200 meters for high- and low-frequency cetaceans). To assure the largest shutdown zone can be fully monitored, protected species observers (PSOs) shall be positioned in the possible best vantage points during all piling/drilling activities to guarantee a shutdown if a high- and/or low-frequency cetacean approaches or enters the 200-meter shutdown zone. These measures are described in full detail below in the Mitigation and Monitoring Sections.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that feeds into identifying the area ensonified above the acoustic thresholds.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project, *i.e.,* impact pile driving, vibratory pile driving, and vibratory pile removal. Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth. An impact hammer shall then generally be used to place the pile at its intended depth. The actual durations of each installation method vary depending on the type and size of the pile. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation. Factors that potentially minimize the potential impacts of pile installation associated with the project include:

- The relatively shallow waters in the project area (Taylor *et al.,* 2008);
- Land forms around Tenakee Springs that shall block the noise from spreading; and

• Vessel traffic and other commercial and industrial activities in the project area that contribute to elevated background noise levels.

In order to calculate distances to the Level A and Level B sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations (see Table 3). Note that piles of differing sizes have different sound source levels.

Empirical data from recent ADOT&PF sound source verification (SSV) studies at Ketchikan, Kodiak, and Auke Bay, Alaska were used to estimate sound source levels (SSLs) for vibratory, impact, and drilling installations of 30-inch steel pipe piles (MacGillivray *et al.,* 2016, Warner and Austin 2016b, Denes *et al.,* 2016a, respectively). These Alaskan construction sites were generally assumed to best represent the environmental conditions found in Tenakee and represent the nearest available source level data for 30-inch steel piles. Similarities among the sites include thin layers of soft sediments overlying a bedrock layer and comparable bedrock depths. However, the use of data from Alaska sites was not appropriate in all instances. Details are described below.

For vibratory driving of 24-inch steel piles, data from two Navy project locations in the state of Washington were reviewed. These include data from proxy sound source values at Navy installations in Puget Sound (Navy, 2015) and along the waterfront at Naval Base Kitsap (NBK), Bangor (Navy 2012). After assessing these two sources, ADOT&PF selected an average source level of 161 dB rms, which NMFS concurs with as an appropriate sound source. In addition, for a fourth project at NBK, Bangor, construction crews drove 16-inch hollow steel piles with measured levels similar to those for the 24-inch piles. Therefore, NMFS elects to use 161 dB rms as a source level for vibratory driving of 18-inch and 16-inch steel piles.

For vibratory driving of 14-inch steel and timber piles and 12.75-inch steel piles, ADOT&PF suggested a source level of 155 dB rms, which NMFS also concurs with. This source level was derived from summary data pertaining to vibratory driving of 18-inch steel piles in Kake, Alaska (MacGillivray 2015).

In their application, ADOT&PF derived source levels for impact driving of 30-inch steel piles by averaging the individual mean values associated with impact driving of the same size and type from Ketchikan (Warner and Austin 2016a). Mean values from Ketchikan were the most conservative dataset for 30-inch impact pile driving in Southeast Alaska. The average mean value from this dataset was 194.7 dB rms and 180.8 dB sound exposure level (SEL).

For 24-inch impact pile driving, NMFS used data from a Navy (2015) study of proxy sound source values for use at Puget Sound military installations. The Navy study recommended a value of 193 dB rms and 181 dB SEL, which was derived from data generated by impact driving of 24-inch steel piles at the Bainbridge Island Ferry Terminal Preservation project and the Friday Harbor Restoration Ferry Terminal project. NMFS found this estimated source level to be appropriate.

For impact driving of 20-, 18-, and 14-inch steel piles, ADOT&PF used source levels of 186.6 dB, 158 dB, and 158 dB respectively. These source levels were derived from Caltrans SSV studies at the Stockton Wastewater Treatment Plant (20-inch) and Caltrans SSV studies at Prichard Lake Pumping Plant in Sacramento, CA (18- and 14-inch) (Caltrans 2015). In regards to the drilling activities, a source level of 165 dB for all pile types originated from ADOT&PF SSV studies for piling operations in Kodiak, Alaska (Warner and Austin 2016b).

TABLE 3—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DRILLING, AND VIBRATORY PILE REMOVAL

Method and pile type	Installation, removal, or proofing	Sound level at 10 meters			Literature source
Vibratory hammer		dB rms			
30-inch steel piles	Install	165.0			Derived from Warner and Austin 2016a & Denes *et al.* 2016.
24-inch steel piles	Install	161.0			Navy 2012, 2015.
20-inch steel piles	Install	161.0			Navy 2012, 2015.
18-inch steel piles	Remove, Install	161.0			Navy 2012, 2015.
16-inch steel piles	Remove	161.0			Navy 2012, 2015.
14-inch steel piles	Remove	155.0			MacGillivray *et al.* 2015.
14-inch timber piles	Remove, Install	155.0			MacGillivray *et al.* 2015.
12.75-inch steel piles	Remove	155.0			MacGillivray *et al.* 2015.
Drilling		dB rms			
30-inch steel piles	Install	165.0			Derived from Warner and Austin 2016b.
24-inch steel piles	Install	165.0			Derived from Warner and Austin 2016b.
20-inch steel piles	Install	165.0			Derived from Warner and Austin 2016b.
18-inch steel piles	Install	165.0			Derived from Warner and Austin 2016b.
Impact hammer		dB rms	dB SEL	dB peak	
30-inch steel piles	Proofing	194.7	180.8	208.6	Warner and Austin 2016a.
24-inch steel piles	Proofing	193.0	181.0	210.0	Navy 2015 (from 82 FR 31400).
20-inch steel piles	Proofing	186.5	175.5	207.0	Caltrans 2015.
18-inch steel piles	Proofing	158.0	.....	174.0	Caltrans 2015.
14-inch timber piles	Install	158.0	.....	174.0	Caltrans 2015.

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

$$TL = B * \log 10 (R^1/R^2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

NMFS typically recommends a default practical spreading loss of 15 dB per tenfold increase in distance. ADOT&PF analyzed the available underwater acoustic data utilizing this metric.

When NMFS' Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, NMFS developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which shall result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and shall qualitatively address the output where appropriate. For stationary sources such as pile driving and drilling, NMFS' User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it shall not incur PTS. Inputs used in the User Spreadsheet and the resulting isopleths are reported in Tables 3 and 4.

TABLE 4—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

Type of pile	Activity	Piles installed or removed per day	Level A harassment zone (meters) [1]					Level B harassment zone (meters), cetaceans and pinnipeds [2]
			Cetaceans			Pinnipeds		
			LF	MF	HF	PW	OW	
Vibratory (120 dB)								
30-inch steel	Install [4]	3	11	1	16	7	1	10,000
24-inch steel, 20-inch steel, 18-inch steel.	Install [4]	3	6	1	9	4	1	5,412
18-inch steel, 16-inch steel.	Remove [4]	10	13	2	19	8	1	5,412
14-inch steel, 14-inch timber, 12.75-inch steel.	Remove [5]	10	5	1	8	3	1	2,154
Drilling (120 dB)								
30-inch steel, 20-inch steel.	Install [6]	3	55	5	81	34	3	10,000
24-inch steel, 18-inch steel.	Install [7]	3	42	4	62	26	2	10,000
Impact (160 dB) [3]								
30-inch steel	Proofing	1	70	3	82	37	3	2,057
		2	110	4	131	59	5	
		3	144	6	171	77	6	
24-inch steel	Proofing	1	71	3	85	38	3	1,585
		2	113	4	135	61	5	
		3	148	6	176	79	6	
20-inch steel	Proofing	3	64	3	76	34	3	584
18-inch steel	Proofing	3	<1	<1	<1	<1	<1	7
14-inch timber	Install	10	1	<1	2	<1	<1	7

[1] Level A Isopleths Calculated Using NMFS' 2016 Acoustic User Spreadsheet. Source level set at a distance of 10 Meters, a weighting factor adjustment of 2 kHz for impulse sources and 2.5 kHz for continuous sources, and a propagation loss value of 15 LogR.

[2] Level B Isopleths Calculated using Practical Spreading Loss Model. Source level set at a distance of 10 meters and and a propagation loss value of 15 LogR.

[3] 30 Strikes per pile.

[4] 45 minute activity duration.

[5] 2.5 hour activity duration.

[6] 9 hour activity duration.

[7] 6 hour activity duration.

[1] The distance of the modeled SPL from the driven pile.

[2] The distance from the driven pile of the initial measurement.

Pulse duration from the SSV studies described above are unknown. However, all necessary parameters were available for the SEL_{cum} (cumulative Single Strike Equivalent) method for calculating isopleths for 30-inch, 24-inch, and 20-inch impact piles. Therefore, this method was selected for those piles. To account for potential variations in daily productivity during impact installation, isopleths were calculated for different numbers of piles that shall be installed each day (see Table 4). Should the contractor expect to install fewer piles in a day than the maximum anticipated, a smaller Level A shutdown zone shall be employed to monitor take.

To derive Level A harassment isopleths associated with impact driving 30-inch steel piles, ADOT&PF utilized a single strike SEL of 180.8 dB and assumed 30 strikes per pile for 1 to 3 piles per day. For 24-inch and 20-inch steel piles, ADOT&PF used a single strike SEL of 181 dB SEL and 175.5 SEL respectively, also assuming 30 strikes at a rate of 1 to 3 piles per day. To calculate Level A harassment isopleths associated with impact piling 18-inch and 14-inch steel/timber piles, a source level (rms sound pressure level (SPL)) of 158 dB was used with a pulse duration of .05 seconds.

To calculate Level A harassment for vibratory driving of 30-inch piles, ADOT&PF utilized a source level (rms SPL) of 165 dB and assumed 45 minutes of driving per day. For installing 24, 20, and 18-inch piles, ADOT&PF used a source level of 161 dB and assumed up to 45 minutes of driving per day. For removal of 18 and 16-inch piles, ADOT&PF assumed use of 18-inch piles and used the same source level of 161 dB for up to 45 minutes. Level A harassment for the installation/removal of piles 14-inches and under in diameter used a source level of 155 dB rms and assumed 2.5 hours of driving/removal a day. In regards to Level A for drilling, a source level of 165 dB rms was used for all pile types with varying levels of activity for each pile type (see Tables 1 & 2 of the FR Notice (83 FR 12152; March 20, 2018) for information on drilling duration and max number of piles drilled each day). Results for all Level A isopleths are shown in Table 4. Isopleths for Level B harassment associated with impact (160 dB) and vibratory harassment (120 dB) were also calculated and are included in Table 4.

It is important to note that the actual area ensonified by pile driving activities is constrained by local topography relative to the total threshold radius (particularly for the Level B ensonified zones). The actual ensonified area was determined using a straight line-of-sight projection from the anticipated pile driving locations. Overall, Level A harassment zones for impact installation are relatively small because of the few strikes required to proof the piles. The maximum aquatic areas ensonified within the Level A harassment isopleths do not exceed 0.1 square kilometer (km^2) (see Figures 6–1 and Figure 6–2 in application). The corresponding areas of the Level B ensonified zones for impact driving and vibratory installation/removal are shown in Table 5 below.

TABLE 5—CALCULATED AREAS ENSONIFIED WITHIN LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

Type of pile	Activity	Level B harassment zone (km^2), cetaceans and pinnipeds
Vibratory (120 dB)		
30-inch steel	Install	78.9
24-, 20-, 18-, and 16-inch steel	Install	45.3
14-, 12.75-inch steel, and 14-inch timber	Remove	7.3
Drilling (120 dB)		
30-, 24-, 20-, and 18-inch steel	Install	78.9
Impact (160 dB)		
30-inch steel	Proofing	6.7
24-inch steel	Proofing	4.0
20-inch steel	Proofing	0.6
18-inch steel	Proofing	<0.1
14-inch timber	Install	<0.1

Marine Mammal Occurrence and Final Take Estimates

In this section we provide the information about the presence, density, or group dynamics of marine mammals that shall inform the take calculations. Potential exposures to impact and vibratory pile driving noise for each threshold were estimated using local marine mammal density datasets where available and local observational data. As previously stated, only Level B take shall be considered for this action as Level A take shall be avoided via mitigation (*i.e.,* shutdown). Each shutdown zone fully covers the extent of each corresponding Level A zone for all piling and drilling activities (See Tables 4 and 6). Level B take is calculated differently for some species based on differences in density, year-round habitat use, and other contextual factors. See below for specific methodologies by species.

Steller Sea Lions

Steller sea lion abundance in the project area is highly seasonal in nature with sea lions being most active between October and March (Figure 4–2). Level B exposure estimates are conservatively based on the average winter (October to March) abundance of 140 sea lions at the Tenakee Cannery haulout, which is 8.9 km away from the project site (Jemison, 2017, unpublished data). However, it is unlikely that the entire Steller sea lion population from the Tenakee Cannery haulout shall forage to the west near the Tenakee Springs ferry terminal. Additionally, Steller sea lions do not generally forage every day, but tend to forage every 1–2 days and return to haulouts to rest between foraging trips (Merrick and

Loughlin 1997; Rehburg *et al.,* 2009). Overall, this information indicates that only half of the Steller sea lions at the Tenakee Cannery haulout (*i.e.,* average of 140 during winter) is likely to approach the project site on any given day and be exposed to sound levels that constitute behavioral harassment. As a result, an estimated 70 individuals is a conservative estimate of the number of Steller sea lions likely to forage in the underwater behavioral harassment zone on a given day. Therefore: 70 Steller sea lions per day * 93 days of potential exposure = 6,510 potential exposures. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

To assign take to the eastern distinct population segment (eDPS) and western DPS (wDPS) stocks of Steller sea lions, data from researchers at NMFS' Alaska Fisheries Science Center were used. Researchers at NMFS' Alaska Fisheries Science Center state that roughly 17.8 percent of Steller sea lions at the Tenakee Cannery Point haulout are members of the wDPS whereas 82.2 percent are from the eDPS (L. Fritz, pers. comm; L. Fritz, unpublished data). Therefore, it is estimated that only 1,159 takes (17.8 percent of 6,510) have the potential to occur for wDPS Steller sea lions and 5,351 (82.2 percent of 6,510) takes have the potential to occur for eDPS Steller sea lions. In addition, since there is only an average of 140 Steller sea lions located at the Tenakee Cannery haulout, it is predicted that only 115 (82.2 percent of 140) individuals from the eDPS and 25 (17.8 percent of 140) individuals from the wDPS have the potential to be harassed.

Harbor Seals

Harbor seals are non-migratory; therefore, the exposure estimates are not dependent on season. We anticipate Level B harbor seal take to be relatively high, given the presence of three established haulouts within the largest (10 km) Level B harassment zone of the project site. The best available abundance estimate for Tenakee Inlet is 259 individual harbor seals (London, J., pers. comm.).

The number of harbor seals that could potentially be exposed to elevated sound levels for the project was estimated by calculating density * area * number of days of activity. The total density of harbor seals in Tenakee inlet is approximately 1.11 animals per km^2 (259 harbor seals/233.35 km^2 of available habitat in Tenakee Inlet). However, the action area is equivalent to 78.9 km^2. Therefore: 1.11 harbor seals per km^2 * 78.9 km^2 * 93 days of potential exposure = 8,144 potential exposures. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Harbor Porpoises

Harbor porpoises are non-migratory; therefore, our exposure estimates are not dependent on season. Harbor porpoise surveys conducted in southeast Alaska during the summers of 1991–1993, 2006, 2007, and 2010–2012 included Chatham Strait (near the action area). The average density estimate for all survey years in Chatham Strait was 0.013 harbor porpoise per square km (Dahlheim *et al.,* 2015). Surveys in 1997, 1998, and 1999 reported an average harbor porpoise density of .033 per square km in Southeast Alaska (Hobbs and Waite 2010). Based density estimates from Hobbs and Waite (2010), a more conservative density estimate, we estimate that approximately 2.6 (.033 * 78.9) harbor porpoises could occur daily within the 78.9 square km Level B harassment zone. Therefore: 2.6 harbor porpoises per day * 93 days of potential exposure = 242 potential exposures. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Dall's Porpoises

Dall's porpoise are non-migratory; therefore, our exposure estimates are not dependent on season. Based on anecdotal evidence citing rare occurrences of the species in the action area, we anticipate approximately one observation of a Dall's porpoise pod in the Level B harassment zone each week during construction (Lewis, S., pers. comm.). Based on an average pod size of 3.7 (Wade *et al.,* 2003), we estimate 49 Dall's porpoise could be exposed to Level B harassment noise during the 93 day construction period (*i.e.,* 3.7 individuals per week * 13.2 weeks of potential exposure = 48.84 (rounded up to 49) total potential exposures). Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Killer Whales

Local marine mammal experts indicate that approximately one killer whale pod is observed in Tenakee Inlet each month, year-round (Lewis, S., pers. comm.). It is assumed that all three killer whale stocks are equally likely to occur in the area because no data exist on relative abundance of the three stocks in Tenakee Inlet. The exposure estimate is conservatively based on a resident pod size, which has been quantified and is known to be a larger than other stocks. Resident killer whales occur in a mean group size of 19.3 during the fall in southeast Alaska (Dahlheim *et al.,* 2009). Therefore, we assume that a total of approximately 60 killer whales could be exposed to Level B harassment over the course of the project (*i.e.,* (19.3 individuals per pod * 1 pods per month) * 3.1 months = 59.83 (rounded up to 60)). Since there are no data that exist for killer whale stocks in Tenakee Inlet, 60 Level B takes were applied to each stock. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Humpback Whales

Humpback whales are present in Tenakee Inlet year-round. Local experts indicate that as many as 12 humpback whales are present on some days from spring through fall, with lower numbers during the winter (S. Lewis and M. Dahlheim, pers. comm.). We conservatively estimate that half of those, or six individuals on average, could be exposed to Level B harassment during each day of pile installation and removal, therefore: 6 humpback whales per day * 93 days of exposure = 558 potential exposures. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Minke Whales

Minke whales may be present in Tenakee Inlet year-round. Their abundance throughout southeast Alaska is very low, and anecdotal reports have not included minke whales near the project area. However, minke whales are distributed throughout a wide variety of habitats and could occur near the project area. Therefore, we conservatively estimate that one minke whale could be exposed to Level B harassment each month during construction or a total of three minke whales during the 93-day construction period. Each of these exposures will result in Level B take only, as Level A take is neither requested nor authorized due to shutdown measures.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating

grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure shall be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

In addition to the measures described later in this section, ADOT&PF shall employ the following standard mitigation measures:

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

The following measures shall apply to ADOT&PFs mitigation requirements:

Establishment of Shutdown Zone for Level A—For all pile driving/removal and drilling activities, ADOT&PF shall establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity shall occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). For all in-water heavy machinery activities, a 10 meter shutdown zone will be required. In addition, during impact installation of 24-inch and 30-inch steel piles at a frequency of 2 or 3 piles per day, PSOs shall implement a 200-meter shutdown zone for Dall's porpoises, minke whales, and humpback whales (low- and high-frequency cetaceans). The placement of PSOs during all pile driving and drilling activities (described in detail in the Monitoring and Reporting Section) shall ensure that each shutdown zone is visible during pile driving and drilling activities. All shutdown zones, with their corresponding sound source type are presented in Table 6 below.

TABLE 6 SHUTDOWN ZONES FOR VARIOUS PILE DRIVING/DRILLING ACTIVITIES FOR MARINE MAMMAL HEARING GROUPS

Sound source type	Shutdown zone radii (meters)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
1—Vibratory pile driving/removal, drilling, and impact pile driving (all impact pilling activities not expressed in the column directly below)	100	100	100	50	50
Impact Installation of 24-inch and 30-inch steel piles at a frequency of two or three piles per day	200	100	200	100	100
3—In Water Heavy Machinery Activities (Non pile driving and drilling activities)	10	10	10	10	10

Establishment of Monitoring Zones for Level B—ADOT&PF shall establish Level B disturbance zones or zones of influence (ZOI) which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The Level B zones are depicted in Table 4. As shown, the largest Level B zone is equal to 78.9 km^2, making it impossible for the PSOs to view the entire harassment area. Due to this, Level B exposures shall be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

Soft Start—The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors shall be required to provide an initial set of strikes from the hammer at 40 percent energy, each strike followed by no less than a 30-second waiting period. This procedure shall be conducted a total of three times before impact pile driving

begins. Soft Start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer shall observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone shall be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 30 minutes (for cetaceans) and 15 minutes (for pinnipeds). If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, piling activities may begin and Level B take shall be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone shall commence.

Monitoring and Reporting

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

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

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

Visual Monitoring

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

PSOs shall be land-based observers. A primary PSO shall be placed at the terminal where pile driving shall occur. A second observer shall range the uplands on foot or by ATV via Tenakee Ave., and go from Grave Point east of the harbor up and west of the project site to get a full view of the Level A zone and as much of the Level B zone as possible. PSOs shall scan the waters using binoculars, and/or spotting scopes, and shall use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs shall be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring shall be conducted by qualified observers, who shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target.
- Independent observers (*i.e.,* not construction personnel).
- Observers must have their CVs/resumes submitted to and approved by NMFS
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher).Observers may substitute education or training for experience.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- At least one observer must have prior experience working as an observer.
- Experience or training in the field identification of marine mammals, including the identification of behaviors.
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior.
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

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

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;
• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
• Locations of all marine mammal observations; and
• Other human activity in the area.

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

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury, serious injury or mortality, ADOT&PF shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report shall include the following information:
• Description of the incident;
• Environmental conditions (*e.g.,* Beaufort sea state, visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ADOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF shall not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report shall include the same information identified in the paragraph above. Activities shall be able to continue while NMFS reviews the circumstances of the incident. NMFS shall work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF shall provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the mitigation section, shutdown zones equal to or exceeding Level A isopleths shown in Table 4 shall be implemented, and in this case, Level A take is not anticipated nor authorized. Behavioral responses of marine mammals to pile driving and removal at the ferry terminal, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving, removal, and drilling shall occur for 93 days, any harassment shall be temporary. In addition, the project was designed with relatively small-diameter piles, which shall avoid the elevated noise impacts associated with larger piles. In addition, there are no known biologically important areas near the project zone that shall be moderately or significantly impacted by the construction activities. The region of Tenakee Inlet where the project shall take place is located in a developed area with regular marine vessel traffic. Although there is a harbor seal haulout approximately one km south of the project site, it shall not be located within the project's Level B zone.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:
• No mortality is anticipated or authorized.
• There are no known biologically important areas within the project area.
• ADOT&PF shall implement mitigation measures such as vibratory driving piles to the maximum extent practicable, soft-starts, and shut downs.
• Monitoring reports from similar work in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity shall

have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Overall, ADOT&PF proposes 15,566 total Level B takes of these marine mammals. Table 7 below shows take as a percent of population for each of the species listed above.

TABLE 7—SUMMARY OF THE ESTIMATED NUMBERS OF MARINE MAMMALS POTENTIALLY EXPOSED TO LEVEL B HARASSMENT SOUND LEVELS

Species	DPS/Stock	Number of exposures to Level B harassment total and by stock	Number of individuals potentially exposed to Level B harassment	Stock abundance	Percent of population [1]
Steller sea lion	Eastern DPS	5,351	115	41,638	<0.3
	Western DPS	1,159	25	53,303	<0.1
Harbor seal	Glacier Bay/Icy Strait	8,144	259	7,210	3.6
Harbor porpoise	Southeast Alaska	242	242	975	24.8
Dall's porpoise	Alaska	49	49	83,400	<0.1
Killer whale	West Coast transient	60	60	243	24.7
	Alaska resident	60	60	2,347	2.6
	Northern Resident	60	60	290	20.7
Humpback whale	Mexico DPS/Central North Pacific	558	558	10,103	5.5
Minke whale	Alaska	3	3	N/A	N/A
Total		15,686	1,434	N/A	N/A

[1] The percent of population is based on the proportion of take that is expected to occur from each stock based on abundance (see Table 1). Killer whale stocks are assumed to be equally likely to occur.

N/A: Not Applicable or no stock population assessment is available.

Table 7 presents the number of animals that could be exposed to received noise levels causing Level B harassment for the work at the Tenakee Springs Ferry Terminal. Our analysis shows that less than 25 percent of each affected stock could be taken by harassment. Therefore, the numbers of animals authorized to be taken for all species shall be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For harbor porpoise, the abundance estimates used in the percentage of population were taken from inland Southeast Alaska waters. These abundance estimates have not been corrected for g(0) and are likely conservative, therefore it is expected for the percentage of population that shall be taken to be overestimated. In addition, high percentage totals for northern resident (20.7 percent) and western transient (24.7 percent) killer whales were based on the possibility that all 60 takes for killer whales shall occur for each stock, which is a highly unlikely scenario.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals shall be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks shall not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes. The project is not known to occur in an important subsistence hunting area. It is a developed area with regular marine vessel traffic. However, ADOT&PF plans to provide advanced public notice of construction activities to reduce construction impacts on local residents, ferry travelers, adjacent businesses, and other users of the Tenakee Springs ferry terminal and nearby areas. This shall include notification to local Alaska Native tribes that may have members who hunt marine mammals for subsistence. Of the marine mammals considered in this IHA application, only harbor seals are known to be used for subsistence in the project area. If any tribes express concerns regarding project impacts to subsistence hunting of marine mammals, further communication between shall take place, including provision of any project information, and clarification of any mitigation and minimization measures that may reduce potential impacts to marine mammals.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there shall not be an unmitigable adverse impact on subsistence uses from ADOT&PF's activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' Alaska Regional Office, whenever we propose to

authorize take for endangered or threatened species.

NMFS Alaska Region issued a Biological Opinion to NMFS Office of Protected Resources which concluded the city dock and improvement project is not likely to jeopardize the continued existence of WDPS Steller sea lions or Mexico DPS humpback whales or adversely modify critical habitat because none exists within the action area.

National Environmental Policy Act

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

Authorization

As a result of these determinations, we have issued an IHA to ADOT&PF for conducting the described construction activities related to city dock and ferry terminal improvements from June 1, 2019 through May 31, 2020 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 20, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Intent To Find That Georgia Has Satisfied All Conditions of Approval Placed on Its Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and Environmental Protection Agency.

ACTION: Notice of Intent to find that Georgia has satisfied all conditions of approval on its coastal nonpoint pollution control program.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and Environmental Protection Agency (EPA) (the federal agencies) invite public comment on the agencies' proposed finding that Georgia has satisfied all conditions on the 2002 approval of the State's coastal nonpoint pollution control program (coastal nonpoint program). The Coastal Zone Act Reauthorization Amendments (CZARA) directs states and territories with coastal zone management programs previously approved under Section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs, which must be submitted to the federal agencies for approval. Prior to making such a finding, NOAA and EPA invite public input on the federal agencies' reasoning for this proposed finding.

DATES: Individuals or organizations wishing to submit comments on the proposed findings document should do so by July 26, 2018.

ADDRESSES: Comments can be made by email to: *ocm.czara@noaa.gov,* or in writing to Joelle Gore, Chief, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (240) 533–0813, to the ATTN: Georgia Coastal Nonpoint Program. All comments received will be posted without change to *https://coast.noaa.gov/czm/pollutioncontrol/,* including any personal information provided. The federal agencies may publish any comment received. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The federal agencies 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 FURTHER INFORMATION CONTACT: Copies of the proposed Findings Document may be found on NOAA's Coastal Nonpoint Pollution Control Program website at *https://coast.noaa.gov/czm/pollutioncontrol/.* Additional background information on the state's program may be obtained upon request from: Allison Castellan, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (240) 533–0799, email *allison.castellan@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 6217(a) of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b(a), requires that each state (or territory) with a coastal zone management program previously approved under section 306 of the Coastal Zone Management Act must prepare and submit to the federal agencies a coastal nonpoint pollution control program for approval. Georgia originally submitted its program to the federal agencies for approval in December 1999. The federal agencies provided public notice of and invited public comment on their proposal to approve, with conditions, the Georgia program (66 FR 49643). The federal agencies approved the program by letter dated June 4, 2002, subject to the conditions specified in the letter (67 FR 38471). The federal agencies propose to find, and invite public comment on the proposed findings, that Georgia has now fully satisfied all conditions of the earlier approval of its coastal nonpoint program.

Over time, Georgia has made changes to its program in order to satisfy the identified conditions. As explained in the proposed findings document, the federal agencies have determined that Georgia has fully met all conditions originally placed on its program. The proposed findings document describes how the State program has satisfied the conditions.

The proposed findings document for Georgia's program as well as information on the Coastal Nonpoint Program in general is available for download on the NOAA website at *https://coast.noaa.gov/czm/pollution control/.*

Dated: June 18, 2018.

W. Russell Callender,

Assistant Administrator for Ocean Services, National Oceanic and Atmospheric Administration.

David P. Ross,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 2018–13613 Filed 6–25–18; 8:45 am]

BILLING CODE 3510–08–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on July 12, 2018, from 10:00 a.m. to 4:00 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting in the Conference Center at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will discuss: The Committee's priorities and agenda, current initiatives to reform the London Interbank Offered Rate (LIBOR), including the development and adoption of alternative interest rate benchmarks, and the effect of such reform on the derivatives markets.

DATES: The meeting will be held on July 12, 2018, from 10:00 a.m. to 4:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by July 19, 2018.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by ''Market Risk Advisory Committee,'' by any of the following methods:

- *CFTC website: https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–877–951–7311.

International Toll and Toll Free: Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 3154908.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. app. 2, sec. 10(a)(2).

Dated: June 20, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–13612 Filed 6–25–18; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice Inviting Preliminary Public Input on Transformation and Sustainability Plan; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Request for preliminary public input; Notification of listening sessions; Correction.

SUMMARY: The Corporation for National and Community Service published a Notice in the **Federal Register** of June 19, 2018, concerning listening sessions to solicit comments regarding its Transformation and Sustainability Plan. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Neill Minish, Special Initiatives Advisor, Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525. Phone: 202–606–6664. Email: *nminish@cns.gov.*

Correction

In the **Federal Register** of June 19, 2018, in FR Doc. 2018–13087, on page 28415, in the first column, correct the second listening session to read as follows:

2. June 26, 2018, New Orleans, LA.

Dated: June 20, 2018.

Brian Finch,

Director of Business Transformation.

[FR Doc. 2018–13588 Filed 6–21–18; 11:15 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of the Army is publishing this notice to announce that the following Federal Advisory Committee meeting of the Advisory Committee on Arlington National Cemetery will take place. The meeting is open to the public. For more information about the Committee, please visit: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings*

DATES: The Committee will meet on Thursday, July 26, 2018 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Arlington National Cemetery Welcome Center, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *timothy.p.keating.civ@mail.mil,* or by phone at 1–877–907–8585. Website: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Agenda: The Committee will convene to deliberate various courses of action and possible recommendations for the Secretary of the Army to consider to keep Arlington National Cemetery open well in to the future as outlined in Public Law 114–158.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Timothy Keating, the Committee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140(d), the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Designated Federal Official, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Official will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting may be available for public comments. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Official.

Brenda S. Bowen,

Federal Register Liaison Officer, Department of the Army.

[FR Doc. 2018–13667 Filed 6–25–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Board on Coastal Engineering Research; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board on Coastal Engineering Research will take place.

DATES: The Board on Coastal Engineering Research will meet from 8:00 a.m. to 12:00 p.m. on August 7, 2018 and reconvene from 8:00 a.m. to 5:00 p.m. on August 8, 2018. The Executive Session of the Board will convene from 8:00 a.m. to 12:00 p.m. on August 9, 2018.

ADDRESSES: All sessions will be held at the Marriott Providence Downtown Hotel Marquis Ballroom, 1 Orms St. Providence, RI 02904. All sessions, including the Executive Session are open to the public. For more information about the Board, please visit *https://chl.erdc.dren.mil/usace-cerb/.*

FOR FURTHER INFORMATION CONTACT: COL Bryan S. Green, US Army, (601) 634–2513 (Voice), (601) 634–2818 (Facsimile), *Bryan.S.Green@usace.army.mil* (Email). Mailing address is U.S. Army Engineer, Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Website: *https://chl.erdc.dren.mil/usace-cerb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. The Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

Purpose of the Meeting: The theme of the meeting is ''Coupling Coastal Engineering Solutions with Social & Ecological Predications.'' The purpose of the meeting is to identify Corps coastal research priorities related to the physical, biological, and chemical processes impacting human and ecosystem health as identified in the Future of Nearshore Processes Research paper.

Agenda: On Tuesday morning, August 7, 2018, panel presentations will address Challenges and Successes Managing Northeast Regional Coastal Systems. Presentations will include: U.S. Army Corps of Engineers Social & Ecological Predictions; Important

Characteristics of the Northeast Region; Northeast Regional Ocean Plan: Ocean & Coastal Ecosystem Health; and Coastal Resources Management Council's New Scenario based Permitting for Coastal Structures. The day will end with a presentation on; The Natures Conservancy (TNC) Applications of Living Shorelines and Natural and Nature-Based Features in the Northeast for Coastal Resilience.

On Wednesday morning, August 8, 2018, the Board will reconvene to discuss Coastal Research Supporting Social & Ecological Needs. Presentations will include: Research on Long-Term Natural Geomorphologic Evolution of Barrier Islands & Estuaries in Absence of Humans; Ecological Metrics; Predicting the Transport, Transformation and Fate of Sediment and Particle-Bound Nutrients and Contaminates; Research on Coastal Water Quality Addressing the Sources, Transformation, Transport, and Ecology of Biocolloid; Reducing Risk and Improving Resiliency to the Impacts of Climate Variability; Northeast Sediment Sources and Needs; and Conveyance of Risk from Storms and Social Implications of Impacts. The Wednesday afternoon session continues with the State of Knowledge and Research Direction's panel. Presentations include: Triggers in Rising Seas and Community Flooding; Research Roadmap on Natural and Nature-Based Features; Ecological Modeling and Prediction Uncertainty; Climate Change and Adaptation Planning for Ports; and Urban Flood Prediction: Current Capabilities and Challenges. The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Thursday morning, August 9, 2018.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Because seating capacity is limited, advance registration is required. For registration requirements please see below.

Oral participation by the public is scheduled for 4:00 p.m. on Wednesday, August 8, 2018. The Marriott Providence Downtown Hotel is fully handicap accessible. For additional information about public access procedures, please contact COL Bryan S. Green, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than July 23, 2018, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Statements: Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to COL Bryan S. Green, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Brenda Bowen,

Federal Register Liaison Officer, Department of the Army.

[FR Doc. 2018–13668 Filed 6–25–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Expeditionary Technology Search (xTechSearch) Prize Competition Announcement

AGENCY: Department of the Army, DoD.

ACTION: Announcement of competition.

SUMMARY: Under the provisions of applicable laws and regulations, the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)) is announcing the Army Expeditionary Technology Search—xTechSearch Prize Competition—for the Army to enhance engagements with the entrepreneurial funded community, small businesses, and other non-traditional defense partners. The xTechSearch program will provide an opportunity for businesses to pitch novel technology solutions, either a new application for an existing technology or an entirely new technology concept, to the Army.

DATES:

1. July 11, 2018. Deadline for submission of White Paper with xTechSearch Cover Letter registration form.
2. July 30–August 31, 2018. Semifinalists—Up to 125 participants brief xTechSearch panels.
3. October 8–10, 2018. Up to 25 finalists featured at the Association of the United States Army Annual Meeting and Exposition in Washington, DC.
4. April 2019. Capstone Demonstration with Senior Army Leadership.

ADDRESSES: Proposal submissions should be emailed to *usarmy.pentagon.hqda-asa-alt.mbx.xtechsearch@mail.mil* no later than 11 July 2018. Detailed information can be found at Challenge.gov: *https://www.challenge.gov/challenge/army-expeditionary-technology-search-xtechsearch/*

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Smith, Deputy Director for Laboratory Management ASA(ALT) Office of the Deputy Assistant Secretary of the Army, Research and Technology, (703) 697–0685.

SUPPLEMENTARY INFORMATION: Eligibility: The entities allowed to participate in this competition are small businesses as defined in 13 CFR part 121. To qualify, the participating entity must fall within the size standard by North American Industry Classification System code 541713, 541714, and 541715.

There may be only one submission per business. In addition, each entity:

- Shall provide registration information in the xTechSearch Cover Letter registration form;
- Shall be incorporated in and maintain a primary place of business in the United States;
- Shall perform the work in the United States.
- May not be a Federal entity or Federal employee acting within the scope of their employment.

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a prize competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Army, for claims by—

- Third parties for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a prize competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to prize competition activities; and
- Federal Government for damage or loss to Government property resulting from such an activity.

Prizes will be offered under 15 U.S.C. Section 3719 (Prize competitions).

- The total prize pool is $1.95M.

Evaluation Criteria and Process

Phase I: Concept White Paper Contest

- All interested eligible contestants will submit a xTechSearch Cover Letter registration form with a White Paper, of no greater than 1000 words, describing the novel technology concept, innovative application concept, and integration with the Army's modernization priorities and outlining their knowledge, skills, capabilities, and approach for this challenge. Contestants' concept papers will be reviewed by a panel of subject matter experts and judges who will select semifinalists who will be awarded a prize of $1000 and be invited to the Phase II xTechSearch Technology Pitch Forums.
- Concept White Papers will be ranked based on the novelty of the proposed technology to revolutionizing and modernizing the Army. Each white paper must include the following:
  - Proposed Army Modernization Priority alignment,
  - Proposed concept and current technology maturity,
- Concept White Paper Scoring Criteria:
  - Potential for Impact/ Revolutionizing the Army—50%
  - Scientific and Engineering Viability—30%
  - Team Experience and Abilities—20%

Phase II: xTechSearch Technology Pitches

- Up to one hundred twenty five (125) selected contestant semi-finalists will be invited to complete an in-person Technology pitch to a panel of Army and Department of Defense subject matter experts and judges at one of five selected locations across the United States.
- xTechSearch Technology Pitches will be ranked based on the novelty of the proposed technology to revolutionizing and modernizing the Army. Finalists will be selected based on the propensity of the technology to revolutionize Army missions, solve an Army capability gap, and catalyze with Army assets. Each technology pitch must include a proposal to demonstrate proof-of-concept for the technologies within 6 months.
- Up to twenty-five (25) finalists selected by the judge panel will receive a prize of $5000 and be invited to display an exhibit and make a formal public oral presentation of their proposal at the 2018 AUSA Annual Meeting Innovators' Corner in Washington, DC.
- Scoring Criteria:
  - Potential for Impact/ Revolutionizing the Army—50%
  - Scientific and Engineering Viability; Proof-of-Concept Demonstration Plan—30%
  - Team Experience and Abilities—20%

Phase III: AUSA Innovators' Corner

- Up to twenty-five (25) xTechSearch finalists will be featured at Innovators' Corner at the 2018 AUSA Annual Meeting and Exposition, 8–10 October 2018 in Washington, DC.
- Finalists will provide a display and a presentation on their submission in an Army-sponsored exhibit space and engage with Department of Defense (DoD) customers, industry partners, and academia.
- Up to twelve (12) Phase III prize winners will be announced, four (4) each day. Phase III prize winners will be awarded prizes of $125,000 and 6 months to demonstrate proof-of-concept for their xTechSearch technology, to be demonstrated at an xTechSearch Finale Demonstration.

Phase IV: xTechSearch Finale Demonstration—April 2019

- Each Phase III winner will demonstrate proof-of-concept for their technology solution to senior DoD, Government, and industry leadership. The winner of the Finale Demonstration will be awarded a prize of $200,000.

Authority: 15 U.S.C. Section 3719; Pub. L. 96–480, Section 24, as added Pub. L. 111–358, title I, Section 105a, Jan. 4, 2011 Stat. 3989

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–13669 Filed 6–25–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2018–HA–0038]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Agency, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency 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 August 27, 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 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, TRICARE Health Plan, Policy and Benefits, 8111 Gatehouse Road, Falls Church, VA, 22042, Ms. Vonda Lawson or call (703) 275–6221.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TriCare DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment; DD–2642; OMB Control Number 0720–0006.

Needs and Uses: The DD–2642, ''TRICARE DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment'' form is used by TRICARE beneficiaries to claim reimbursement for medical expenses under the TRICARE Program (formerly the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)). The information collected will be used by TRICARE to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary has the received care, and reimbursement for medical services received.

Affected Public: Individuals or Households.

Annual Burden Hours: 207,500.

Number of Respondents: 830,000.

Responses per Respondent: 1.

Annual Responses: 830,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The respondents to this information collection are TRICARE beneficiaries which include active duty service members, retirees, family members, and others. The DD–2642 is used by beneficiaries to file for reimbursement of out-of-pocket costs paid to providers and suppliers for authorized health care services or supplies. The information collected by the DD–2642 also aids TRICARE in determining beneficiary eligibility, health insurance liability and to certify the beneficiary has received the medical care as indicated. Respondents may obtain the DD–2642 by various methods. The DD–2642 may be completed online via the TRICARE website, tricare.mil. Additionally, respondents may print the form from the TRICARE website or the Department of Defense forms web page, *www.esd.whs.mil/Directives/forms/* and complete the DD–2642 by hand. Respondents may also call their designated regional contractor who can direct respondents on how to obtain the DD–2642. Respondents can identify their regional contractor through the TRICARE website. Respondents residing overseas may visit their local military treatment facility Tricare Service Center to request a copy of the DD–2642. Respondents may complete the DD–2642 online and submit it immediately, or in some cases, choose to mail their completed DD–2642 to their regional contractor. The regional contractor then enters the information into the TRICARE Record Encounter Data System.

Dated: June 21, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–13712 Filed 6–25–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2018–OS–0017]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 26, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Basic Criminal History and Statement of Admission (Department of Defense Child Care Services Programs); DD Form 2981; OMB Control Number 0704–0516.

Type of Request: Reinstatement, with change.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,250.

Needs and Uses: The information collection requirement is necessary to obtain a self-reported record of criminal history from each individual who comes into regular, reoccurring contact with children under the age of 18 years. Individuals are required to self-report any arrests, charges or convictions that would keep the individual from obtaining or maintaining a favorable suitability or fitness determination. Programs impacted are referenced within the 42 U.S. Code § 13041 and include impacted individuals such as employees, DoD contractors, providers, adults residing in a family child care home, volunteers, and others with regular reoccurring contact with children.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket

ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 21, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–13704 Filed 6–25–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2018–OS–0036]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Sexual Assault Prevention and Response Office for the Department of Defense 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 August 27, 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 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to DoD Sexual Assault Prevention and Response Office, 4800 Mark Center Drive, Suite 07G21, Alexandria, VA 22350, Darlene Sullivan, or call (571) 372–7867.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Sexual Assault Incident Database (DSAID); DD Forms 2965, 2910, and 2910–1; OMB Control Number 0704–0482.

Needs and Uses: The information collection requirement is necessary to centralize case-level sexual assault data involving a member of the Armed Forces, in a manner consistent with statute and DoD regulations for Unrestricted and Restricted reporting, as well as to facilitate reports to Congress on claims of retaliation in connection with an Unrestricted Report of sexual assault made by or against a member of the Armed Force. Records may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, conducting research, and case and business management. De-identified data may also be used to respond to mandated reporting requirements.

Affected Public: Individuals or Households.

Annual Burden Hours: 1,780.

Number of Respondents: 730.

Responses per Respondent: 1.

Annual Responses: 730.

Average Burden per Response: 2.44 hours.

Frequency: On occasion.

It is DoD policy to establish a culture free of sexual assault by providing an environment of prevention, education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well-being of all persons covered by the regulation.

Dated: June 21, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–13701 Filed 6–25–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; OLLI Technology Corporation dba Tanka

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Intent to Grant License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to OLLI Technology Corporation dba Tanka a partially exclusive license to practice the Government-owned inventions described in the following U.S. Patents: U.S. Patent No. 8,023,760 titled ''System and method for enhancing low-visibility imagery,'' U.S. Patent No. 8,116,522 titled ''Ship detection system and method from overhead images,'' U.S. Patent No. 8,149,245 titled ''Adaptive linear contrast method for enhancement of low-visibility imagery,'' U.S. Patent No. 8,170,272 titled ''Method for classifying vessels using features extracted from overhead imagery,'' U.S. Patent No. 8,411,969 titled ''Method for fusing overhead imagery with automatic vessel reporting systems,'' U.S. Patent No. 8,422,738 titled ''Adaptive automated synthetic aperture radar ship detection method with false alarm mitigation,'' U.S. Patent No. 8,437,509 titled ''System and method for inferring vessel speed from overhead images,'' U.S. Patent No. 8,731,237 titled ''Automatic asset detection for disaster relief using satellite imagery,'' U.S. Patent No. 8,958,602 titled ''System and method for tracking maritime domain targets from video data,'' U.S. Patent No. 9,305,214 titled ''Systems and methods for real-time horizon detection in images,'' U.S. Patent No. 9,349,170 titled ''Single image contrast enhancement method using the adaptive wiener filter,'' and U.S. Patent No. 9,355,439 titled ''Joint contrast enhancement and turbulence mitigation method,'' as well as any re-issue.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the publication date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Research and

Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33, Room 2531, San Diego, CA 92152–5001. File an electronic copy of objections with *paul.a.herbert@navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Herbert, 619–553–5118, *paul.a.herbert@navy.mil.*

(Authority: 35 U.S.C. 209(e); 37 CFR 404.7)

Dated: June 19, 2018.

E.K. Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–13647 Filed 6–25–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0035]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 26, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0035. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 206–04, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs.

OMB Control Number: 1845–0102.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 6,090,000.

Total Estimated Number of Annual Burden Hours: 2,009,700.

Abstract: The Department is requesting an extension of the current information collection. We are updating this Income-Driven Repayment Plan Request form to make it more user friendly and allow for easier processing by the servicers. No new questions are being asked, some existing questions are being streamlined and there is reformatting to allow for readability and ease in completing the form. There is no burden change based on these changes.

Dated: June 21, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–13690 Filed 6–25–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; International Early Learning Study (IELS) 2018 Main Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 26, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0051. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 206–04, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department

assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Early Learning Study (IELS) 2018 Main Study.

OMB Control Number: 1850–0936.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 8,091.

Total Estimated Number of Annual Burden Hours: 4,461.

Abstract: The International Early Learning Study (IELS), scheduled to be conducted in 2018, is a new study sponsored by the Organization for Economic Cooperation and Development (OECD), an intergovernmental organization of industrialized countries. In the United States, the IELS is conducted by the National Center for Education Statistics (NCES). The IELS focuses on young children and their cognitive and non-cognitive skills and competencies as they transition to primary school. The IELS is designed to examine: Children's early learning and development in a broad range of domains, including social and cognitive skills; the relationship between children's early learning and children's participation in early childhood education and care (ECEC); the role of contextual factors, including children's individual characteristics and their home backgrounds and experiences, in promoting young children's growth and development; and how early learning varies across and within countries prior to beginning, or in the early stages of primary school. In 2018, in the participating countries, including the United States, the IELS will assess nationally-representative samples of 5-year-old children enrolled in public and private schools that offer kindergarten in the United States through direct and indirect measures, and will collect contextual data about their home learning environments, ECEC histories, and demographic characteristics. The IELS will measure young children's knowledge, skills, and competencies in both cognitive and non-cognitive domains, including language and literacy, mathematics and numeracy, executive function/self-regulation, and social emotional skills. This assessment will take place as children are transitioning to primary school and will provide data on how U.S. children entering kindergarten compare with their international peers on skills deemed important for later success. To prepare for the main study, which will be conducted from October to December 2018, the IELS countries conducted a field test in the fall of 2017 to evaluate newly developed assessment instruments and questionnaires and also to test the study operations, and main study respondent recruitment began in September 2017. The request to conduct the 2017 IELS field test data collection and the IELS 2018 main study recruitment was approved in September 2017 (OMB #1850–0936 v.3–4). This request is to conduct the IELS 2018 main study.

Dated: June 21, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–13709 Filed 6–25–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Special Programs for Indian Children—Demonstration Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for the Indian Education Discretionary Grants Programs—Demonstration Grants for Indian Children program, Catalog of Federal Domestic Assistance (CFDA) number 84.299A.

DATES: *Applications Available:* June 26, 2018.

Deadline for Notice of Intent to Apply: July 11, 2018.

Deadline for Transmittal of Applications: August 10, 2018.

Deadline for Intergovernmental Review: September 10, 2018.

ADDRESSES: For the addresses for obtaining and submitting 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.*

FOR FURTHER INFORMATION CONTACT: Tara Ramsey, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W203, Washington, DC 20202. Telephone: (202) 260–3774. Email: *NYCP.OIE@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of Indian students in preschool, elementary, and secondary schools.

Background: For FY 2018, the Department will continue to use the priority for Native Youth Community Projects (NYCP) first used in FY 2015 to support community-led, comprehensive projects to help American Indian/Alaska Native (AI/AN) children become college- and career-ready. NYCP funding is one of many efforts across the Federal government to coordinate, measure progress, and make investments in Native youth programs. These efforts aim to address educational and other outcomes for Native youth not currently being met. These grants are designed to help communities improve educational outcomes, specifically college- and career-readiness, through strategies tailored to address the specific challenges and build upon the specific opportunities and culture within a community. Such strategies can include supplemental academic programs or courses, social-emotional services, cultural education, and other support services for AI/AN students and families.

Recognizing the importance of Tribes to the education of Native youth, NYCP

projects are based on a partnership that includes at least one Tribe and one school district or Department of the Interior Bureau of Indian Education (BIE)-funded school. We expect that this partnership will facilitate capacity building within the community, generating positive results and practices for student college-and-career readiness beyond the period of Federal financial assistance. The requirement of a written partnership agreement helps to ensure that all relevant partners needed to achieve the project goals are included from the outset. Grantees' project evaluations should help inform future practices that effectively improve outcomes for AI/AN youth.

Because educational choice is a promising option to expand access to high-quality education and improve college- and career-readiness for Native youth, this competition also includes the Secretary's Final Supplemental Priority 1 to empower families and individuals to choose a high-quality education. For this competition, the Department is particularly interested in community-led approaches to educational choice, such as the expansion of existing charter schools, the use of supplemental Education Scholarship Accounts, and course choice.

Priorities: This competition contains one absolute priority and four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from 34 CFR 263.21(c)(1) and 263.20. In accordance with 34 CFR 75.105(b)(2)(ii), competitive preference priority one is from 34 CFR 263.21(c)(5), competitive preference priority two is from 34 CFR 263.21(b), and paragraph (b) of competitive preference priority three is from 34 CFR 263.21(c)(2). Paragraph (a) of competitive preference priority three (relating to Promise Zones) is from the notice of final priority published in the **Federal Register** on March 27, 2014 (79 FR 17035). Competitive preference priority four is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096).

Absolute Priority: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Native Youth Community Projects.

A native youth community project is—

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities, which—

(i) Must include—

(A) One or more Tribes or their Tribal education agencies; and

(B) One or more BIE-funded schools, one or more local educational agencies (LEAs), or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Competitive Preference Priorities: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 13 points to an application, depending on how well the application meets one or more of these priorities; the total possible points for each priority are noted in parentheses.

These priorities are:

Competitive Preference Priority One (zero or two points).

Projects that include an LEA that is eligible under the Small Rural School Achievement (SRSA) or Rural and Low-Income School (RLIS) program, or a BIE-funded school that is located in an area designated by the U.S. Census Bureau with a locale code of 42 or 43.

Competitive Preference Priority Two (zero or three points).

Although all NYCP grantees are required to have an eligible Indian Tribe or its Tribal education agency (TEA) as a partner, we award three points to an application in which the lead partner is an eligible Indian Tribe or its TEA, an Indian organization (as defined in this notice), or a Tribal college or university (as defined in section 316(b) of the Higher Education Act of 1965, as amended (HEA)).

Competitive Preference Priority Three (zero or three points).

Applications that meet one of the following criteria—

(a) Designed to serve a local community within a federally designated Promise Zone; or

(b) Submitted by a partnership or consortium in which the lead applicant or one of its partners has received a grant in the last four years under one or more of the following grant programs:

(1) State Tribal Education Partnership (section 6132 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)).

(2) Alaska Native Education Program (ESEA sections 6301–6306).

(3) Promise Neighborhoods (ESEA sections 4623–4624).

Note: As a participant in the Promise Zone Initiative, the Department is cooperating with the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), and nine other Federal agencies to support comprehensive revitalization efforts in 22 high-poverty urban, rural, and Tribal communities across the country. Each application for NYCP funds that is accompanied by a Certification of Consistency with Promise Zone Goals and Implementation (HUD Form 50153) signed by an authorized representative of the lead organization of a Promise Zone designated by HUD or USDA will receive two points, under competitive preference priority 3(a). An application for NYCP grant funds that is not accompanied by a signed certification (HUD Form 50153) will not receive points under competitive preference priority 3(a), but may still be eligible to receive points under competitive preference priority 3(b) if it received one of the grants listed. To view the list of designated Promise Zones and lead organizations please go to *https://www.hudexchange.info/programs/promise-zones/promise-zones-overview/*. The certification form is available at: *www.hudexchange.info/resource/4396/promise-zones-certification-form-and-guidance/*.

Note: An application will not receive points for both (a) and (b) under competitive preference priority 3.

Competitive Preference Priority Four—Empowering Families and Individuals to Choose a High-Quality Education that Meets their Unique Needs (zero to 5 points).

Projects that are designed to address increasing access to educational choice (as defined in this notice) for students who are Indians, as defined in section 6151 of the ESEA.

Definitions: The following definitions apply to this competition. The definition of ''educational choice'' is from the Supplemental Priorities, the definition of ''evidence-based'' is from section 8101(21) of the ESEA, and the definition of ''Indian organization'' is from 34 CFR 263.20.

Educational choice means the opportunity for a child or student (or a family member on their behalf) to create a high-quality personalized path for learning that is consistent with applicable Federal, State, and local laws; is in an educational setting that best meets the child's or student's needs; and, where possible, incorporates evidence-based activities, strategies, or interventions. Opportunities made available to a student through a grant program are those that supplement what is provided by a child's or student's geographically assigned school or the institution in which he or she is currently enrolled and may include:

(1) Public educational programs or courses including those offered by traditional public schools, public charter schools, public magnet schools, public online education providers, or other public education providers; or

(2) Private or home-based educational programs or courses including those offered by private schools, private online providers, private tutoring providers, community or faith-based organizations, or other private education providers.

Evidence-based, when used with respect to a State, LEA, or school activity, means an activity, strategy, or intervention that—

(1) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(a) Strong evidence from at least 1 well-designed and well-implemented experimental study;

(b) Moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or

(c) Promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or

(2)(a) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(b) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Indian organization means an organization that—

(1) Is legally established—

(a) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(b) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Application Requirements: The following requirements apply to all applications submitted under this competition and are from section 6121 of the ESEA and 34 CFR 263.20, 263.21, and 263.22. An applicant must include in its application:

(a) A description of the defined geographic area to be served by the project.

(b) Evidence, based on either a needs assessment conducted within the last three years or other data analysis, of—

(1) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(2) Opportunities in the local community to support Indian students; and

(3) Existing local policies, programs, practices, service providers, and funding sources.

(c) A project design and management plan that—

(1) Addresses one or more barriers or opportunities towards the goal of ensuring that Indian students are prepared for college and careers, as identified in the local needs assessment or other data analysis; and

(2) Uses a community-based strategy (or strategies), and measureable objectives for that strategy (or strategies) that can be used to measure progress toward the goal.

(d) A copy of an agreement signed by the required partners in the proposed project, identifying the responsibilities of each partner in the proposed project. Signatories to the agreement must include at least one Tribe or its TEA and at least one LEA or BIE-funded school, as described in the absolute priority above. Letters of support do not meet the requirement for a signed partnership agreement.

(e) Evidence that the applicant or one of its partners has demonstrated the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

(f) A description of how Indian Tribes and parents and family of Indian children have been, and will be, involved in developing and implementing the proposed activities.

(g) Information demonstrating that the proposed project is an evidence-based program, where applicable, which may include an existing evidence-based program that has been modified to be culturally appropriate for Indian students. Applicants that believe the evidence-based requirement is not applicable to their project must give an explanation in the application of why it is not applicable.

(h) A description of how the applicant will continue the proposed activities once the grant period is over.

(i) For projects that plan to use the grant funding for early childhood or kindergarten programs, evidence that the program is effective in preparing young children to make sufficient academic growth by the end of grade 3.

Note: Applications that do not include the required documents to demonstrate eligibility or other program requirements will likely be rejected or deemed ineligible for review.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe.

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and

Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 263. (e) The notice of final priority published in the **Federal Register** on March 27, 2014 (79 FR 17035). (f) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $25,600,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–1,000,000.

Estimated Average Size of Awards: $750,000 per year.

Estimated Number of Awards: 26–40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Grants are for an initial period of three years, with the possibility of renewal for an additional year if the Secretary determines that the grantee has made substantial progress.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies; LEAs, including charter schools that are considered LEAs under State law; Indian Tribes; Indian organizations; BIE-funded schools; Tribal colleges and universities (as defined in section 316(b) of the HEA, 20 U.S.C. 1059c(b)); or a consortium of any of these entities.

The absolute priority for NYCP requires that an applicant be a member of a partnership that includes at least one Tribe or its TEA and at least one LEA or BIE-funded school. We will reject applications that do not include at least these two types of partners.

Note: Including as a partner an Indian organization or Tribal college or university does not satisfy the requirement, under the absolute priority, of including the Tribe itself as one of the partners. A Tribe may designate another entity to apply on its behalf only if the entity submits as part of its application a Tribal resolution authorizing the designation for the purpose of applying for and administering this Demonstration grant.

Applicants applying as an Indian organization must demonstrate that the entity meets the definition of ''Indian organization.''

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

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.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Demonstration Grants for Indian Children program, an application may include business information that the applicant considers proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachment Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of FY 2018.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is 12 point or larger but no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the consortium agreement or partnership agreement; the assurances and certifications; or the abstract, the resumes, the bibliography, or other required attachments.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application for funding. To do so, please email *NYCP.OIE@ed.gov* with the subject line ''Intent to Apply,'' and include the following information:

(a) Applicant's name, mailing address, and phone number;

(b) Contact person's name and email address;

(c) The defined local geographic area to be served by the project;

(d) Name(s) of partnering LEA(s) or BIE-funded school(s);

(e) Name(s) of partnering Tribe(s) or TEA(s); and

(f) If appropriate, names of other partnering organizations.

Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR part 263. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for project* (Maximum 15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which the project is informed by evidence, which could be either a needs assessment conducted within the last three years *or* other data analysis documenting the following:

(i) The greatest barriers both in and out of school to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources.

b. *Quality of the project design* (Maximum 30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) (Up to 4 points) The extent to which the project is focused on a defined local geographic area.

(ii) (Up to 6 points) The extent to which the proposed project is evidence-based, where applicable, which may include an existing evidence-based program that has been modified to be culturally appropriate for Indian students.

(iii) (Up to 7 points) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iv) (Up to 8 points) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(v) (Up to 5 points) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

c. *Quality of project personnel* (Maximum 10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) (Up to 6 points) The extent to which the applicant, or one of its partners, demonstrates capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

(ii) (Up to 2 points) The qualifications, including relevant training and experience, of key project personnel.

(iii) (Up to 2 points) The qualifications, including relevant training and experience, of the project director or principal investigator.

Note: Please note that section 7(b) of the Indian Self-Determination and Education Assistance Act requires that to the greatest extent feasible, a grantee must give to Indians preference and opportunities in connection with the administration of the grant, and give Indian organizations and Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

d. *Adequacy of resources* (Maximum 10 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) (Up to 5 points) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(ii) (Up to 5 points) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

e. *Quality of the management plan* (Maximum 25 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) (Up to 15 points) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) (Up to 5 points) The extent to which Indian Tribes and parents and families of Indian children have been, and will be, involved in developing and implementing the proposed activities.

(iii) (Up to 5 points) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

f. *Quality of the project evaluation* (Maximum 10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) (Up to 7 points) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(ii) (Up to 3 points) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period

may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has developed the following performance measures for measuring the overall effectiveness of the Demonstration Grants for Indian Children program:

(1) The percentage of the annual measurable objectives, as described in the application, that are met by grantees; and

(2) The percentage of grantees that report a significant increase in community collaborative efforts that promote college and career readiness of Indian children.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in developing the proposed project and identifying the method of evaluation. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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 the 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: June 21, 2018.

Jason Botel,

Principal Deputy Assistant Secretary Delegated the Authority to Perform the Functions and Duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–13728 Filed 6–25–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0040]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Formula Grant EASIE Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 26, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 207–13, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kimberly Smith, 202–453–6459.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Formula Grant EASIE Annual Performance Report.

OMB Control Number: 1810–0726.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,300.

Total Estimated Number of Annual Burden Hours: 14,300.

Abstract: The purpose of Indian Education Formula Grant to Local Agencies, as authorized under section 6116 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) is to assist grantees to provide Indian students with the opportunity to meet the same challenging state standards as all other students and meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. The Indian Education Formula Grant (CFDA 84.060A), is neither competitive nor discretionary and requires the annual submission of the application from either a local education agency, tribe, Indian organization or Indian community based organization. The amount of the award for each applicant is determined by a formula based on the reported number of American Indian/Alaska Native students identified in the application, the state per pupil expenditure, and the total appropriation available. The Office of Indian Education (OIE) of The Department of Education (ED) collects annual performance data within the same system that collects the annual application. The application and the annual performance report are both be housed in the Education Data Exchange Network (EDEN) Submission System. The 524B Annual Performance Report (APR) was designed for discretionary grants, however the title VI program is a formula grant program. The EASIE APR goes beyond the generic 524B APR and facilitates the collection of more specific and comprehensive data due to grantees entering project specific data into an online database.

Dated: June 20, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–13609 Filed 6–25–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0046]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Magnet Schools Assistance Program—Government Performance and Results Act (GPRA) Table Form

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 26, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0046. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 207–13, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justis Tuia, 202–453–6654.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general

public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Magnet Schools Assistance Program—Government Performance and Results Act (GPRA) Table Form.

OMB Control Number: 1855–0025.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 116.

Total Estimated Number of Annual Burden Hours: 58.

Abstract: The collection of this information is part of the government-wide effort to improve the performance and accountability of all federal programs, under the Government Performance and Results Act (GPRA) passed in 1993, the Uniform Guidance, and EDGAR. Under GPRA, a process for using performance indicators to set program performance goals and to measure and report program results was established. To implement GPRA, ED developed GPRA measures at every program level to quantify and report program progress required by the Elementary and Secondary Education Act of 1965, as amended. Under the Uniform Guidance and EDGAR, recipients of federal awards are required to submit performance and financial expenditure information. The GPRA program level measures and budget information for the Magnet Schools Assistance Program (MSAP) are reported in the Annual Performance Report (APR). The APR is required under 2 CFR 200.328 and 34 CFR 75.118 and 75.590. The annual report provides data on the status of the funded project that corresponds to the scope and objectives established in the approved application and any amendments. To ensure that accurate and reliable data are reported to Congress on program implementation and performance outcomes, the MSAP APR collects the raw data from grantees in a consistent format to calculate these data in the aggregate.

Dated: June 20, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–13610 Filed 6–25–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 12, 2018, 9:00 a.m. to 5:00 p.m. Friday, July 13, 2018 8:00, a.m. to 12:00 noon.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Drive, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Runkles, Office of Basic Energy Sciences, U.S. Department of Energy, Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–6529.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of this Board is to make recommendation to DOE–SC with respect to the basic energy sciences research program.

Tentative Agenda

- Call to Order, Introductions, Review of the Agenda
- News From the Office of Science
- News From the Office of Basic Energy Sciences
- BES 40th Report Presentations
- Materials Sciences and Engineering Division COV Report
- Scientific User Facilities Division COV Meeting Announcement
- Public Comments
- Adjourn

Breaks Taken as Appropriate

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Runkles at (301) 903–6594 (fax), or *katie.runkles@science.doe.gov* (email). Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days on the Committee's website: *www.science.energy.gov/bes/besac/meetings.*

Issued at Washington, DC, on June 21, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–13693 Filed 6–25–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection package requests a three-year extension of ''Industrial Relations,'' OMB Control Number 1910–0600. This proposed collection covers major Departmental Contractor Human Resource Information necessary for contract management, administration, and cost control.

DATES: Comments regarding this proposed information collection must be received on or before July 26, 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 notice, please advise the Desk Officer for the Department of Energy of your intention to make a submission as soon as possible.

ADDRESSES: Written comments should be sent to the OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 735 17th Street NW, Room 10102, Washington, DC 20503 and to Alesia Gant, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–1615, or by email at *alesia.gant@hq.doe.gov;* Ms. Gant may also be contacted at (202) 287–1476.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alesia Gant at the address listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1910–0600;

(2) *Information Collection Request Title:* Industrial Relations;

(3) *Type of Request:* Renewal;

(4) *Purpose:* This information is required for management oversight of the Department of Energy's Facilities Management Contractors and to ensure that the programmatic and administrative management requirements of the contracts are managed efficiently and effectively;

(5) *Annual Estimated Number of Respondents:* 42;

(6) *Annual Estimated Number of Total Responses:* 316;

(7) *Annual Estimated Number of Burden Hours:* 4,093;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Authority: 42 U.S.C. 7256; 48 CFR 970.0370–1.

Issued in Washington, DC on June 18, 2018.

John R. Bashista,

Director, Office of Acquisition Management.

[FR Doc. 2018–13677 Filed 6–25–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension with changes to Form EIA–63C, *Densified Biomass Fuel Report* under OMB Control Number 1905–0209. Form EIA–63C collects data on wood pellet fuel and other densified biomass fuel production, sales, and inventory levels from U.S. manufacturing facilities of densified biomass fuel products for the purpose of estimating densified biomass fuel consumption in the United States, as well as production, sales, and inventory at state, regional, and national levels.

DATES: EIA must receive all comments on this proposed information collection no later than July 26, 2018. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at 202–395–0710.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer: Brandon Debruhl, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, *Email: Brandon_F_DeBruhl@omb.eop.gov.*

and to:

Connor Murphy, U.S. Department of Energy, U.S. Energy Information Administration, 1000 Independence Ave. SW, Washington, DC 20585, Email: *DensifiedBiomass2018@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions, should be directed to Connor Murphy at 202–287–5982, or by email *Connor.Murphy@eia.gov.* You can view Form EIA–63C *Densified Biomass Fuel Report* online at *https://www.eia.gov/survey/#eia-63c.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0209;

(2) *Information Collection Request Title:* Densified Biomass Fuel Report;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* Form EIA–63C *Densified Biomass Fuel Report* is part of EIA's comprehensive energy data program. The survey collects information on the manufacture, shipment, exports, energy characteristics, and sales of pellet fuels and other densified biomass fuel products data from facilities that manufacture densified biomass fuel products, primarily pellet fuels, for energy applications. The data collected are a primary source of information for the nation's growing production of biomass products for heating and electric power generation, for use in both domestic and foreign markets.

(4a) *Changes to Information Collection:* Respondents will no longer have to answer the following six questions:

- Part 2 Question 2.2 ''What is the operational month''
- Part 2 Question 2.4 ''What is the total installed horsepower of the pellet extrusion machinery at this facility''
- Part 2. Question 2.6 ''What is the planned maximum annual production capacity at this facility''
- Part 2. Question 2.7 ''What is the planned total installed horsepower of the pellet extrusion machinery at this facility''
- Part 3. Question 3.2 ''In the reporting period, did the mill utilize any portion of the above feedstock for uses other than transformation into densified biomass products, such as to operate the mill, produce electricity (combined heat and power) or other beneficial use of energy produced (such as heating/cooling)''
- Part 4. Question 4.2 ''Export Port.''

EIA also removed the requirement to report quantity, characteristics, inventory, and revenue data on compressed fuel logs, bricks and briquettes from on questions 3.3, 3.4 and 4.1.

Finally, the due date for annual respondents (small biomass fuel manufacturers having a capacity of less than 10,000 tons per year or planned facilities) to report is changed from February 1 to June 1 to coincide with the industry's off-season and ease their reporting burden during the heating season which is their busiest time of the year. Respondents that need to file annually will only need to report limited data in Parts 1 and 2 of the form;

(5) *Annual Estimated Number of Respondents:* 108;

(6) *Annual Estimated Number of Total Responses:* 1,065;

(7) *Annual Estimated Number of Burden Hours:* 1,467;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $111,026 (1,467 burden hours times $75.69 per hour). EIA estimates that there are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on June 15, 2018.

Nanda Srinivasan

Director, Office of Survey Development and Statistical Integration U.S. Energy Information Administration.

[FR Doc. 2018–13678 Filed 6–25–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1274–001.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.
Description: Compliance filing: DEOK submits compliance filing re: Commission's 6/1/2018 order to be effective 1/1/2012.
Filed Date: 6/20/18.
Accession Number: 20180620–5090.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: ER18–1808–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–06–20 Termination of SA 2998 Exelon-MISO ENRIS Agreement (J371) to be effective 7/31/2018.
Filed Date: 6/20/18.
Accession Number: 20180620–5021.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: ER18–1809–000.
Applicants: Entergy Arkansas, Inc.
Description: Request of Entergy Arkansas, Inc. for Temporary and Limited Waiver of Rate Schedule.
Filed Date: 6/19/18.
Accession Number: 20180619–5132.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1810–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–06–20_Termination of SA 3050 SC Interconnection-ITCM GIA (J298) to be effective 6/21/2018.
Filed Date: 6/20/18.
Accession Number: 20180620–5037.
Comments Due: 5 p.m. ET 7/11/18.

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: June 20, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–13662 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–172–000]

American Municipal Power, Inc.; Notice of Filing

Take notice that on June 15, 2018, American Municipal Power, Inc. submitted an application for approval of revenue requirement for reactive power service in MISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 6, 2018.

Dated: June 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–13595 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14878–000]

FreedomWorks, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 1, 2018, FreedomWorks, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mt. Storm Pumped Storage Hydro Project to be located near Bismarck in Grant County, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing Mt. Storm Lake as an upper reservoir with a surface area of 1,200 acres and a storage capacity of 44,000 acre-feet at a surface elevation of approximately 3,200 feet above mean sea level (msl); (2) as many as two new lower reservoirs with a combined surface area of 690 acres and a combined storage capacity of 12,000 acre-feet at a surface elevation of 2,350 to 2,425 feet msl created through construction of new semi-circular dams and/or dikes; (3) as many as eight new 10,000-foot-long, 4-foot-diameter penstocks connecting the upper reservoir and lower reservoir; (4) two new 300-foot-long, 50-foot-wide, 25-foot-high powerhouses containing four turbine-generator units with a total rated capacity of 1,000 megawatts; (5) a new transmission line connecting the powerhouse to a nearby electric grid

interconnection point with options to evaluate multiple grid interconnection locations; and (6) appurtenant facilities. The proposed project would have an annual generation of 4,380,000 megawatt-hours.

Applicant Contact: Tim Williamson, FreedomWorks, LLC, 525 Wren Lane, Harpers Ferry, WV 25425; phone: 267–254–6107.

FERC Contact: Woohee Choi; phone: (202) 369–6324.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14878–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14878) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 20, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–13708 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–174–000]

American Municipal Power, Inc.; Notice of Filing

Take notice that on June 19, 2018, American Municipal Power, Inc. submitted a filing of proposed cost-based revenue requirement for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service under Schedule 2 of the Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 pm Eastern Time on July 10, 2018.

Dated: June 20, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–13705 Filed 6–25–18; 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 rate filings:

Docket Numbers: ER13–738–005; ER11–3097–009; ER10–1186–008; ER10–1329–008.

Applicants: DTE Electric Company, DTE Energy Trading, Inc., DTE Energy Supply, Inc., St. Paul Cogeneration, LLC.

Description: Updated Market Power Analysis for the Central Region of the DTE MBR Entities, et al.

Filed Date: 6/18/18.

Accession Number: 20180618–5134.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER14–1619–004.

Applicants: Cottonwood Energy Company LP.

Description: Supplement (Clarification) to May 11, 2018 Cottonwood Energy Company LP tariff filing.

Filed Date: 6/18/18.

Accession Number: 20180618–5142.

Comments Due: 5 p.m. ET 7/9/18.

Docket Numbers: ER17–219–007.

Applicants: PacifiCorp.

Description: Compliance filing: OATT Ancillary Erratum to Compliance Filing in ER17–219 to be effective 7/1/2018.

Filed Date: 6/15/18.

Accession Number: 20180615–5243.

Comments Due: 5 p.m. ET 7/6/18.

Docket Numbers: ER17–2088–001: ER16–2035–001; ER16–1833–003; ER14–474–008.

Applicants: Apple Blossom Wind, LLC, Black Oak Wind, LLC, Sempra Gas & Power Marketing, LLC, Sempra Generation, LLC.

Description: Updated Market Power Analysis for the Central Region of Apple Blossom Wind, LLC, et al.

Filed Date: 6/18/18.

Accession Number: 20180618–5138.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–1190–001.

Applicants: Entergy Arkansas, Inc.

Description: Tariff Amendment: Amended Distribution Agreement to Reflect Tax Cuts and Jobs Act of 2017 to be effective 6/1/2018.

Filed Date: 6/19/18.

Accession Number: 20180619–5019.

Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1267–002.

Applicants: South Central MCN LLC.

Description: Tariff Amendment: SCMCN ER18–1267 Deficiency Filing Part 1 to be effective 3/31/2018.

Filed Date: 6/18/18.

Accession Number: 20180618–5089.

Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1267–003.

Applicants: South Central MCN LLC.

Description: Tariff Amendment: SCMCN ER18–1267 Deficiency Filing Part 2 to be effective 3/31/2018.

Filed Date: 6/18/18.

Accession Number: 20180618–5090.
Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1424–001.
Applicants: Rio Bravo Fresno, A California Joint Venture.
Description: Tariff Amendment: Amendment to 1 to be effective 4/23/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5002.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1427–001.
Applicants: Rio Bravo Rocklin, A California Joint Venture.
Description: Tariff Amendment: Amendment to 1 to be effective 4/23/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5000.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1534–001.
Applicants: East Hampton Energy Storage Center, LLC.
Description: Tariff Amendment: East Hampton Energy Storage Center, LLC Amendment to App for Market-Based Rates to be effective 7/6/2018.
Filed Date: 6/18/18.
Accession Number: 20180618–5109.
Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1535–001.
Applicants: Montauk Energy Storage Center, LLC.
Description: Tariff Amendment: Montauk Energy Storage Center, LLC Amendment to App for Market-Based Rates to be effective 7/6/2018.
Filed Date: 6/18/18.
Accession Number: 20180618–5111.
Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1577–001.
Applicants: Thunder Spirit Wind, LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 5/14/2018.
Filed Date: 6/15/18.
Accession Number: 20180615–5244.
Comments Due: 5 p.m. ET 7/6/18.

Docket Numbers: ER18–1781–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 2041R7 Kansas City Board of Public Utilities PTP Agreement to be effective 9/1/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5035.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1795–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: Hope PSA to be effective 5/31/2018.
Filed Date: 6/18/18.
Accession Number: 20180618–5092.
Comments Due: 5 p.m. ET 7/9/18.

Docket Numbers: ER18–1796–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA SA No. 4856; Queue No. AA2–121/AB2–104/AC1–003 to be effective 5/21/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5024.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1797–000.
Applicants: Ioway Energy, LLC.
Description: Tariff Cancellation: Cancellation of Ioway Energy MBR Tariff to be effective 6/19/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5048.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1798–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5098; Queue No. AB1–173/AB1–173A to be effective 5/21/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5062.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1799–000.
Applicants: Kentucky Utilities Company.
Description: § 205(d) Rate Filing: Amended Rate Schedules Nos. 185 and 157 TCJA to be effective 7/1/2018.
Filed Date: 6/19/18.
Accession Number: 20180619–5095.
Comments Due: 5 p.m. ET 7/10/18.

Docket Numbers: ER18–1800–000; ER18–1801–000; ER18–1802–000; ER18–1803–000; ER18–1804–000; ER18–1805–000; ER18–1806–000; ER18–1807–000.
Applicants: Bendwind, LLC, DeGreeff DP, LLC, DeGreeffpa, LLC, Groen Wind, LLC, Hillcrest Wind, LLC, Larswind, LLC, Sierra Wind, LLC, TAIR Windfarm, LLC.
Description: Notice of Cancellation Market Base Rate Tariffs of Bendwind, LLC, et al.
Filed Date: 6/19/18.
Accession Number: 20180619–5099.
Comments Due: 5 p.m. ET 7/10/18.

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, nterventions, 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: June 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–13596 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8479–001]

Herrin, Michael D.; Notice of Filing

Take notice that on June 19, 2018, Michael D. Herrin, submitted for filing an, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2018).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 10, 2018.

Dated: June 20, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–13664 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN18–7–000]

Footprint Power LLC; Footprint Power Salem Harbor Operations LLC; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission in the above-captioned docket,[1] with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2017), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2017), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Jeremy Medovoy

Catherine Collins

Katherine Walsh

Mark Nagle

Benjamin Jarrett

John Karp

Alfred Jasins

Dated: June 20, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–13706 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *Footprint Power LLC, et al.,* 163 FERC ¶ 61,198 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14877–000]

Peak Hour Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 17, 2018, Peak Hour Power, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Silver Creek Pumped Storage Project to be located on Silver Creek Reservoir in Schuylkill County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 8,000-foot-long, 125- to 175-foot-high roller-compacted concrete or rock-filled semi-circular dam and/or dike forming an upper reservoir having a surface area of 150 acres and a total storage capacity between approximately 8,000 and 10,000 acre-feet at a normal maximum water surface elevation between approximately 1,650 and 1,750 feet above mean sea level (msl); (2) a lower reservoir encompassing the existing Silver Creek Reservoir and neighboring abandoned mines land and having a surface area of 100 acres and a total storage capacity of 10,000 acre-feet at a normal maximum water surface elevation between 1,200 and 1,300 feet msl; (3) a 3,000-foot-long tunnel connecting the upper and lower reservoirs; (4) a powerhouse containing two turbine units with a total rated capacity of 250 megawatts; (5) a 2-mile-long transmission line connecting to an existing 230-kilovolt (kV) line or a 4000-foot-long transmission line connecting to an existing 69-kV line; and (6) appurtenant facilities. Possible initial fill water would come from local inflow, including groundwater. The proposed project would have an annual generation of 784,750 megawatt-hours.

Applicant Contact: Paul DiRenzo, Peak Hour Power, LLC, 214 Norwegian Woods Drive, Pottsville, PA 17901; phone: 570–617–7810.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14877–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14877) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 20, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–13707 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1299–004.

Applicants: Kinetica Energy Express, LLC.

Description: Compliance filing Compliance Filing to be effective 4/12/2017.

Filed Date: 6/18/18.

Accession Number: 20180618–5054.

Comments Due: 5 p.m. ET 7/2/18.

Docket Numbers: RP18–899–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—EQT Energy, LLC 6–19–2018 to be effective 6/19/2018.

Filed Date: 6/18/18.

Accession Number: 20180618–5038.

Comments Due: 5 p.m. ET 7/2/18.

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: June 20, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–13663 Filed 6–25–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9979–09–Region 6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for South Louisiana Methanol L.P., St. James Methanol Plant in St. James Parish, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petitions for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated May 29, 2018 denying a Petition dated December 29, 2016 and a Petition dated August 10, 2017 from the Louisiana Environmental Action Network and the Sierra Club (collectively, the Petitions and Petitioners, respectively). The Petitions requested that the EPA object to the Clean Air Act (CAA) title V operating permit 1560–00292–V1 issued on June 30, 2017 by the Louisiana Department of Environmental Quality (LDEQ) to South Louisiana Methanol, L.P. (SLM) for its Methanol Plant located in St. James, St. James Parish, Louisiana.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 6 Office, 1445 Ross Avenue, Suite 700, Dallas, TX 75202. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Brad Toups, EPA Region 6, by phone (214) 665–7258, or email at *toups.brad@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

EPA received a first petition from the Petitioners on December 29, 2016 and a second petition from the same Petitioners on August 10, 2017 for the operating permit issued on June 30, 2017 to SLM for its Methanol Facility located in St. James Parish, Louisiana. The Petitioners requested that the Administrator object to the proposed operating permit issued by the LDEQ to SLM based on eight primary claims in the Petition. The claims are described in detail in Section IV of the Order. In summary, the issues raised include: Matters properly addressable through preconstruction permit requirements, such as the establishment of proper preconstruction emission limits and standards (various claims, introduction to Order Section IV); claims concerning the failure to require Best Available Control Technology (Claim IV); claims of permit condition unenforceability (Claim V); claims of unenforceability of emissions limits that apply to the boiler (Claim V.A), the Reformer Vent (Claim V.B), the flare (Claim V.D), the crude methanol tank (Claim V.E), the cooling towers (Claim V. G), from miscellaneous fired sources (Claim V.F), including CO_2e emissions from such fired sources (Claim V.C). On May 29, 2018, the EPA Administrator issued an Order denying the Petitions. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than August 27, 2018.

Dated: June 15, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–13652 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9979–38–OLEM]

Brownfields Utilization, Investment and Local Development (BUILD) Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Brownfields Utilization, Investment, and Local Development (BUILD) Act was enacted on March 23, 2018 as part of the Consolidated Appropriations Act, 2018. The BUILD Act reauthorized the Environmental Protection Agency's (EPA's) Brownfields Program, and made amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the 2002 Small Business Liability Relief and Brownfields Revitalization Act. These amendments affect brownfields grants, ownership and liability provisions, and State & Tribal Response Programs. The Environmental Protection Agency (EPA) is developing policy and guidance to implement the BUILD Act amendments. As part of this process, the EPA is soliciting comment on three provisions in the BUILD Act: The authority to increase the per-site cleanup grant amounts to $500,000, the new multi-purpose grant authority, and the new small community assistance grant authority.

DATES: Comments will be accepted through July 10, 2018.

ADDRESSES: Please send any comments to *BUILDAct@epa.gov* no later than July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, U.S. EPA, (202) 566–2745, *lentz.rachel@epa.gov* or Megan Quinn, U.S. EPA, (202) 566–2773, *quinn.megan@epa.gov.*

SUPPLEMENTARY INFORMATION: Publication of this notice will start a two-week comment period for stakeholders to respond to the questions included in this notice. Comments will be accepted through July 10, 2018. EPA expects to develop policy on these three grant programs and incorporate them into the Agency's guidelines for the FY 2019 brownfields grant cycle.

Background

The Brownfields Utilization, Investment, and Local Development (BUILD) Act was enacted on March 23, 2018 as part of the Consolidated Appropriations Act, 2018. The BUILD Act reauthorized the EPA's Brownfields Program, and made amendments to CERCLA, as amended by the 2002 Small Business Liability Relief and Brownfields Revitalization Act. These amendments affect brownfields grants, ownership and liability provisions, and State & Tribal Response Programs. The EPA is developing policy and guidance to implement the BUILD Act. As part of that process, the EPA is soliciting comment on three provisions in the BUILD Act: The authority to increase the per site cleanup grant amounts to $500,000, the new multi-purpose grant authority, and the new small community assistance grant authority.

Cleanup Grant Policy

The BUILD Act amended CERCLA Section 104(k)(3)(A)(ii) to increase the ceiling for brownfields cleanup grant funding from $200,000 to $500,000 per site; eligible entities can request a waiver up to $650,000 per site, based on the anticipated level of contamination, size, or ownership status of the site. The applicant must own the site to expend any resources on cleanup at the site. The Agency's primary concern is one of community access to brownfields cleanup funds. Increasing the amount of single cleanup grants will most likely decrease the total number of grants that may be awarded in any given fiscal year, therefore decreasing the number of brownfield sites cleaned-up and communities served, particularly when annual appropriations remain level or decrease.

Given these parameters, the Agency is interested in receiving comments from communities and other stakeholders on the following considerations:

1. If a community receives a $500,000 cleanup grant, how likely is it that the community could meet the 20 percent cost share statutory requirement (CERCLA 104(k)(10)(B)(iii))? How would communities meet the 20 percent cost share requirement? Do stakeholders support a higher per grant funding amount, with cost share requirement of less than 20 percent, even if the result is fewer communities will receive brownfields cleanup grants?

2. In your community's experience, how long does the average brownfield cleanup take to complete? Please provide information on the average length of time, including from the time of state review and approval of a clean-up plan to the time when the brownfield site is ready for reuse. What are the barriers your community experiences in getting a brownfield site cleaned up and ready for reuse?

Multipurpose Grant Policy

The BUILD Act established a new Multipurpose Brownfield Grant program. Under this new authority, EPA may provide a maximum of $1 million in funding per grant to an eligible entity to inventory, characterize, assess, plan for or remediate one or more brownfield sites within a target area. The statute requires that a Multipurpose Grant recipient own the brownfields property prior to expending grant resources to remediate the property. The grant funding may be made available to a grant recipient for a maximum of five years. While the EPA has authority to award multipurpose grants up to $1,000,000, the EPA is considering piloting the grants at no more than $700,000.

Given these parameters, the Agency is interested in receiving comments from communities and other stakeholders on the following considerations:

1. Do communities most need funding for brownfields inventory, planning, site assessment or site remediation activities?

2. Do communities typically have in place an ''overall plan for revitalization of the one or more brownfields within the proposed area in which the multipurpose grant will be used'' or would they most likely need to create this plan using multipurpose grant funds?

3. What is a reasonable number of accomplishments (*e.g.,* brownfields site assessments and site cleanups) to expect from a grant recipient that receives a $700,000 multipurpose grant over a five-year grant period?

4. What complications and barriers will affect a grant recipient's ability to achieve these accomplishments?

128(a) Small Grant Policy

The BUILD Act added a new authority for the EPA to make grants to states and tribes to provide training, technical assistance or research assistance to support a small or disadvantaged community up to $20,000 per community. Site specific assessment and cleanup activities are not allowable expenditures under this grant authority. The EPA is developing further guidance on (1) the types of activities that are eligible expenses (including examples of such activities) and (2) the evaluation criteria that the EPA will use for evaluating and selecting proposals.

Accordingly, the EPA is soliciting comment on the following issues:

1. The EPA anticipates that state and tribes may provide the following activities to small and disadvantaged communities under this grant: Brownfields outreach and education, technical support, economic or market analyses to support the identification of reuse options for a brownfield site, the implementation or use of the EPA's Land Revitalization tools, and preparation of a needs assessment for developing a Tribal Response Program. What other types of activities should be considered as eligible expenditures under this grant program?

2. The EPA plans to include the following evaluation criteria for proposals submitted under this grant program: Description of the target community, description/purpose of the proposed project, expected outcomes, description of key activities, what entity will be conducting the activities (*e.g.,* state, tribe, contractor), leveraged resources being provided (as necessary), approximate timeline for completing the eligible activities, the amount of funding requested, an explanation of why existing state and tribal funding is inadequate to conduct or complete the eligible activities, and a demonstration of support from the community that will benefit from the funded activity. What other types of evaluation criteria may be useful for the EPA to use when evaluating proposals and selecting grant recipients?

Dated: June 6, 2018.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management.

[FR Doc. 2018–13719 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0365; FRL–9979–05–OAR]

Call for Information on Adverse Effects of Strategies for Attainment and Maintenance of National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Office of Air Quality Planning and Standards (OAQPS), is soliciting information to facilitate the Clean Air Scientific Advisory Committee's (CASAC) consideration of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of national ambient air quality standards (NAAQS).

DATES: All comments and information submitted in response to this call for information should be received by the EPA by October 24, 2018.

ADDRESSES: Submit your comments and related information, identified by Docket ID No. EPA–HQ–OAR–2018–0365, to the Federal eRulemaking Portal: *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Robin Langdon, Office of Air Quality Planning and Standards (Mail Code C–439–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–5695; fax number 919–541–0804; or email: *langdon.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Sections 109(d)(2)(A) and (B) of the Clean Air Act (CAA or the Act) require appointment of an independent scientific review committee that is charged with periodically reviewing the existing air quality criteria and NAAQS and recommending any new standards and revisions of existing criteria and standards as may be appropriate. Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the CASAC.

Sections 109(d)(2)(C)(i)–(iii) of the Act additionally require the independent scientific review committee to advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; and advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity. Section 109(d)(2)(C)(iv) of the Act further requires the independent scientific review committee to ''advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such'' NAAQS. As noted in the Administrator's May 9, 2018, memorandum, ''Back-to-Basics Process for Reviewing National Ambient Air Quality Standards,'' [1] these topics may include information which is not relevant to the standard-setting process,[2] but they provide important policy context for the public, co-regulators, and the EPA.

To facilitate the CASAC's consideration of such effects, the EPA requests interested parties to submit information on any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of existing, new, or revised NAAQS for consideration by the CASAC.

Interested parties are encouraged to identify all relevant information, with a particular emphasis on peer-reviewed research studies that have been published or accepted for publication and other analyses in the following categories: Assessments of the impacts of various types of strategies for attainment and maintenance of NAAQS, including requirements for stationary sources, area sources, and/or mobile sources of emissions; evaluations of the effects of permitting requirements, both new source review and prevention of significant deterioration requirements, on economic growth and other relevant effects listed; examinations of the potential impacts of nonattainment status, including the effects on overall economic growth and employment; and evaluations of potential impacts on public health, public welfare, energy production and consumption, and other social effects of interest.

The EPA also seeks information on inter-pollutant trade-offs from strategies to attain and maintain existing, new or revised NAAQS, and information on distributional effects, including changes in exposures and risk, resulting from alternate attainment strategies for NAAQS, as well as other information related to adverse public health, welfare, social, economic, or energy effects that may result from attainment of existing, new or revised NAAQS. Some aspects of this information may also be relevant to the EPA's review of the air quality criteria, which section 108(a)(2) of the Act describes as reflecting ''the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.'' Section 109(d)(1) of the Act requires that the EPA review these criteria periodically. To ensure this statutory requirement is met for ozone and other photochemical oxidants, elsewhere in today's **Federal Register** we are announcing initiation of a new periodic review of the criteria for ozone and other photochemical oxidants and issuing a call for information that would facilitate the EPA's review of these criteria.

II. How To Submit Information to the Docket

Submit information, identified by Docket ID No. EPA–HQ–OAR–2018–0365, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submissions. Once submitted, information cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

When submitting comments, remember to:

- Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Describe any assumptions and provide any technical information and/or data that you used.

[1] Available at: *https://www.epa.gov/sites/production/files/2018-05/documents/image2018-05-09-173219.pdf.*

[2] The Supreme Court has held that section 109(b) ''unambiguously bars cost considerations from the NAAQS-setting process.'' *Whitman* v. *Am. Trucking Associations,* 531 U.S. 457, 471 (2001).

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

When considering submitting CBI, do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Dated: June 12, 2018.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–13718 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2018–0274; FRL–9979–56–ORD]

Review of the National Ambient Air Quality Standards for Ozone—Call for Scientific and Policy-Relevant Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that the Office of Air Quality Planning and Standards (OAQPS) and the Office of Research and Development's National Center for Environmental Assessment (NCEA) are preparing an Integrated Review Plan (IRP) and an Integrated Science Assessment (ISA) as part of the review of the air quality criteria and the National Ambient Air Quality Standards (NAAQS) for ozone (O_3) and related photochemical oxidants. The IRP will summarize the plan for the review, including the initial identification of policy-relevant issues and questions to frame the review. The ISA will build on the scientific assessment conducted for the last O_3 review, focusing on assessing newly available information since the last assessment. Interested parties are invited to assist the EPA by submitting information regarding significant new O_3 research and policy-relevant issues for consideration in this review of the primary (health-based) and secondary (welfare-based) O_3 standards.

DATES: All communications and information submitted in response to this call for information should be received by the EPA by August 27, 2018.

ADDRESSES: Submit your comments and related information, identified by Docket ID No. EPA–HQ–ORD–2018–0274 to the *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the IRP, contact Dr. Deirdre L. Murphy, OAQPS, *telephone:* 919–541–0729, or *email: murphy.deirdre@epa.gov.* For information regarding the ISA, contact Dr. Tom Luben, NCEA, *telephone:* 919–541–5762, or *email:* luben.tom@*epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108(a) of the Clean Air Act (CAA or the Act) directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutants in the ambient air . . . .'' CAA section 108(a)(2). Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

Section 109(d)(2) of the Act requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate. Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC). Section 109(d)(2)(C) of the Act additionally requires the independent scientific review committee to advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and, advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. To ensure this final statutory requirement is fully met, elsewhere in today's **Federal Register** we are issuing a call for information that would facilitate the committee's consideration of these issues.

In its periodic review of the air quality criteria, the EPA reviews the currently available scientific information and prepares an ISA. The ISA and other key documents prepared in the review receive independent and expert scientific review by the CASAC.

Photochemical oxidants, including O_3, are one of six ''criteria'' pollutants for which EPA has established NAAQS, and O_3 is the current indicator for that NAAQS. The O_3 NAAQS were most recently revised in fall of 2015. In consideration of the statutory deadline for the next periodic review of the air quality criteria and standards, the EPA is accelerating initiation of the planning phase for the review, including development of the IRP for the review. The IRP will describe the overall plan for the review, outlining the anticipated schedule, process, and approaches for evaluating the relevant scientific information, as well as the key policy-relevant issues that will frame the review. We intend that the IRP will build upon key documents from the last review (available from: *https://www.epa.gov/naaqs/ozone-o3-air-quality-standards*). Such documents include the preamble to the final rulemaking decision, which included detailed discussions of policy-relevant issues central to that review (80 FR 65292, October 26, 2015), and the *Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants (Final Report, Feb. 2013),* EPA/600/R–10/076F. Interested parties are invited to assist the EPA by submitting information regarding significant new O_3 research and policy-relevant issues for consideration in this review of the primary (health-based)

and secondary (welfare-based) O_3 standards.

The EPA will consult with the CASAC on the IRP and will also solicit comments from the public. As the review proceeds, the EPA will also request CASAC review of, and provide an opportunity for public comment on, other draft documents prepared for the review, which generally include the ISA, a risk/exposure assessment (REA), as warranted, and a policy assessment (PA). The EPA intends to provide the CASAC with a standardized set of key charge questions to consider in providing advice to the Administrator throughout the entire review, supplementing these questions with more detailed requests as necessary. More information on the updated process for the forthcoming ozone NAAQS review, including statutory, standardized charge questions, is contained in the Administrator's May 9 2018 memorandum, ''Back-to-Basics Process for Reviewing National Ambient Air Quality Standards.'' [1]

The ISA will build on the scientific assessment for the last review,[2] focusing on assessing information newly available since the 2013 ISA. With regard to development of the ISA, the public is encouraged to assist in identifying relevant scientific information for the review by submitting research studies that were not part of the prior review, and have been published or accepted for publication in a peer-reviewed journal. The Agency is interested in obtaining newly available information, particularly concerning toxicological studies of effects of controlled exposure to O_3 on laboratory animals, humans, and *in vitro* systems, as well as epidemiologic (observational) studies of health effects associated with ambient exposures of human populations to O_3. The EPA also seeks recent information in other areas of O_3 research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, ambient concentrations, and effects on welfare [3] or the environment. This and other selected literature relevant to a review of the air quality criteria and NAAQS will be considered for inclusion in the forthcoming ISA. In addition to the request to submit current peer reviewed research studies, other opportunities for submission of new peer-reviewed, published (or in-press) papers will be available as part of the public comment period on the draft ISA that will be reviewed by the CASAC.

II. How To Submit Information and Comments to the Docket at *www.regulations.gov*

Submit your comments and related information, identified by Docket ID No. EPA–HQ–ORD–2018–0274 to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* 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.*

When submitting comments, remember to:

- Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

When considering submitting CBI, do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Dated: June 12, 2018.

Mary Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2018–13716 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

[1] Available at: *https://www.epa.gov/sites/production/files/2018-05/documents/image2018-05-09-173219.pdf.*

[2] The scientific assessment for the last review is documented in the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Final Report, Feb 2013),* EPA 600/R–10/076F.

[3] Under CAA section 302(h), effects on welfare include, but are not limited to, ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and wellbeing.''

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128; FRL–9979–52–ORD]

Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' (EPA/600/R–18/097). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen, oxides of sulfur, and particulate matter. The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. On January 28, 2016, EPA released a separate ISA as part of an independent review for the primary (health-based) NAAQS for oxides of nitrogen (EPA/600/R–15/068).

In addition, EPA also released a separate ISA to support the primary NAAQS review for oxides of sulfur (EPA/600/R–17/451, December 13, 2017), and is currently reviewing the primary and non-ecological secondary (*e.g.,* visibility, climate, materials damage) NAAQS for particulate matter.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). This draft document is not final, as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent, Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

DATES: The public comment period begins on June 26, 2018 and ends on September 4, 2018. Comments must be received on or before September 4, 2018.

ADDRESSES: The ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' will be available primarily via the internet on EPA's Integrated Science Assessment home page at *https://www.epa.gov/isa/integrated-science-assessment-isa-oxides-nitrogen-and-sulfur-ecological* or the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Dr. Tara Greaver, NCEA; phone: 919–541–2435; fax: 919–541–1818; or email: *greaver.tara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air . . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS (for more information on the NAAQS review process, see *https://www.epa.gov/naaqs*).

Oxides of nitrogen, oxides of sulfur, and particulate matter are three of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On August 21, 2013 (78 FR 53452), EPA formally initiated its current review of the air quality criteria for the ecological effects of oxides of nitrogen and oxides of sulfur, and the associated secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. Similarly, on December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the particulate matter NAAQS. EPA conducted two workshops—the first on March 4 to 6, 2014 for oxides of nitrogen and oxides of sulfur (79 FR 8644, February 13, 2014), and the second on February 11, 2015 (79 FR 71764, December 3, 2014) for particulate matter—to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the these secondary NAAQS. Teleconference workshops with invited scientific experts, both internal and external to EPA, were held on August 25, 26, and 27, 2015 (80 FR 48316, August 12, 2015) and June 13, 2016 (81 FR 89262, May 11, 2016), to discuss initial draft materials prepared in the development of the draft ISA.

These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the Secondary National Ambient Air Quality Standard for Oxides of Nitrogen and Oxides of Sulfur'' as well as the ''Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.'' The Draft Integrated Review Plan (IRP) for oxides of nitrogen and oxides of sulfur was available for public comment (80 FR 69220, Monday, November 9, 2015) and discussion by the CASAC via publicly accessible teleconference consultation (80 FR 65223, February 10, 2016). The Draft IRP for particulate matter was available for public comment (81 FR 2297, April 19, 2016) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362, March 14, 2016) prior to release of the final document (81 FR 87933, December 6, 2016). The ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' was available for public comment (82 FR 15703, March 30, 2017) and discussed by CASAC and the public (82 FR 15701, March 30, 2017).

The ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' will be discussed at a public meeting for review by CASAC and the public. In addition to the public comment period announced in this notice, the public will have an opportunity to address the CASAC. A separate **Federal Register** notice will inform the public of the exact date and time of the CASAC meeting and of the procedures for public participation.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128, by one of the following method 2nds:

• *www.regulations.gov:* Follow the online instructions for submitting comments.
• *Email: Docket_ORD@epa.gov.*
• *Fax:* 202–566–9744.
• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.
• *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically on *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: June 11, 2018.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2018–13713 Filed 6–25–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Wednesday, July 11, 2018, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This meeting of the Advisory Committee on Community Banking will be Webcast live via the internet *http://fdic.windrosemedia.com.* Questions or troubleshooting help can be found at the same link. For optimal viewing, a high-speed internet connection is recommended. Further, a video of the meeting will be available on-demand approximately two weeks after the event.

Dated: June 21, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–13642 Filed 6–25–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201217–003.

Title: Port of Long Beach Data Services Agreement.

Parties: Port of Long Beach; PierPass LLC; LBCT LLC; SSA Terminals (Pier

A), LLC; International Transportation Service, Inc.; Pacific Maritime Services, L.L.C.; SSA Terminals, LLC; and Total Terminals International, LLC.

Filing Party: Jeff Vogel; Cozen O'Connor.

Synopsis: The amendment adds related provisions regarding the Port Drayage Truck Registry, extends the Agreement through July 1, 2021, and makes corrections to the names and addresses of some of the parties and administrative personnel. The parties request expedited review.

Agreement No.: 011279–030.

Title: Latin America Agreement.

Parties: Central America Discussion Agreement; Caribbean Shipowners Association; ABC Discussion Agreement; West Coast of South America Discussion Agreement; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment deletes the Venezuelan Discussion Agreement and Libra as parties and corrects the addresses of the remaining parties to the Agreement.

Dated: June 21, 2018.

JoAnne D. O'Bryant,

Program Analyst.

[FR Doc. 2018–13729 Filed 6–25–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Information Collection for HHS Certification of Foreign Adult Victims of Human Trafficking.

OMB No.: 0970–0454.

Description: The Trafficking Victims Protection Act, Public Law 106–386 (TVPA) requires the Department of Health and Human Services (HHS) to certify adult alien (''foreign'') victims of severe forms of trafficking in persons (''human trafficking'') who are willing to assist law enforcement in the investigation and prosecution of human trafficking, unless unable to cooperate due to physical or psychological trauma, and who have either made a bona fide application for T nonimmigrant status that has not been denied or been granted Continued Presence (CP) from the U.S. Department of Homeland Security (DHS). The Office on Trafficking in Persons (OTIP) within the HHS Administration for Children and Families issues HHS Certification Letters that grant adult foreign victims of human trafficking eligibility for federal and state benefits and services to the same extent as refugees.

In general, OTIP initiates the certification process when it receives a notice from DHS that DHS has granted a foreign victim of trafficking CP or T nonimmigrant status, or has determined an application for T nonimmigrant status is bona fide. To issue HHS Certification Letters, it is necessary for OTIP to collect information from a victim, or a victim's representative, such as an attorney, case manager, or law enforcement victim specialist, including an address to send the HHS Certification Letter.

OTIP will ask if the victim is in need of case management services and the current location (city, state) of the victim, and refer the victim to an appropriate service provider in his or her area, if requested. OTIP will also ask about the victim's primary language and urgent concerns, such as medical care or housing, and transmit this information to the service provider with the victim's consent.

Finally, OTIP reports information on victim certification to provide to Congress in an annual report on U.S. Government activities to combat trafficking that is prepared by the U.S. Department of Justice. Congress requires HHS and other appropriate Federal agencies to report information on the number of persons who received benefits or other services under subsections (b) and (f) of section 7105 of Title 22 of the U.S. Code in connection with programs or activities funded or administered by HHS. HHS may include in these annual reports additional aggregate information that it collects about the victims when assisting each victim to obtain HHS Certification.

OTIP developed the form to facilitate the submission of consistent information and improve program reporting. The trafficking victim or his or her representative may submit the completed form, which we recommend be done via password-protected email or encryption, to OTIP for the purpose of issuing a Certification Letter. OTIP will store this information in OTIP's secure database for no longer than 10 years, at which time it will be destroyed, unless required for business use by HHS. Other details maintained in the victim's file may include OTIP staff actions, referrals, and notes regarding the victim's interest in receiving services. Maintaining victim records within OTIP's database will ensure efficient service delivery for victims, allow OTIP staff to track victims' progress toward certification, verify eligibility for benefits, and organize information for reporting aggregate data to Congress.

Respondents: Nongovernmental entities providing social or legal services, or victim/survivors of trafficking may use this form to submit a request for certification. The use of this form is optional; the victim or his/her representative has the option to make a request for certification via telephone or email.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
HHS Certification Instrument	800	1	.5	400

Estimated Total Annual Burden Hours: 400.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by JUNE 22, 2018. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW,

Washington, DC 20503; FAX: (202) 395–7285; email: *oira_submission@omb.eop.gov.*

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–13604 Filed 6–25–18; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1073]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on July 12, 2018, from 8:30 a.m. to 4 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–1073. The docket will close on July 11, 2018. Submit either electronic or written comments on this public meeting by July 11, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 11, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of July 11, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 2, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1073 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/*

AdvisoryCommittees/default.htm and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 210795, tafenoquine tablet, 150 milligram, sponsored by GlaxoSmithKline Intellectual Property Development Ltd., England, for the proposed indication of the radical cure (prevention of relapse) of *Plasmodium vivax* malaria.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 2, 2018. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 26, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 27, 2018.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 20, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–13710 Filed 6–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1073]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on July 26, 2018, from 8:30 a.m. to 4 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–1073. The docket will close on July 25, 2018. Submit either electronic or written comments on this public meeting by July 25, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 25, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of July 25, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 12, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1073 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSES** section), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 210607, tafenoquine tablet, 100 milligram (mg), sponsored by 60 Degrees Pharmaceuticals, LLC, for the proposed indication of prevention of malaria in adults for up to 6 months of continuous dosing.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before July 12, 2018, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 3, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 5, 2018.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

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Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 21, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–13711 Filed 6–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6209]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Assessing User Fees Under the Biosimilar User Fee Amendments of 2017

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 July 26, 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 0910–0718. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Assessing User Fees Under the Biosimilar User Fee Amendments of 2017

OMB Control Number 0910–0718—Revision

This information collection supports the above captioned Agency guidance and implementation of the Biosimilar User Fee Amendments of 2017 (BsUFA II). Under BsUFA II, FDA's authority is extended to collect user fees from fiscal years 2018–2022 and includes a number of technical revisions that affect what fees and how fees are collected. Fees authorized by this legislation help fund the review process for biosimilar biological product applications and play an important role in expediting the review and approval process.

We have developed the guidance document entitled ''Assessing User Fees Under the Biosimilar User Fee Amendments of 2017'' to assist industry in understanding when these fees are incurred and the process by which applicants can submit payments. The guidance also provides information on the consequences of failing to pay BsUFA II fees, as well as processes for submitting reconsideration and appeal requests. The guidance document is available on our website at: *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM584984.pdf.*

In the **Federal Register** of November 16, 2017 (82 FR 53505), we published a notice announcing availability of the subject guidance document, including a 60-day notice requesting public comment on the information collection. One comment was received in response to the notice from a trade organization indicating that interested persons ''have reviewed the draft guidance and appreciate(s) FDA applying the user fee provisions consistent with the BsUFA II negotiations and Commitment Letter.'' In addition, and upon our own review, we believe it is appropriate to include the guidance document under the existing information collection ''Biosimilar User Fee Cover Sheet'' currently approved under OMB control number 0910–0718 rather than to establish a new collection. FDA is preparing to renew OMB control number 0910–0718 and will include the guidance document accordingly.

We estimate the burden of the information collection 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 (hours)	Total hours
Request for discontinuation from biological product development program	2	1	2	1	2
Request to move products to discontinued section of the biosimilar list	5	1	5	*0.5	2.5
Small business waiver of the BsUFA application fee	1	1	1	16	16
Small business waiver reconsiderations	1	1	1	24	24
Small business waiver appeals	1	1	1	12	12
Annual Fee Determination Survey	35	1	35	1	35
Annual BsUFA Fees Correspondence	35	1	35	2	70
Total					161.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

Our estimate is based on the number of Biosimilars User Fee submissions we have received since establishing the program.

Dated: June 21, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–13688 Filed 6–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal

Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the table) set forth at 42 CFR 100.3. This table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested outside the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on May 1, 2018, through May 31, 2018. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the table but which was caused by a vaccine'' referred to in the table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: June 19, 2018.

George Sigounas,

Administrator.

List of Petitions Filed

1. Emily Jahn, Millbury, Massachusetts, Court of Federal Claims No: 18–0613V
2. Kathy Macaluso, Naples, Florida, Court of Federal Claims No: 18–0614V
3. Jason Fey and Heather Fey on behalf of E.P.F., Hudson, Wisconsin, Court of Federal Claims No: 18–0615V
4. Jeanne Rudzki, Jefferson, Louisiana, Court of Federal Claims No: 18–0617V
5. Michael Schwarz, Walla Walla, Washington, Court of Federal Claims No: 18–0619V
6. Ernest Perkins, Salt Lake City, Utah, Court of Federal Claims No: 18–0620V
7. Sally Musulin, Cranberry, Pennsylvania, Court of Federal Claims No: 18–0621V
8. Katherine L. Alberino, Medford, Massachusetts, Court of Federal Claims No: 18–0622V
9. Timothy W. Massa, La Grange, Georgia, Court of Federal Claims No: 18–0623V
10. Joseph Davis, Auburn, California, Court of Federal Claims No: 18–0624V
11. Tesalia Lyons on behalf of G.L., Douglasville, Georgia, Court of Federal Claims No: 18–0625V
12. Matthew T. Manley, Greensboro, North Carolina, Court of Federal Claims No: 18–0626V
13. Sherri Paige, Willimantic, Connecticut, Court of Federal Claims No: 18–0627V
14. Marie Aagotnes, New York, New York, Court of Federal Claims No: 18–0631V
15. Arthur Renfro, Cheyenne, Wyoming, Court of Federal Claims No: 18–0632V
16. Thomas D. Taylor, Purcellville, Virginia, Court of Federal Claims No: 18–0633V
17. Alia J. Stone, Columbus, Ohio, Court of Federal Claims No: 18–0634V
18. Carrine Paulen, Big Rapids, Michigan, Court of Federal Claims No: 18–0635V
19. Lovely Varughese, Des Plaines, Illinois, Court of Federal Claims No: 18–0637V
20. Melissa K. Woinarowicz, Karlstad, Minnesota, Court of Federal Claims No: 18–0639V
21. Adam Crispo, Jersey City, New Jersey, Court of Federal Claims No: 18–0640V
22. Cynthia Peterson, Bronx, New York, Court of Federal Claims No: 18–0641V
23. Debra Juno, Yardley, Pennsylvania, Court of Federal Claims No: 18–0643V
24. Fawne Adams, Frederick, Maryland, Court of Federal Claims No: 18–0644V
25. Juliet Ley, Canonsburg, Pennsylvania, Court of Federal Claims No: 18–0645V
26. Keria Edwards, Toledo, Ohio, Court of Federal Claims No: 18–0646V
27. Frankie Reese, Hickory, North Carolina, Court of Federal Claims No: 18–0647V
28. Dana Ochsner, Olympia, Washington, Court of Federal Claims No: 18–0648V

29. Kimberly J. Little, Rochester, New York, Court of Federal Claims No: 18–0649V
30. Mary Stewart, Hattiesburg, Mississippi, Court of Federal Claims No: 18–0650V
31. Ida E. Sondy, Mountain Home, Arkansas, Court of Federal Claims No: 18–0651V
32. Jill Corsiglia, Aptos, California, Court of Federal Claims No: 18–0652V
33. Helen Kearns, Clinton, North Carolina, Court of Federal Claims No: 18–0654V
34. Beverly Schick-Cowell, Sylvania, Ohio, Court of Federal Claims No: 18–0656V
35. Sue Ann Chamberlain, Pleasant Grove, Utah, Court of Federal Claims No: 18–0658V
36. Judy Welch, Lapeer, Michigan, Court of Federal Claims No: 18–0660V
37. Brent Pyles, Georgetown, Kentucky, Court of Federal Claims No: 18–0662V
38. Kristina Link, Grand Rapids, Michigan, Court of Federal Claims No: 18–0663V
39. Brooke Konsky, Newark, Delaware, Court of Federal Claims No: 18–0666V
40. Heather Sheehan, Madison, Wisconsin, Court of Federal Claims No: 18–0668V
41. Linda Serra, Springfield, Illinois, Court of Federal Claims No: 18–0672V
42. Paula Rosselet, Spokane, Washington, Court of Federal Claims No: 18–0674V
43. Bradley Haag, Pickering, Ohio, Court of Federal Claims No: 18–0675V
44. Marian Williams, Jacksonville, Florida, Court of Federal Claims No: 18–0676V
45. Douglas Billing, Wichita Falls, Texas, Court of Federal Claims No: 18–0679V
46. Cecelia Keller, Upland, Pennsylvania, Court of Federal Claims No: 18–0680V
47. David Christian Kunz, Nibley, Utah, Court of Federal Claims No: 18–0681V
48. Merrick Brunker, Ventura, California, Court of Federal Claims No: 18–0683V
49. Bonnie Mahayni, Midlothian, Virginia, Court of Federal Claims No: 18–0684V
50. Elizabeth Tregillus, Washington, District of Columbia, Court of Federal Claims No: 18–0688V
51. Jeffrey Strain, Sacramento, California, Court of Federal Claims No: 18–0689V
52. Maria Turkson, Harrisburg, Pennsylvania, Court of Federal Claims No: 18–0690V
53. Laura Guerrie, Tujunga, California, Court of Federal Claims No: 18–0692V
54. Flint Allen, Hill City, Kansas, Court of Federal Claims No: 18–0693V
55. Chad Sheller on behalf of Daniel E. Sheller, Deceased, Santa Maria, California, Court of Federal Claims No: 18–0696V
56. Lari Talbert, Shreveport, Louisiana, Court of Federal Claims No: 18–0699V
57. Robert G. Baker, Rock Hill, North Carolina, Court of Federal Claims No: 18–0701V
58. Randy Leblanc, Salt Lake City, Utah, Court of Federal Claims No: 18–0702V
59. Jill Longworth, St. Louis, Missouri, Court of Federal Claims No: 18–0703V
60. Kevin Radford, Alpharetta, Georgia, Court of Federal Claims No: 18–0704V
61. Judith Bohnenkamp, O'Fallon, Missouri, Court of Federal Claims No: 18–0709V
62. Gerard L. Muensterman on behalf of Cletus J. Muensterman, Deceased, Evansville, Indiana, Court of Federal Claims No: 18–0714V
63. Claudette Guerrero, Edinburg, Texas, Court of Federal Claims No: 18–0716V
64. Sheila Chille, Niagara Falls, New York, Court of Federal Claims No: 18–0718V
65. Alice Lawler, Oak Harbor, Washington, Court of Federal Claims No: 18–0719V
66. Patricia Wright, La Marque, Texas, Court of Federal Claims No: 18–0720V
67. Gerald Jansen, Newport, Pennsylvania, Court of Federal Claims No: 18–0722V
68. Bethanne Hull, Titusville, Florida, Court of Federal Claims No: 18–0723V
69. Sheena Schmacht on behalf of H.S., Silvis, Illinois, Court of Federal Claims No: 18–0724V
70. David M. Roberts, Sioux City, Iowa, Court of Federal Claims No: 18–0725V
71. Judith A. Bridges, St. Charles, Missouri, Court of Federal Claims No: 18–0726V
72. Barbara Murray, Orlando, Florida, Court of Federal Claims No: 18–0728V
73. Vicki Havel, Rockwall, Texas, Court of Federal Claims No: 18–0729V
74. Silvia Hernandez, Washington, District of Columbia, Court of Federal Claims No: 18–0731V
75. Charles Williams, Oroville, California, Court of Federal Claims No: 18–0732V
76. James Seylaz, Bridgewater, New Jersey, Court of Federal Claims No: 18–0733V
77. Laurel Ostiguy, Marlborough, Massachusetts, Court of Federal Claims No: 18–0736V
78. Kathleen Spain, Las Vegas, Nevada, Court of Federal Claims No: 18–0737V
79. Staci McTeigue, Alpharetta, Georgia, Court of Federal Claims No: 18–0740V
80. Jackie Johns, Marshfield, Missouri, Court of Federal Claims No: 18–0741V
81. Erica Schofield, Missoula, Montana, Court of Federal Claims No: 18–0742V
82. Rocco E. Moat, Milwaukee, Wisconsin, Court of Federal Claims No: 18–0743V
83. Raymond Spornhauer, Lufkin, Texas, Court of Federal Claims No: 18–0744V
84. Janice Hodgett, Kewanee, Illinois, Court of Federal Claims No: 18–0745V
85. Carol D'Angelo, Philadelphia, Pennsylvania, Court of Federal Claims No: 18–0747V
86. Cami Perry, Aurora, Colorado, Court of Federal Claims No: 18–0748V
87. Carol Vorwerck, Towson, Maryland, Court of Federal Claims No: 18–0749V
88. Georgia Derr on behalf of M.D., Harrisburg, North Carolina, Court of Federal Claims No: 18–0751V
89. Sheri Henning, Owasso, Oklahoma, Court of Federal Claims No: 18–0752V
90. Patricia Gauthier, Tonasket, Washington, Court of Federal Claims No: 18–0753V
91. Roderick Sanders, Conyers, Georgia, Court of Federal Claims No: 18–0754V
92. Derek Grace, Dayton, Ohio, Court of Federal Claims No: 18–0757V
93. Sarah Flores and Ryan C. Flores on behalf of M.F., Houston, Texas, Court of Federal Claims No: 18–0759V
94. David Daniel, Houston, Texas, Court of Federal Claims No: 18–0760V
95. Raymond Bielak, St. George, Utah, Court of Federal Claims No: 18–0761V
96. Tori Dreyer, Topeka, Kansas, Court of Federal Claims No: 18–0764V
97. Mark D. Scarlette, Greensboro, North Carolina, Court of Federal Claims No: 18–0766V
98. James Louis, Lisbon, Connecticut, Court of Federal Claims No: 18–0767V
99. Dayane Penderis, Pasadena, California, Court of Federal Claims No: 18–0768V

100. Kathleen Cooper-Loher, Marshfield, Wisconsin, Court of Federal Claims No: 18–0769V
101. Kerstina Alexander on behalf of M.A., Deceased, Woodbridge, Illinois, Court of Federal Claims No: 18–0770V
102. Henry Milligan, Jr., Orlando, Florida, Court of Federal Claims No: 18–0771V
103. Cheryl Thompson, South Bend, Indiana, Court of Federal Claims No: 18–0772V
104. Olivia Gallegos, Fresno, California, Court of Federal Claims No: 18–0773V
105. Jacie Albanez and Mario Albanez on behalf of N.A., San Diego, California, Court of Federal Claims No: 18–0774V
106. Scott Kelbick, Avondale, Arizona, Court of Federal Claims No: 18–0775V
107. Elizabeth Phenneger, Spokane, Washington, Court of Federal Claims No: 18–0776V

[FR Doc. 2018–13593 Filed 6–25–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Standards for the Children's Hospitals Graduate Medical Education Payment Program's Quality Bonus System

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Final response.

SUMMARY: HRSA published a notice in the **Federal Register** on October 11, 2017, soliciting feedback on the establishment of the Children's Hospitals Graduate Medical Education Payment (CHGME) Program's Quality Bonus System (QBS). In particular, HRSA requested feedback on the Fiscal Year (FY) 2019 and beyond multi-step implementation of the system, including demonstration of engagement in state or regional-level initiatives, documentation, and payment structure. This notice summarizes and responds to the comments received during the 60-day comment period.

ADDRESSES: Additional information about the CHGME is available at *https://bhw.hrsa.gov/grants/medicine/chgme.*

FOR FURTHER INFORMATION CONTACT: Malena Crawford, Project Officer, Children's Hospitals Graduate Medical Education Payment Program, Division of Medicine and Dentistry, HRSA at *MCrawford@hrsa.gov* or (301) 443–7334.

SUPPLEMENTARY INFORMATION: The CHGME statute was amended in 2013. The amendments permit up to 25 percent of the total amount appropriated annually in excess of $245 million, but not to exceed $7,000,000, to provide payments to newly qualified hospitals, as defined in section 340E(h) of the Public Health Service Act. The statute additionally states that the Secretary may establish a quality bonus system for CHGME hospitals using any remaining funds after payments are made to newly qualified hospitals. In FY 2018, Congress appropriated $315 million to the CHGME Program. Of this, approximately $4 million in payments were made to newly qualified hospitals. If funding levels and mechanisms remain constant in FY 2019, it is estimated that approximately $3 million may be available annually for the CHGME QBS.

On October 16, 2017, through a **Federal Register** Notice (FRN), HRSA announced a 60-day public comment period to solicit input on the CHGME QBS proposed standards. HRSA proposed a multi-step implementation beginning in FY 2019 that initially will recognize high-level engagement of CHGME hospitals in state and regional health care transformation, as well as engagement of resident trainees in these activities. HRSA sought public comment on the timeline, eligibility, standards, documentation, and payment structure as described in the FRN. HRSA also requested comment on proposed QBS measures, potential data sources, and tiering of QBS payments for FY 2020 and beyond. HRSA received feedback on the following program components in response to the FRN:

- QBS Goals
- Qualifying Initiatives for the FY 2019 QBS
- Measures and Metrics
- Payment Structure
- Documentation, Reporting Requirements and Reducing Reporting Burden
- Implementation Timeline for FY 2020 and Beyond

HRSA carefully reviewed the comments received and used them to guide the development of the FY 2019 CHGME QBS and to inform future iterations of the CHGME QBS. Final guidance for the FY 2019 CHGME QBS will be published in the FY 2019 CHGME Notice of Funding Opportunity (NOFO).

Comments on the Proposed Standards of the Quality Bonus System

HRSA received 17 responses to the request for comments. Thirteen commenters are current CHGME hospitals and four are state/national associations. Comments are summarized below.

QBS Goals

Summary of Comments

Nearly all commenters supported establishing the CHGME QBS to recognize and reward quality training programs for residents supported by the CHGME program and agreed with the approach to recognize engagement in initiatives geared towards transforming pediatric health care to improve access, quality, and cost effectiveness. However, many commenters questioned whether there was enough information about these initiatives to establish a baseline, draw comparisons between children's hospitals, and make judgements about relative performance. Several suggested the proposed approach could be enhanced by starting with documentation of transformation activities in which residents are involved. Specifically, one commenter recommended ''that HRSA work to identify current residents' engagement in quality initiatives and how residents can further engage on broader based initiatives before transitioning the Quality Bonus Program to other criteria in FY 2020 and beyond.'' A few commenters also requested that HRSA offer more clear and specific goals for the multi-step implementation of the QBS.

Response

After considering feedback from stakeholders, the revised goal of the QBS will be to recognize hospitals for quality improvement & GME transformation efforts in high priority focus areas and build standards to increase engagement and involvement of residents in broader initiatives. HRSA will implement a baseline phase for CHGME QBS in FY 2019. Information collected during this baseline phase will be used to establish QBS standards for implementation in FY 2021. In order to qualify for the QBS payment, CHGME awardees must submit documentation in the FY 2019 reconciliation application describing the hospital's initiatives, resident curriculum, and direct resident involvement in the following areas: Integrated care models, telehealth/HIT, population health, social determinants of health, and additional initiatives to improve access

and quality of care to rural/underserved communities.

Qualifying Initiatives for the FY 2019 QBS

Summary of Comments

Many commenters recommended expanding the list of initiatives that would qualify for the QBS and mentioned a number of other initiatives that children's hospitals are currently involved in, which included national and regional non-federal collaboratives. One commenter recommended recognizing initiatives that address pediatric health disparities (*e.g.,* childhood obesity, immunizations, access to care, poverty, food insecurity, population health, child abuse, opioid overuse) at the local and regional levels, initiatives that positively impact the health of surrounding communities, hospital quality improvement projects, and other quality-related programs that meet the goals of the Healthy People 2020. Another commenter recommended recognizing resident participation in medical homes and clinically integrated networks.

Several commenters recommended that HRSA start by compiling a list of the quality improvement and transformation efforts that residents currently engage in to identify focus areas for increased engagement and involvement. A few commenters expressed concerns that resident engagement in these initiatives may be limited due to training requirements that require rotating to a variety of clinical sites and normal resident turnover in training programs that typically last between 3–5 years.

Response

HRSA considered the commenters' recommendations for qualifying initiatives for FY 2019 and has revised the FY 2019 QBS qualification requirements taking into consideration the comments received. As mentioned above, in order to qualify for the FY 2019 QBS payment, CHGME awardees must submit documentation in the FY 2019 reconciliation application describing the hospital's initiatives, resident curriculum, and direct resident involvement in the following areas: integrated care models, telehealth/HIT, population health, social determinants of health, and additional initiatives to improve access and quality of care to rural/underserved communities. In all areas, CHGME awardees will be required to highlight initiatives aimed at improving access and quality of care to rural and/or underserved communities. More details will be included in the FY 2019 CHGME NOFO.

Measures and Metrics

Summary of Comments

Several commenters recommended focusing the QBS measures and metrics on the CHGME program and its goals, including measures regarding the quality of resident training. Commenters offered a number of potential measures and metrics that ranged from residency training characteristics, graduate outcomes, clinical learning environment outcomes, and health care transformation activities. One commenter recommended developing measures and metrics to evaluate how well training programs prepare graduates to improve the quality of care provided to local communities and integrate quality improvement into their clinical practice. They also recommended that quality measures could evaluate the quality of training settings, including commitment to caring for underserved populations, and impact on addressing healthcare problems in the community.

A few commenters recommended that HRSA more critically evaluate future QBS measures and metrics. Specifically, one commenter stated that they were ''particularly concerned about the proposed plans for FY 2020. Currently, there are no ''off the shelf'' measures that can be used to determine the quality of training programs. We recommend a thorough stakeholder process be convened with pediatric experts and CHGME hospitals to outline the best path forward.''

A number of commenters cautioned that it is hard to tie patient outcomes to resident training. A few other commenters discouraged using graduate outcomes as a QBS measure, suggesting that hospitals are unable to control the specialty choices and future practice locations of residents. Several commenters also cautioned against using metrics relating to hospital outcomes which could not be directly tied to training. They recommended only using measures that were within a hospital's control. The following chart highlights other suggested measures and metrics from commenters:

ADDITIONAL QBS MEASURES AND METRICS RECOMMENDED BY COMMENTERS

Residency Training
Quality of resident training.
Volume of trainee-led initiatives and participation in larger hospital initiatives.
Percentage of training time spent in rural and underserved locations.
Graduate Outcomes
Percentage of graduates practicing in underserved areas.
Practice patterns and competency levels of graduates.
Clinical Learning Environment Outcomes
Value of clinical care.
Number of unnecessary medical tests, treatments, and procedures.
Rates of medical complications (hospital-acquired infections, unplanned extubations).
Rates of surgical complications (surgical site infections).
Hospital readmission rates.
Chronic disease management (treatment compliance and percentage at goal).
Health Care Transformation Activities
Number of faculty and resident publications.
Number of health care transformation initiatives.

Commenters also identified existing sets of measure that could be reviewed to identify potential candidates for use in the QBS such as the American Board of Family Medicine's (ABFM) Certification Survey Questionnaire, the ABFM's National Family Medicine Residency Graduate Follow-up Survey, the Children's Hospital Association approved activities such as Solutions for Patient Safety, the American College of Surgeons' Pediatric National Surgical Quality Improvement Program, and the Accreditation Council for Graduate Medical Education's (ACGME) milestones and measures.

Response

HRSA appreciates the recommendations for potential QBS measures and metrics and recognizes the concerns regarding appropriate measures and metrics expressed by the commenters. HRSA will be reviewing all the sets of measures that were identified, as well as individual measure that were suggested for potential incorporation into the next phase of the QBS. Following the initial baseline phase of the QBS as detailed above in Qualifying Initiatives for the FY 2019 QBS response section, HRSA plans to conduct an environmental scan of GME quality measures, analyze the data collected during the baseline year, develop quality measures for GME programs in the above areas, and manage an organized stakeholder engagement process on potential QBS

standards and measures for future iterations.

Payment Structure

Summary of Comments

Most commenters agreed with the tiered payment method but highlighted the importance of clearly messaging that funding tiers are not indicative of different levels of quality or engagement for the first phase of the CHGME QBS. One commenter offered, ''the bonus payments would have a more significant effect in transforming the quality of CHGME programs if the payments were funded at a level larger than $3 million and were in excess of current program funding.''

Response

HRSA will continue to message clearly that the FY 2019 CHGME QBS payment tiers are not reflective of the quality of the initiatives. The payment tiers were developed taking into account the size of the training programs and CHGME payments typically awarded. In future years, once the data sources were better developed HRSA would work to develop a payment structure that takes into account both the size of the program and quality. As noted earlier, the amount of funding available for the QBS is provided for in statute and the $3 million funding amount is an estimation, assuming funding levels and mechanisms remain constant.

For FY 2019, QBS payments will be disbursed with the CHGME FY 2019 reconciliation payments. CHGME hospitals that submit the required documentation with the FY 2019 reconciliation application will receive a portion of the available funds for the CHGME QBS payment. Amounts will be distributed according to a three-tiered payment structure detailed in the **Federal Register**, 82 FR 48102.

HRSA expects that future quality measures will likely be a combination of both quantitative and qualitative measures, where payment will be directly linked to the level of achievement of an individual hospital. We will continue to seek additional input from stakeholders and experts on the appropriate measures and metrics for future iterations of the CHGME QBS.

Documentation, Reporting Requirements and Reducing Reporting Burden

Summary of Comments

Several commenters indicated that HRSA already collects quite a bit of information through the annual report and recommended that HRSA build on its existing reporting requirements to minimize reporting burden. These commenters suggested that new reporting requirements would add an administrative burden and deter maximum participation in the QBS. One commenter questioned whether HRSA would publicly share the QBS data.

Response

HRSA agrees that participation in the QBS should not be overly burdensome and will work to create reasonable documentation requirements. HRSA acknowledges that it is already collecting some quality-related data in the annual CHGME performance measures and is developing ways to improve these fields. In addition, as part of the further development of the QBS, HRSA will be reviewing the different sets of data that children's hospitals already report to identify if any of the measures could be used as part of the QBS. A long-term goal would be to have transparency regarding the QBS data and HRSA will make sure to include that topic in stakeholder discussions. Any new data collection form(s) that are developed will require Office and Management and Budget (OMB) approval. Stakeholders will be able to provide public comments on any new data collection form(s) developed.

Implementation Timeline for FY 2020 and Beyond

Summary of Comments

Half of commenters recommended a longer timeline to phase in the full FY 2020 and beyond QBS proposed framework, in order to ensure a thorough stakeholder engagement process in which pediatric experts are adequately involved in establishing metrics and measures, identifying quality outcomes, and evaluating QBS standards.

Response

HRSA recognizes concerns about the QBS implementation timeline. We understand that there are many important factors that must be taken into account when implementing the QBS, and each requires thorough and well-informed consideration. In addition, QBS-related data collection must align with existing reporting and payment schedules for the CHGME Payment Program. The first phase of the CHGME QBS is planned to start in FY 2019, and we have taken into consideration feedback collected through this FRN. The data collected during the FY 2019 QBS will give HRSA an indication of the current experiences across our children's hospitals so that we can establish reasonable parameters and measures moving forward. In addition, HRSA is examining using existing reporting requirements to establish components of the QBS for FY 2020 and beyond. HRSA will continue collaborating with stakeholders and experts to inform future phases and measures for the CHGME QBS. As new QBS measures will affect a fiscal year payment, any updates or changes will be included in that year's NOFO.

Conclusion

HRSA appreciates the comments and recommendations received and has used them to guide the development of the FY 2019 CHGME QBS and inform future iterations of the CHGME QBS. Final guidance for the FY 2019 CHGME QBS will be published in the FY 2019 CHGME NOFO. If you have questions or concerns about comments that were not addressed in this notice, please contact *MCrawford@hrsa.gov.*

Dated: June 19, 2018.

George Sigounas,

Administrator.

[FR Doc. 2018–13592 Filed 6–25–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; National Survey of Organ Donation Attitudes and Practices, OMB No. 0915–0290—Reinstatement With Change

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR is for reinstatement with change of a previously approved information collection, assigned OMB control number 0915–0290, which expired on March 31, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 26, 2018.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: National Survey of Organ Donation Attitudes and Practices, OMB No. 0915–0290—Reinstatement with Change.

Abstract: HRSA is requesting approval from OMB for reinstatement with change of a previously approved collection of information (OMB control number 0915–0290). The National Survey of Organ Donation Attitudes and Practices (NSODAP) is conducted approximately every 6–7 years and serves a critical role in providing HRSA and the donation community with data regarding why Americans choose to donate organ, current barriers to donation, and potential new approaches to increasing donations. Survey data and derived analytic insights inform HRSA's public outreach and educational initiatives. HRSA is improving the quality and relevance of the data collected by making the following changes:

(1) HRSA is increasing the ability to produce more precise results by targeting 10,000 completed surveys (increased from 3,250 in 2012). This increase will allow for a more accurate and robust analysis of the attitudes and donation practices of important subgroups such as Americans over the age of 50 and various minority populations. Although the precision of the results from the survey will increase, the respondent burden will be reduced, and survey completion costs will be lower resulting in a cost neutral change.

(2) HRSA is streamlining the data collection process to minimize respondent burden. Of the 10,000 targeted completed surveys, 8,000 will be completed online by a nationally representative web panel composed of Americans over the age of 18 who have already agreed to participate in a survey. Web panels target a representative section of a population used by other approved surveys. HRSA will complete the remaining 2,000 surveys by telephone. In 2012, all 3,250 surveys were conducted by telephone and respondents were contacted using random-digit dialing, a process that yielded a low response rate. Contacting respondents by telephone will remain a part of the survey protocol to compare current data to the 2012 data. However, for this survey, identification of a sample of adults over the age of 18 for a telephone survey will be from a national list of home addresses. Before contact, those selected for the telephone survey will receive a mailed pre-notification letter with information about the survey. This mailing will improve survey cooperation and reduce the number of people contacted for the survey. Additionally, it is more time and cost effective to take the survey online than taking the survey by phone as the average response will be 0.1 hour shorter, and the cost of an online survey can range $3–$4 per survey compared to $50–$100 for a high-quality phone survey.

(3) To improve the relevance of the data collected and in response to the comments received during the 60-day public comment period, HRSA revised the instrument to add, remove, or edit a few questions. Example changes include removing certain questions that were only relevant for a random-digit-dialing sample design, editing certain questions to add clarity, and adding questions to highlight emerging topics such as receiving organ donation information through a hand-held device or mobile apps.

Need and Proposed Use of the Information: HRSA is the primary federal entity responsible for oversight of organ and blood stem cell transplant systems and initiatives to increase organ donor registration and donation in the United States. This survey is the primary method by which HRSA can obtain information from Americans about organ donation attitudes and beliefs. OMB previously approved this survey, and HRSA fielded it during 2005 and 2012. HRSA uses the resulting information from the survey to inform practice, policy, and other public awareness and education activities related to organ donation and transplantation. This type of information is essential for planning, targeting, and implementing outreach efforts to increase public donation commitment as well as for tracking the results of such efforts over time. Members of the donation and transplantation community also make use of the findings of the survey in their outreach efforts and research efforts. Increasing the number of completed cases via a web panel for online survey completion and modifying the survey instrument without increasing the survey length will dramatically improve the quality and precision of the results while minimizing respondent burden as much as possible. The modified instrument and survey fielding methods will allow research on the attitudes and behaviors of important subgroups of Americans as well as research on emerging topics related to organ donation.

Likely Respondents: A nationally representative sample of adults over the age of 18 with a high number of responses from populations of interest such as racial-ethnic minorities, including African American, Asian, Native American, and Hispanic respondents, as well as respondents of all age groups and education levels.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
National Survey of Organ Donation Attitudes and Practices—Telephone (English and Spanish Versions)	2,000	1	2,000	.37	740

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
National Survey of Organ Donation Attitudes and Practices—Web Online Panel (English and Spanish Versions)	8,000	1	8,000	.27	2,160
Total	10,000		10,000		2,900

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–13590 Filed 6–25–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Health Resources and Service Administration Uniform Data System, OMB No. 0915–0193—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than August 27, 2018.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: HRSA Uniform Data System (UDS), OMB No. 0915–0193—Revision.

Abstract: HRSA utilizes the UDS for annual reporting by certain HRSA award recipients, including Health Center Program awardees (those funded under section 330 of the Public Health Service (PHS) Act), Health Center Program look-alikes, and Nurse Education, Practice, Quality and Retention (NEPQR) Program awardees (specifically those funded under the practice priority areas of section 831(b) of the PHS Act).

Need and Proposed Use of the Information: HRSA collects UDS data annually to ensure compliance with legislative and regulatory requirements, improve clinical and operational performance, and report overall program accomplishments. These data help to identify trends over time, enabling HRSA to establish or expand targeted programs and to identify effective services and interventions that will improve the health of medically underserved communities. HRSA compares UDS data with other national health-related data sets to compare HRSA award recipient patient populations and the overall U.S. population.

HRSA is considering several changes for 2019 UDS data collection:

- *Substance Use Disorder and Mental Health Services:* Collect substance use disorder and mental health services by provider specialty to better assess which providers are delivering behavioral health services; support investments in these priority areas; and better describe comprehensive, integrated models of care.
- *Closing the Referral Loop: Receipt of Specialist Report (https://ecqi.healthit.gov/ecqm/measures/cms050v6t):* Add a clinical quality measure from the Centers for Medicare and Medicaid Services (CMS) electronic-specified clinical quality measures to address care coordination.
- *Health Information Technology (health IT):* Streamline and clarify health IT questions regarding utilization of health IT to include information sharing, patient engagement, quality improvement, and program evaluation and research.
- *Statin Therapy for the Prevention and Treatment of Cardiovascular Disease (https://ecqi.healthit.gov/ecqm/measures/cms347v1):* Replace the current non-specified Coronary Artery Disease measure with an e-specified measure that aligns with the Centers for Disease Control and Prevention and the CMS Million Hearts® clinical quality measures relating to statin therapy.
- *Telemedicine and Virtual Visits:* Collect information on services provided via telemedicine or virtual visits by provider in order to capture the changing health care delivery landscape.
- *Tenure for Health Center Staff:* Retire Table 5A related to the tenure for staff.
- *Workforce:* Collect workforce related information, including workforce satisfaction and health professional training.

Likely Respondents: The respondents will include Health Center Program awardees, Health Center Program look-alikes, and NEPQR Program awardees funded under the practice priority areas of section 831(b) of the PHS Act.

Burden Statement: Burden includes the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of: Collecting, validating and verifying information, processing and maintaining information, disclosing and providing information. It also accounts for time to train personnel, respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Universal Report	1,471	1	1,471	223	328,033
Grant Report	504	1	504	30	15,120
Total	1,975		1,975		343,153

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–13587 Filed 6–25–18; 8:45 a.m.]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; lncRNAs in HLBS Diseases.

Date: August 17, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947 *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; MACS–WIHS DACC.

Date: August 21, 2018.

Time: 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–827–7913, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; MACS–WIHS Clinical Research Sites.

Date: August 21, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–827–7913, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 19, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13633 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 of the NHLBI Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and contract proposals 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 and contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research.

Date: July 13, 2018.

Time: 8:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel; Short-term Research Education to Increase Diversity.

Date: July 20, 2018.

Time: 8:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development Awards—K08 and K99.

Date: July 25, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 19, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13632 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Human Genome Research Institute.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 10, 2018.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 20, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13631 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the ZAT1 PJ (01) meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions.

Date: July 25, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Complementary and Integrative Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Eugenia Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–435–2591 *pamela.jeter@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: June 19, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13630 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases.

Date: July 13, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., SUITE 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Diversity Training Grant Review.

Date: July 19–20, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., SUITE 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13636 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodevelopment and connectome.
Date: July 10, 2018.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.
Date: July 12, 2018.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pulmonary Diseases.
Date: July 17–18, 2018.
Time: 6:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Microbial Drug Resistance.
Date: July 17, 2018.
Time: 1:30 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental, Microbiology and Oral Biology.
Date: July 18, 2018.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group NeuroAIDS and other End-Organ Diseases Study Section.
Date: July 19, 2018.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR18–519: Alzheimer's Biomarkers.
Date: July 19–20, 2018.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–102: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).
Date: July 19–20, 2018.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Biophysics of Neural Systems Study Section.
Date: July 19, 2018.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Lord Baltimore Hotel, 20 West Baltimore Street, Baltimore, MD 21201.
Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.
Date: July 19, 2018.
Time: 10:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301)435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory system development and age-related impairment.
Date: July 19, 2018.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–827–2549, *jdrgonova@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Immunology:
Date: July 19, 2018.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207 MSC 7812, Bethesda, MD 20892, (301)435–1238, *hodged@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13628 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Dementia Caregiving Interventions.

Date: July 17, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Room 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 20, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13635 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Respiratory Sciences.

Date: July 11, 2018.

Time: 11:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapy and Biology.

Date: July 12–13, 2018.

Time: 9:00 a.m. to 11:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–596: Research on Current Topics in Alzheimer's Disease and Its Related Dementias.

Date: July 12–13, 2018.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: July 18, 2018.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: July 18, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Zoe Fisherman's Wharf, 425 North Point, San Francisco, CA 94133.

Contact Person: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle Biology, Diseases and Regeneration.

Date: July 18, 2018.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Genetics.

Date: July 18, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5902, *caojn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Learning, Memory and Cognition.

Date: July 18, 2018.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ying-Yee Kong, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5185, Bethesda, MD 20892, *ying-yee.kong@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13627 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the ZAT1 VS (11) meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Training and Research Grants.

Date: August 2, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Complementary and Integrative Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Viatcheslav A Soldatenkov, MD, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892 *soldatenkovv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: June 19, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13629 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ''NIA U01 Clinical Trials A1 2018 SEP'' ZAG1–ZIJ G A1.

Date: July 11, 2018.

Time: 12:01 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 20, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13634 Filed 6–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of September 28, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations

listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Santa Barbara County, California and Incorporated Areas Docket No.: FEMA–B–1729	
City of Carpinteria	Public Works Department, 5775 Carpinteria Avenue, Carpinteria, CA 93013.
City of Goleta	City Hall, Planning and Environmental Review Department, 130 Cremona Drive, Suite B, Goleta, CA 93117.
City of Santa Barbara	Community Development Department, Building and Safety Division, 630 Garden Street, Santa Barbara, CA 93101.
Unincorporated Areas of Santa Barbara County	Naomi Schwartz County Office Building, 130 East Victoria Street, Suite 200, Santa Barbara, CA 93101.
Adams County, Colorado and Incorporated Areas Docket No.: FEMA–B–1708	
Unincorporated Areas of Adams County	Adams County Community and Economic Development, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.
Arapahoe County, Colorado and Incorporated Areas Docket No.: FEMA–B–1708	
City of Aurora	Engineering Department, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80012.
Unincorporated Areas of Arapahoe County	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.
Tillamook County, Oregon and Incorporated Areas Docket No.: FEMA–B–1710	
City of Bay City	City Hall, 5525 B Street, Bay City, OR 97107.
City of Garibaldi	City Hall, 107 Sixth Street, Garibaldi, OR 97118.
City of Manzanita	City Hall, 543 Laneda Avenue, Manzanita, OR 97130.
City of Nehalem	City Hall, 35900 8th Street, Nehalem, OR 97131.
City of Rockaway Beach	City Hall, 276 Highway 101 South, Rockaway Beach, OR 97136.
City of Wheeler	City Hall, 775 Nehalem Boulevard, Wheeler, OR 97147.
Unincorporated Areas of Tillamook County	Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, OR 97141.
Fairfield County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1666	
Unincorporated Areas of Fairfield County	Fairfield County Planning, Building and Zoning Department, 117 South Congress Street, Winnsboro, SC 29180.
Kershaw County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1666	
City of Camden	City Hall, Building and Zoning Department, 1000 Lyttleton Street, Camden, SC 29020.
Unincorporated Areas of Kershaw County	Kershaw County Government Center, Planning and Zoning Department, 515 Walnut Street, Camden, SC 29020.
Lancaster County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1666	
Unincorporated Areas of Lancaster County	Lancaster County Administration Building, Zoning Department, 101 North Main Street, Lancaster, SC 29720.

Community	Community map repository address
Sumter County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1666	
City of Sumter	The Liberty Center, City-County Planning Department, 12 West Liberty Street, Sumter, SC 29150.
Unincorporated Areas of Sumter County	Sumter City-County Planning Department, 12 West Liberty Street, Sumter, SC 29150.
Marathon County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–1710	
City of Schofield	City of Schofield Public Works, 200 Park Street, Schofield, WI 54476.
City of Wausau	City of Wausau Inspections Department, 407 Grant Street, Wausau, WI 54403.
Unincorporated Areas of Marathon County	Marathon County Conservation, Planning and Zoning Office, 210 River Drive, Wausau, WI 54403.
Village of Rothschild	Village Hall, 211 Grand Avenue, Rothschild, WI 54474.

[FR Doc. 2018–13607 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of August 28, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Hamilton County, Florida and Incorporated Areas Docket No.: FEMA–B–1623	
Town of White Springs	Town Hall, 10363 Bridge Street, White Springs, FL 32096.
Unincorporated Areas of Hamilton County	Hamilton County Building Department, 204 Northeast 1st Street, Jasper, FL 32052.

Community	Community map repository address
Suwannee County, Florida and Incorporated Areas Docket No.: FEMA–B–1623	
Unincorporated Areas of Suwannee County	Suwannee County Planning and Zoning and Floodplain Management Department, 224 Pine Avenue Southwest, Live Oak, FL 32064.
Brunswick County, North Carolina and Incorporated Areas Docket No.: FEMA–B–1523, FEMA–B–1541 and FEMA–B–1616	
City of Boiling Spring Lakes	City Hall, 9 East Boiling Spring Road, Boiling Spring Lakes, NC 28461.
City of Northwest	Northwest City Hall, 4889 Vernon Road, Leland, NC 28451.
City of Southport	City Hall, 1029 North Howe Street, Southport, NC 28461.
Town of Belville	Town Hall, 497 Olde Waterford Way, Suite 205, Belville, NC 28451.
Town of Calabash	Town Hall, 882 Persimmon Road, Calabash, NC 28467.
Town of Carolina Shores	Town Hall, 200 Persimmon Road, Carolina Shores, NC 28467.
Town of Caswell Beach	Town Hall, 1100 Caswell Beach Road, Caswell Beach, NC 28465.
Town of Holden Beach	Town Hall, 110 Rothschild Street, Holden Beach, NC 28462.
Town of Leland	Town Hall, 102 Town Hall Drive, Leland, NC 28451.
Town of Navassa	Town Hall, 334 Main Street, Navassa, NC 28451.
Town of Oak Island	Town Hall, 4601 East Oak Island Drive, Oak Island, NC 28465.
Town of Ocean Isle Beach	Town Hall, 3 West Third Street, Ocean Isle Beach, NC 28469.
Town of Shallotte	Town Hall, 106 Cheers Street, Shallotte, NC 28470.
Town of St. James	St. James Town Hall, 4140A Southport-Supply Road, Southport, NC 28461.
Town of Sunset Beach	Town Hall, 700 Sunset Boulevard North, Sunset Beach, NC 28468.
Town of Varnamtown	Varnamtown Town Hall, 100 Varnamtown Road, Supply, NC 28462.
Village of Bald Head Island	Village Hall, 106 Lighthouse Wynd, Bald Head Island, NC 28461.
Unincorporated Areas of Brunswick County	Brunswick County Government Complex, 30 Government Center Drive, Bolivia, NC 28422.
New Hanover County, North Carolina and Incorporated Areas Docket No.: FEMA–B–1523	
City of Wilmington	Planning, Development, and Transportation Department, Planning Division, 305 Chestnut Street, Wilmington, NC 28401.
Town of Carolina Beach	Town Hall, Planning Department, 1121 North Lake Park Boulevard, Carolina Beach, NC 28428.
Town of Kure Beach	Town Hall, Building Inspections, 117 Settlers Lane, Kure Beach, NC 28449.
Town of Wrightsville Beach	Town Hall, Planning and Parks Department, 321 Causeway Drive, Wrightsville Beach, NC 28480.
Unincorporated Areas of New Hanover County	New Hanover County Development Services Office, 230 Government Center Drive, Suite 110, Wilmington, NC 28403.
Brown County, Texas and Incorporated Areas Docket No.: FEMA–B–1412 and FEMA–B–1709	
City of Bangs	City Hall, 109 South 1st Street, Bangs, TX 76823.
City of Blanket	City Hall, 719 Main Street, Blanket, TX 76432.
City of Brownwood	Engineering Office, 501 Center Avenue, Brownwood, TX 76801.
City of Early	City Hall, 960 Early Boulevard, Early, TX 76802.
Unincorporated Areas of Brown County	Brown County Building Inspector's Office, 200 South Broadway Street, Suite 322, Brownwood, TX 76801.

[FR Doc. 2018–13608 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1837]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Goodyear, (18–09–0175P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	Engineering Department, 14455 West Van Buren Street, Goodyear, AZ 85338.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2018	040046
Maricopa	City of Surprise, (18–09–0588P).	The Honorable Sharon Wolcott, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2018	040053
California:						
Lassen	Unincorporated Areas of Lassen County, (18–09–0502P).	The Honorable Chris Gallagher, Chairman, Board of Supervisors, Lassen County, 221 South Roop Street Suite 4, Susanville, CA 96130.	Lassen County Building Official, 707 Nevada Street, Susanville, CA 96130.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2018	060092
Santa Barbara	City of Carpinteria, (17–09–0602P).	The Honorable Fred Shaw, Mayor, City of Carpinteria, 5775 Carpinteria Avenue, Carpinteria, CA 93013.	Department of Public Works, 5775 Carpinteria Avenue, Carpinteria, CA 93013.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2018	060332
Sonoma	City of Petaluma, (18–09–0524P).	The Honorable David Glass, Mayor, City of Petaluma, 11 English Street, Petaluma, CA 94952.	City Hall, 11 English Street, Petaluma, CA 94952.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2018	060379
Trinity	Unincorporated Areas of Trinity County, (17–09–2611P).	The Honorable Keith Groves, Chairman, Board of Supervisors, Trinity County, P.O. Box 1613, Weaverville, CA 96093.	Trinity County Planning Department, 61 Airport Road, Weaverville, CA 96093.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	060401
Indiana:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Hamilton	City of Carmel, (18–05–0387P).	The Honorable James Brainard, Mayor, City of Carmel, City Hall, 1 Civic Square, Carmel, IN 46032.	Department of Community Services, 1 Civic Square, Carmel, IN 46032.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2018	180081
Marion	City of Indianapolis, (18–05–0387P).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2018	180159
Kansas: Riley	City of Manhattan, (18–07–0921P).	The Honorable Linda Morse, Mayor, City of Manhattan, 1101 Poyntz Avenue Manhattan, KS 66502.	City Hall, 1101 Poyntz Avenue, Manhattan, KS 66502.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 19, 2018	200300
Missouri: St. Louis	City of Ladue, (17–07–2658P).	The Honorable Nancy Spewak, Mayor, City of Ladue, 9345 Clayton Road, Ladue, MO 63124.	City Hall, 9345 Clayton Road, Ladue, MO 63124.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2018	290363
New York:						
Nassau	City of Glen Cove, (18–02–0451P).	The Honorable Tim Tenke, Mayor, City of Glen Cove, 9 Glen Street, Glen Cove, NY 11542.	City Hall, 9 Glen Street, Glen Cove, NY 11542.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	360465
Onondaga	Town of Lysander, (18–02–0720P).	The Honorable Joseph P. Saraceni, Town Supervisor, Town of Lysander, 8220 Loop Road, Baldwinsville, NY 13027.	Town Hall, 8220 Loop Road, Baldwinsville, NY 13027.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	360583
Ohio:						
Champaign	City of Urbana, (17–05–6915P).	The Honorable Bill Bean Mayor, City of Urbana 205 South Main Street Urbana, OH 43078.	Municipal Building, 205 South Main Street, Urbana, OH 43078.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	390060
Champaign	Unincorporated Areas of Champaign County, (17–05–6915P).	Mr. Bob E. Corbett Commissioner, Champaign County, 205 South Main Street, Urbana, OH 43078.	Champaign County Engineer Office, 428 Beech Street, Urbana, OH 43078.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	390055
Madison	City of London, (17–05–6148P).	The Honorable Patrick J. Closser, Mayor, City of London, 6 East 2nd Street, London, OH 43140.	City Building, 102 ½ South Main Street, London, OH 43140.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 6, 2018	390366
Pennsylvania:						
Montgomery	Township of Upper Dublin, (17–03–1574P).	Mr. Ira S. Tackel, President, Upper Dublin Township Board of Commissioners, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	Municipal Hall, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	420708
Montgomery	Township of Whitemarsh, (17–03–1574P).	Ms. Amy R. Grossman, Chair, Whitemarsh Township Board of Supervisors, 616 Germantown Pike, Lafayette Hill, PA 19444.	Administrative Building, 616 Germantown Pike, Lafayette Hill, PA 19444.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	420712
Wisconsin: Dodge	Unincorporated Areas of Dodge, County, (17–05–4613P).	The Honorable Russell Kottke, Chairman, Dodge County Board of Supervisors, Administrative Building, 127 East Oak Street, Juneau, WI 53039.	Dodge County Administrative Building, 127 East Oak Street, Juneau, WI 53039.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2018	550094

[FR Doc. 2018–13605 Filed 6–25–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0091]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Replacement Naturalization/ Citizenship Document

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: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 26, 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 1615–0091 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 January 31, 2018, at 83 FR 4504, allowing for a 60-day public comment period. USCIS did not receive any 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–2006–0052 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:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The form is provided by U.S. Citizenship and Immigration Services (USCIS) to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if he or she was issued one of the documents described above and it was lost, mutilated, or destroyed; if the document is incorrect due to a typographical or clerical error by USCIS; if the applicant's name was changed by a marriage or by court order after the document was issued and the applicant now seeks a document in the new name; or if the applicant is seeking a change of the gender listed on their document after obtaining a court order, a U.S. Government-issued document, or a letter from a licensed health care professional recognizing that the applicant's gender is different from that listed on their current document. The only document that can be replaced on the basis of a change to the applicant's date of birth, as evidenced by a court order or a U.S. Government-issued document is the Certificate of Citizenship. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

(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 N–565 is 27,690 and the estimated hour burden per response is 1.33 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 36,828 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 $3,495,863.

Dated: June 20, 2018.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–13602 Filed 6–25–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0099]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 and Supplements A and B

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 August 27, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0099 in the body of the letter, the agency name and Docket ID USCIS–2006–0059. 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–2006–0059;

(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–2006–0059 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 T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 and Supplements A and B.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–914 and Supplements A and B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Individuals or households. Form I–914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 980 responses at 2.33 hours; Supplement A, 1,024 responses at 1.17 hours; Supplement B—Law Enforcement Officer, 245 responses at 3.50 hours; Supplement B—Law Enforcement Officer, 245 responses at .25 hours. Biometric processing 1,759 respondents requiring Biometric Processing at an estimated 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 6,458 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 $1,986,400.

Dated: June 20, 2018.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–13585 Filed 6–25–18; 8:45 am]

BILLING CODE 911197–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0100]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for the Return of Original Documents

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: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 26, 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 [1615–0100] 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 April 10, 2018, at 83 FR 15393, allowing for a 60-day public comment period. USCIS did not receive any comment(s) 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–2008–0010 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Documents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–884; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information will be used by USCIS to determine whether a person is eligible to obtain original documents contained in an alien file.

(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–884 is 6,600 and the estimated hour burden per response is 0.5 hour.

(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 3,300 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 $808,500.

Dated: June 20, 2018.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–13586 Filed 6–25–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–29]

30-Day Notice of Proposed Information Collection: Community Development Block Grant (CDBG) Grantees

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* July 26, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or

speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 19, 2018 at 82 FR 17423.

A. Overview of Information Collection

Title of Information Collection: Community Development Block Grant (CDBG) Grantees.

OMB Approval Number: 2506–0077.

Type of Request: Revision of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: This request identifies the estimated reporting burden associated with information that CDBG entitlement grantees will report in IDIS for CDBG-assisted activities, recordkeeping requirements, and reporting requirements. Grantees are encouraged to update their accomplishments in IDIS on a quarterly basis. In addition, grantees are required to retain records necessary to document compliance with statutory and regulatory requirements, Executive Orders, 2 CFR part 200 requirements, and determinations required to be made by grantees as a determination of eligibility. Grantees are required to prepare and submit their Consolidated Annual Performance and Evaluation Reports, which demonstrate the progress grantees make in carrying out CDBG-assisted activities listed in their consolidated plans. This report is due to HUD 90 days after the end of the grantee's program year. The information required for any particular activity is generally based on the eligibility of the activity and which of the three national objectives (benefit low- and moderate-income persons; eliminate/prevent slums or blight; or meet an urgent need) the grantee has determined that the activity will address.

Estimated Number of Respondents/ Estimated Number of Responses:

Task	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Current Inventory*: Recordkeeping pursuant to 24 CFR 570.506	1,209.00	1.00	1,209.00	129.00	155,961.00	35.16	$5,483,588.76
Reporting pursuant to 24 CFR 570.507, 24 CFR 570.200 (e) and 570.506(c)	1,209.00	4	4,836.00	78.50	379,626.00	35.16	$13,347,650.16
Entitlement communities maintain required documentation	1,209.00	1.00	1,209.00	25.00	30,225,00	35.16	$1,062,711.00
Total	1,209.00	.....	.....	.....	565,812.00	.....	$19,893,949.92

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 14, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–13661 Filed 6–25–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7002–N–08]

60-Day Notice of Proposed Information Collection: Community Development Block Grant-Disaster Recovery (CDBG–DR); 2 Year Expenditure Deadline Extension Request

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date*: August 27, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: James R. Castle, Community Planning and Development Specialist, CPD/OBGA/DRSI, Department of Housing and Urban Development, 451 7th Street SW, Room 7272, Washington, DC 20410; email James R. Castle at *James.R.Castle@HUD.GOV* or telephone 202–402–2696. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: CDBG–DR 24-month Expenditure Deadline Extension Request.

OMB Approval Number: 2506- 0206.

Type of Request: Extension of currently approved collection.

Form Number:

Description of the need for the information and proposed use: This information collection is being conducted by CPD/OBGA to assist the Administrator of HUD in determining, as required by sec. 904(c) under Title IX of the Disaster Relief Appropriation Act, 2013 (PL113–2), whether to grant extensions of the 24-month expenditure deadline for grantees receiving funds under the Act. The data will allow HUD to expeditiously review request for extensions of the deadline where a deadline puts recovery at risk.

Respondents (*i.e.* affected public): States and Units of Local Governments.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 25.

Frequency of Response: 1.

Average Hours per Response: 4.

Total Estimated Burdens: 25.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2 Year Expenditure Deadline Waiver Request	25.00	1.00	25.00	4.00	100.00	$25.43	$2,543.00
Total	25.00	1.00	25.00	4.00	100.00	25.43	2,543.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 14, 2018.

Lori Michalski,

Acting General Deputy Assistant Secretary, for Community Planning and Development.

[FR Doc. 2018–13650 Filed 6–25–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–28]

30-Day Notice of Proposed Information Collection: HUD Multifamily Rental Project Closing Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act (PRA). The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date*: July 26, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRASubmission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, email *Colette Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents to be submitted to OMB may be found at: *https://www.hud.gov/program_offices/housing/mfh/mfhclosingdocuments* or obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The previous PRA **Federal Register** notice that solicited public

comment on the information collection for a period of 60 days was published on September 5, 2017 at 82 FR 41977.

A. Overview of Information Collection

Title of Information Collection: HUD Multifamily Rental Project Closing Documents.

OMB Approval Number: 2502–0598.

Type of Request: Extension of currently approved collection and implementation of two new forms, with revisions to certain documents as shown in redline comparison found at the website link above.

Form Numbers: HUD–91070M; HUD–91071M; HUD–91073M; HUD–91710M; HUD–91712M: HUD–91725M; HUD–91725M–CERT; HUD–91725M–INST; HUD–92023M; HUD–92070M; HUD–92223M; HUD–92408M; HUD–92412M; HUD–92414M; HUD–92420M; HUD–92434M; HUD–92441M; HUD–92442M; HUD–92450M; HUD–92452A–M; HUD–92452M; HUD–92455M; HUD–92456M; HUD–92464M; HUD–92466M; HUD–92476.1M; HUD–92476aM; HUD–92476M; HUD–92477M; HUD–92478M; HUD–92479M; HUD–92554M; HUD–92907M; HUD–92908M; HUD–93305M; HUD–94000M; HUD–94001M.

Description of the need for the information and proposed use: The Closing Documents are used in FHA-insured multifamily rental project transactions. In connection with this 30-day notice, HUD generally tried to improve the forms in terms of readability and editorial corrections, while also addressing public comments received in connection with the 60-day notice. While complying with the PRA, this 30-day notice provides information beyond that normally provided in such notices. This notice identifies substantive changes that HUD has made to the Closing Documents in response to public comments submitted in response to the 60-day notice and responds to significant issues raised by commenters on the Closing Documents. HUD received comments from four law firms and one industry group.

Discussion of Significant Revisions

Consolidated Certifications—Borrower, HUD–91070M

One commenter suggested HUD merge the *Owner's Certification and Acknowledgement of Program Obligation for Broadly Affordable, Affordable and Green/Energy Efficient Multifamily Housing Mortgage Insurance Premiums (MIPs) and the Acceptance of Housing Choice Vouchers,* form HUD–92013–D, with the *Consolidated Certifications—Borrower,* to make the closing process more efficient and reduce the number of forms used in closings. HUD agreed with the suggestion and merged the 92013–D into the HUD–91070M.

Survey Instructions and Report, HUD–91073M

One commenter suggested HUD's Office of Multifamily Housing Production (Multifamily Housing) eliminate the Report portion of the document consistent with the LEAN/232 Healthcare program, and that to have the two programs with different closing requirements is arbitrary and capricious. HUD declines to accept this suggested change and comment. The risks associated with the two programs are different, thus it is not arbitrary and capricious for the two programs to have different requirements. Here, HUD has determined that the Report is necessary because it calls attention to important property characteristics, allowing HUD staff to more efficiently address the findings to protect HUD's interests. With the recent improvements to the form, HUD believes the burden estimate is realistic.

Opinion of Borrower's Counsel, HUD–91725M

One commenter suggested changes concerning evidence of foreign qualification of entities within the organizational structure, as set out in Section I. HUD agreed with the comment and added an instruction to the HUD–91725M–INST to ''include foreign qualification when Borrower has qualified the entity voluntarily or such qualification is required by state law or HUD Program Obligations.''

HUD disagreed with a comment that Section 1, paragraph S (Residual Receipts Note/Surplus Cash Note) should be deleted or moved because of new paragraph W for private secondary financing. HUD has determined that there may be instances where there is only a Surplus Cash Note.

Regarding Section 1, paragraph MM (Additional Transaction Documents), one commenter noted that the change to include all documents related to the loan closing could result in disclosure of certain due diligence certifications and documents that HUD does not allow lenders to recite in the lender certification documents. HUD agreed with the comment and modified the HUD–91725M–INST to limit paragraph MM to ''all loan documents related to the FHA closing that will be delivered at closing that are not otherwise listed in the form Opinion . . .''

HUD agreed with a comment to modify the language in opinion 4 concerning authorization related to controlling entities within the borrower's organizational hierarchy ''whose authorization is required.'' HUD rejected a comment to delete opinion 9 because Multifamily Housing does in fact permit trusts as borrower entities per the MAP Guide.

One commenter stated that the addition of ''Supporting Documents'' in opinion 11 is a change in policy, and that it results in HUD asking for an opinion about whether LIHTC documents prevail over the bond documents or vice versa. HUD disagreed with this comment as the concept of ''Supporting Documents'' is not new to the form. Further, neither ''Primary Loan Documents'' nor ''Supporting Loan Documents'' include the secondary financing documents, Source Documents, or tax credit documents in paragraphs T–W of Section I. Consequently, HUD is not asking for an opinion about which of these documents would control over the others in the event there is a conflict. HUD disagreed with a similar comment about the addition of ''Supporting Documents'' in opinion 12 for the same reason.

One commenter objected to the required disclosure of litigation threatened in writing in confirmation (g) of Section IV. HUD determined such disclosure is necessary because HUD is aware of situations where threatened litigation resulted in actual of filing of litigation. Further, HUD is adding the requirement in the 91725–INST that litigation threatened in writing must not only be identified, but a detailed explanation and risk assessment must be provided.

Exhibit A to Opinion of Borrower's Counsel, HUD–91725–CERT

One commenter noted that the Section 7 certification that there is no default under the *Regulatory Agreement* would only be applicable in the context of a refinancing where there is an existing HUD Regulatory Agreement. HUD agreed with the comment and revised the language to clarify that also no state of facts that exists now or that with the passage of time will result in a default under the *Regulatory Agreement* or PEA (for Section 6).

HUD agreed to a suggestion from one commenter to revise the signature block in the HUD–91725M to reflect signature by an attorney or law firm, which HUD points out is currently allowed in the *Instructions.*

Instructions to Opinion of Borrower's Counsel, HUD–91725M–INST

HUD made several changes to the 91725M–INST that resulted from

comments discussed above relative to the HUD–91725M.

Two commenters objected to the requirement that paragraphs Y (Zoning) and GG (Utility Letters) be dated within 120 days of closing as being too inflexible. HUD agreed with the comment and revised the instructions to reflect that the timeframe for the documentation will vary depending on the circumstances and specific facts of a given transaction, keeping in mind that HUD is interested in receiving recent documentation. Notwithstanding, the date of documentation must not be more than one year prior to closing.

One commenter stated that the instruction for Section I, paragraph a, seems to indicate all organizational documents up the chain of the borrower must be included in the *Opinion,* even if they do not show up in the signature block of the borrower. The commenter also believes that discretion should be afforded to the local counsel to determine which organizational documents are necessary or relevant to issue the legal opinion in accordance with state law. HUD disagreed with this comment. Discretion is provided to local counsel, but the *Opinion* form is drafted to ensure that all entities in the chain are identified if necessary to establish authorization. The instructions state: ''. . . Borrower's Counsel's review must include the organizational documents of Borrower and any controlling entity within the Borrower's organizational hierarchy to the extent necessary to provide the required opinion.''

HUD made a correction to the instructions for paragraph T (Public Entity Agreement) of Section I to establish that the term not only covers agreements between a borrower and a public entity, but also any agreement which binds the project, regardless of whether the current borrower is a signatory.

Lease Addendum, HUD–92070M

One commenter suggested HUD add bracketed options for different possible defined terms for the parties and documents. HUD rejected this suggestion because the different possible names are too numerous, and there is already flexibility to allow the underlying terms from the lease to be incorporated into the defined terms of the *Lease Addendum.* In response to a comment about the definition of ''days,'' HUD revised the form to clarify that ''days'' means calendar days. HUD agreed with a comment to revise the form to require landlords to deliver an estoppel certificate from time to time to the tenant, lender, or HUD.

HUD disagreed with a comment to add Native American tribal lands as a public entity eligible for waiver of the HUD option to purchase in Section 7. HUD Multifamily Housing will consider such requests on a case-by-case basis in Headquarters due to the unique and complex laws and requirements governing Native American tribal land.

One commenter requested clarification of lender's cure and foreclosure rights under Section 11. HUD rejected this comment as it appeared to confuse lender's rights under the *Lease Addendum* with lender's rights under the *Security Instrument.* The *Security Instrument* provides that borrower's failure to pay to lender ground rents is a Monetary Event of Default under the *Security Instrument;* HUD determined the *Lease Addendum* does not also need to provide that nonpayment of ground rents is a default under the *Security Instrument.*

Another comment requested HUD add a finite term to the cure period in Section 11. HUD disagreed with the comment because the time required to cure will vary depending on the circumstances. Consequently, HUD has determined that reasonableness is the appropriate standard where the lender or HUD are reasonably and diligently pursuing a cure of a Ground Lease Event of Default.

Surplus Cash Note, HUD–92223M

One commenter suggested the recent addition of the limitation on borrowers' repayment to 75% of cumulative Surplus Cash in Section 2 should not be in this document but rather in the *Regulatory Agreement.* HUD disagreed with the comment because it is important that payees of borrowers have no doubt or misunderstanding about this limitation when the borrower is the maker on multiple *Surplus Cash Notes* or any other subordinate loans. Payees will not necessarily know to look to the *Regulatory Agreement* for this restriction on repayment. Another commenter suggested that the limitation is mathematically unclear, with which HUD disagreed. The comment didn't seem to take into consideration that a borrower could be the maker on more than one *Surplus Cash Note,* and without the language in question, could result in the borrower paying more than 75% of Surplus Cash in a given year to repayment on multiple subordinate loans. Regarding this same requirement, HUD made further revisions to clarify that the 75% of available Surplus Cash limitation applies to all subordinate debt of the borrower, not just debt under *Surplus Cash Notes.*

One commenter requested HUD add ''except upon the prior written approval of HUD'' to the end of Section 8 to allow for the sale or assignment of the *Surplus Cash Note* for LIHTC transactions. HUD did not accept this requested policy change, as the present requirement has not been a barrier to using LIHTC in FHA Multifamily transactions, and HUD does not anticipate it being a barrier in the future.

HUD added bracketed language in Section 9 to accommodate the policy to allow for compounding of interest in certain LIHTC transactions.

Subordination Agreement—Public, HUD–92420

HUD agreed with several commenters that Section 3(b) needed further clarification to allow for an exception to the general rule that the subordinate loan may not mature before the FHA-insured loan for forgivable loans. HUD rejected a comment that the HUD-required language in Section 3 should not be required when the subordinate loan is forgivable, as these protections are still needed for forgivable loans in the event the borrower defaults under a forgivable loan and the subordinate lender seeks repayment.

HUD added language in Section 3(c) that payments due under borrowers' subordinate loans are limited to 75% of cumulative Surplus Cash, consistent with MAP Guide policy and the *Surplus Cash Note.* One commenter asked that HUD add back ''from project income'' (from the version of the form published in connection with the 60-day notice) relative to payments due under the subordinate note. HUD rejected this change as unnecessary because the *Subordination Agreement—Public* continues to permit borrower repayment from non-project sources. In response to a commenter and consistent with the change to *the Surplus Cash Note,* HUD made a change to Section 3 to allow for compounding of interest for certain eligible LIHTC transactions. One commenter suggested that removal of the requirement in Section 5 that the subordinate lien be extinguished upon a deed in lieu of foreclosure is contrary to the MAP Guide. While the commenter is correct, HUD Multifamily Housing decided to revise this policy (for public subordinate lenders only) as reflected in the document; the next issuance of the MAP Guide will include this revised policy.

A commenter asked that Section 10 be revised to allow for automatic re-subordination of the subordinate lien for Sections 223(a)(7) and 223(f) refinancings; HUD declined to make this change as the form already requires

automatic subordination of refinancing the FHA-insured senior loan, which includes FHA refinancings. HUD made a technical correction in Section 10(d) to remove the allowance of deletion of this paragraph for forgivable loans. This paragraph contains an important senior lender protection that is applicable to forgivable loans in the event of a default under the forgivable loan and payment becomes due.

One commenter requested HUD add the schedule/exhibits of senior and subordinate loan documents to the signature page. HUD agreed with this comment and made the corresponding revision.

Lender's Certificate, HUD–92434M

HUD accepted several editorial and other non-substantive corrections suggested by commenters and shown in the redline comparison published in connection with this 30-day notice.

In response to a comment, HUD added language in Section B.2. to accommodate situations where certain Firm Commitment conditions cannot be satisfied until after initial closing. HUD further revised language in Section B.4 to clarify the Firm Commitment should not be attached to the *Lender's Certificate* in response to another comment.

One commenter objected to references to the reserve for replacement amount and related exhibit in Section C.4; HUD disagreed the references could lead to an inconsistency but changed the language to reference the Firm Commitment instead of the *Regulatory Agreement.* Relative to UCC searches in Section C.8, one commenter asked to qualify the provision for UCC filing searches to exclude UCC filings to be terminated upon closing of the insured loan; HUD rejected this change in procedure. Similarly, HUD rejected a requested change to Section E.7 for materials stored off-site to be limited to those paid from insured loan proceeds, as HUD's collateral for the insured loan includes all borrower assets, not only those paid from insured loan proceeds.

One commenter asked HUD to modify Section E.10 to allow for inclusion of an exhibit describing delayed permits and approvals to be obtained at a later date, but the commenter did not provide a rationale for the requested modification. HUD therefore declined to accept this change. Concerning lenders' due diligence in Section E.10 in ensuring all required permits and approvals have been obtained, HUD agreed with several commenters that the prohibition against relying on the *Opinion of Borrower's Counsel* should be removed. However, HUD determined that the ''reasonable'' standard for the required due diligence should remain. Another commenter asked HUD to revise the definition of ''HUD-insured Loan Funds'' in Section F; HUD rejected the language as unnecessary given existing guidance on these structures.

One commenter suggested that HUD add the Lender's Assurance of Permanent Financing to the *Lender's Certificate;* while HUD generally agreed with the comment, HUD decided it would be too difficult to adopt at this time.

Building Loan Agreement, HUD–92441M

HUD did not receive comments on this document but decided to make a needed technical correction to add language in Section 4(c) to ensure compliance with 24 CFR 200.54.

Construction Contract, HUD–92442M

HUD agreed to make several non-substantive editorial changes to improve the document in response to several comments and as shown in the redline comparison published in connection with this 30-day notice.

HUD declined a request to remove the requirement in Article 2.C. for the lender to sign the plans and specifications as this is a MAP Guide requirement that HUD has decided to maintain. HUD agreed to a proposed change in Article 3.A to set the start date for work within fourteen days of the date of the *Construction Contract.*

One commenter requested HUD modify the liquidated damages provision in Article 3(E) to allow borrowers to recoup soft costs. HUD declined to revise its policy that soft costs not be allowed in the calculation of liquidated damages. Another commenter asked about the Identity of Interest Amendment referenced within the form. HUD has determined that this form should not have been removed from the MAP Guide Appendices as it is still required when applicable. The MAP Guide will be revised to again include this document in the appendices.

One commenter noted that the bracketed language in Section 4.E is confusing because Section 2.A.8 does not include the incentive payment addendum as a construction document in identity of interest cases, but Section 4.E requires the addendum for identity of interest cases. HUD agrees with this comment and has revised Section 2.A.8 (re-numbered as Section 2.A.7) accordingly.

HUD agreed with one comment that the owner as opposed to the contractor is sometimes responsible for paying for the building permits and as-built survey and made corresponding changes in Article 7.A and 7.C to allow for this possibility.

Performance Bond, HUD–92452M

No public comments were submitted for this form, but HUD determined that several technical corrections were needed. HUD revised Section 3 to use the already-defined term ''Obligees'' rather than separately listing Borrower and Lender as ''Obligees.'' This change is consistent with the first paragraph of the form and with Section 2 of the form *Payment Bond,* HUD–92452A–M Separately, HUD included a parenthetical definition of the already-capitalized term ''Obligor,'' which is similarly defined in the form *Payment Bond.*

Request for Endorsement of Credit Instrument, HUD–92455M

HUD accepted several editorial and other non-substantive corrections suggested by commenters and shown in the redline comparison published in connection with this 30-day notice.

One commenter requested HUD revise the language in Section I.A.7 to qualify lender's certification about completion of borrower's repairs ''Based on the Repair Certification of Borrower . . . .'' or ''to the best of lender's knowledge and information . . . .'' This change is unnecessary as the entire section is qualified by the best of lender's knowledge. HUD rejected a similar comment with respect to the new No Material Adverse Change certification in Section I.A.14 given that the entire section is qualified by the best of lender's knowledge. Further, this new provision was explicitly identified in the 60-day notice as new, rather than a clarification of the form, as the commenter suggested.

Regarding the 50% holdback for cash-out refinances in Section 223(f) and addressed in Section I.B.1 of the form, HUD declined to change its policy at this time to allow for an alternative percentage.

One commenter objected to the reference to the reserve for replacement amount and exhibit in Section I.B.5. HUD disagreed the reference could lead to an inconsistency and notes that the provision references the Firm Commitment instead of the *Regulatory Agreement* and made further edits to clarify that the Firm Commitment is not attached to the form.

Regarding the list of fees and charges of lender in Section I.C.3, HUD disagreed with a request to reference the Certified Closing Statement instead of a separate list, as HUD wants this

information separated from the other information that is included in the Certified Closing Statement.

One commenter asked HUD to modify Section I.C.11 to allow for inclusion of an exhibit describing delayed permits and approvals to be obtained at a later date but did not provide any rationale for the modification. HUD therefore declined to accept the requested modification. Concerning lenders' due diligence in I.C.11 in ensuring all required permits and approvals have been obtained, HUD agreed with several commenters that the prohibition against relying on the *Opinion of Borrower's Counsel* should be removed, but kept the ''reasonable'' standard for the required due diligence. Another commenter asked HUD to revise the definition of ''HUD-insured Loan Funds'' in Section I.D.; HUD rejected the language as unnecessary given existing guidance on these structures.

HUD disagreed with a comment concerning Section II.A.1, requesting that the borrower certification about the Certificate of Lender be qualified, because the entire section is already qualified by ''knowledge and belief.'' HUD further disagreed with the request in II.A.to exclude customary vendor payables not over thirty days old from the list of unpaid obligations, as these items fall outside the scope of the language in most scenarios. One commenter objected to newly added language requiring the borrower to certify to the status of the Mortgaged Property and *Security Instrument* as more appropriate for a title company. HUD rejected this comment as borrowers in FHA-insured Multifamily transactions are sophisticated business entities that can engage professionals to assist them in making these determinations.

One commenter suggested that HUD add the Lender's Assurance of Permanent Financing to the Certificate of Lender; while HUD generally agreed with the comment, HUD decided it would be too difficult to adopt at this time.

Regulatory Agreement, HUD–92466M

One commenter requested HUD revise the definition of ''Affiliate'' to change ''policy'' to ''actions,'' but did not sufficiently identify or explain the commenter's perceived deficiencies with the current definition. HUD therefore declined to make the requested change. As a general matter, HUD believes that the terms ''Affiliate'' and ''Principal'' in the context of the *Regulatory Agreement* should remain distinct from ''Controlling Participant'' or any other term in the new previous participation regulations because the participants and scope of activity is different. Accordingly, HUD has elected to largely preserve the former 24 CFR 200.215 definitions of ''Affiliate'' and ''Principal'' previously referenced in the *Regulatory Agreement* rather than referencing the new term or regulations.

One commenter requested HUD elaborate on the types of assets that can be held by borrowers apart from the Mortgaged Property defined in I.1.s. HUD declined to make changes to this paragraph to incorporate any additional specific examples of permissible non-project funds. As stated in prior FAQs, references to items such as distributed Surplus Cash and permissible loan repayments are themselves examples of potential non-project funds. If a party is uncertain as to how to treat a particular asset after reviewing applicable Program Obligation, such party should contact the Office of Multifamily Housing for guidance.

One commenter requested that HUD improve the definition of Residual Receipts in I.1.dd. HUD declined to make the proposed change to the new definition of Residual Receipts, as it would be inappropriate to describe a method of calculating Residual Receipts in this document because any residual receipts requirements will generally stem from separate HUD programs and source documents (*e.g.,* Section 8 HAP contracts) with their own residual receipts language. Accordingly, the definition merely refers to residual receipts requirements in general terms, while the Residual Receipts Rider still functions to more precisely reference the source of residual receipts restrictions and their effect on the *Regulatory Agreement.*

HUD also received a comment to provide greater clarity to the Section 30 listing of other occupancy and use restrictions. It was not HUD's intent to change policy on what information is to be shown in this Section 30, but rather to clarify the existing policy by making the separate instructions more distinct. Thus, subsection ''a'' of this revised Section 30 corresponds to the first sentence in the current version of the *Regulatory Agreement.* This subsection ''a'' instruction is designed to encompass any occupancy restrictions or policy that may be imposed in connection with the FHA loan itself. For further clarification, HUD included examples of types of loan-related occupancy restrictions and policies that fall under this category. The subsection ''b'' instruction corresponds to the second sentence of the current version of the Section 30 language. This is intended to cover *other* occupancy restrictions that, while not a requirement of the FHA loan itself, may otherwise be convenient to identify in the *Regulatory Agreement.* In such cases, such other restrictions may only be referenced in Section 30 with the caveat that they are included for informational purposes only.

Escrow Agreement for Deferred Repairs, HUD–92476.1

HUD received a comment to add alternative language for lenders that are approved for self-administration of the escrow. HUD agreed with this comment and added additional language in Sections 5 and 6 along with a new Exhibit C to reflect transactions where HUD has approved delegation to the lender of administration of the repair escrow.

The remaining changes to the form shown in the redline comparison published in connection with this 30-day notice are HUD-initiated improvements and updates given the expanded levels of work that are permitted in certain 223(f) transactions. HUD added a new Alternative B for Sections 1 and 2 for transactions with Level 2/Level 3 repairs funded with tax credit equity, along with a new Exhibit D to include the tax credit equity pay-in schedule, and that the additional assurance of completion amount may be cash or a letter of credit.

HUD added language in Section 8 to: (a) Clarify that the Latent Defects Deposit is only required when required by the Firm Commitment; (b) clarify that it is calculated on both ''critical'' and ''non-critical'' repairs performed before or after closing; and (c) include the amount when a Latent Defects Deposit is required, or to insert ''N/A'' if it is not required.

Given that the Firm Commitment requires latent defect assurances when the repairs/alterations are greater than $400,000, regardless of when the work is completed, HUD added a new Alternative B in the Recitals to capture the possibility of a Latent Defects Deposit when all work is completed before closing and no deferred repair escrow is required. Further, HUD added an instruction to revise the title of the document and strike paragraphs 1–3 and 5–7 in such situations.

Borrower's Oath, HUD–92478M

One commenter asked why the *Borrower's Oath* is notarized and why it can't be combined with one of the other closing documents executed by the borrower. This document is notarized because at least one provision is required by statute to be certified under oath. In terms of merging the contents

into another document. HUD declined to accept this suggestion because the notary requirement and the form's contents support keeping it as a stand-alone document.

Supplementary Conditions to the Construction Contract, HUD–92554M

HUD received a comment to add to this document any provisions in the AIA A201 that HUD requires be stricken or modified per the FHA Multifamily Program Closing Guide. HUD declined to make this change. Including the requested change is not practical because the closing documents are renewed every three years, and the AIA A201 document may change prior to or soon after the documents are renewed. HUD has determined that it is more practical to announce changes in policy via the Closing Guide or other HUD directives.

Subordination Agreement—Private, HUD–92907M

One commenter asked HUD to clarify whether all ''Subordinate Loan Documents'' referenced in Section 1(p) actually means ''all'' of such documents. HUD determined no additional clarification is needed, the document clearly states, ''include all documents.'' HUD added language in Section 3(c)(1) that payments due under borrower subordinate loans are limited to 75% of cumulative Surplus Cash, consistent with MAP Guide policy and the *Surplus Cash Note.* To be consistent with the change to the *Surplus Cash Note* and Multifamily Housing policy, HUD made a change to Section 3(c)(4) to allow for compounding of interest for certain eligible LIHTC transactions.

A commenter asked that Section 10 be revised to allow for automatic re-subordination of the subordinate lien for Sections 223(a)(7) and 223(f) refinancings; HUD declined to make this change as the form already requires automatic subordination of refinancing the FHA-insured senior loan, which includes FHA refinancings. One commenter requested HUD add the schedule/exhibits of senior and subordinate loan documents to the signature page. HUD agreed with this comment and made the corresponding revision.

Agreement and Certification, HUD–93305M

One commenter requested that Section 14 be revised to not require attachment of special condition certifications. HUD agreed with the comment and removed the requirement to attach the separate certifications. These certifications should be inserted into the body of the document in Section 14.

Security Instrument, HUD–94000M

One commenter asked for additional clarity on the content of Exhibit B. HUD agreed with the comment and added instructions to indicate that form state Addendum provisions do not need to be separately referenced in the Exhibit B specifically if such addenda are otherwise validly attached to and incorporated in the Security Instrument under applicable state law. HUD similarly revised the instruction language in Sections 43 and 49.

Another commenter suggested HUD add as an option ''[Leasehold]'' where the document covers a leasehold estate. HUD agreed with the suggestion and added the term ''Leasehold'' as optional bracketed language on the Security Instrument cover, title on page 2, and preamble paragraph. This language is to be inserted for transactions involving a leasehold estate. Note that use of the *Security Instrument* in such transactions must comply with the HUD requirements for leasehold mortgages, including use of the form *Lease Addendum.*

Note, HUD–94001M

One commenter requested additional language to harmonize the *Note* with the requirements of form HUD–9807 to put borrowers on notice of HUD's administrative prepayment procedures to protect lenders from arguments that they are improperly conditioning prepayment on HUD approval. HUD declines to add the suggested language to the *Note.* The existing *Note* language does not conflict with form HUD–9807. To the extent any party has questions on HUD's administrative processes regarding loan prepayment or FHA insurance termination, please refer to relevant Program Obligations and forms, including Section 11.8 of the MAP Guide and the instructions in form HUD–9807.

Respondents (*i.e.* affected public): Lenders, Borrowers, Housing Finance Agencies, Government Agencies that support affordable housing, Multifamily Housing Developers, Lenders' Counsel, Borrowers' Counsel, Contractors, Architects, Secondary Financing Lenders

Estimated Number of Respondents: 17,468.

Estimated Number of Responses: 17,468.

Frequency of Response: 1.

Average Hours per Response: .72 hours.

Total Estimated Burden Hours: 12,576.96.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions. Please note that HUD will not consider any redline/strikeout comparison documents submitted by commenters, as it is far too inefficient for HUD to consolidate and consider comparison versions of each of the documents from numerous interested parties. HUD will only consider proposed changes to the documents listed under Section A that are submitted in narrative and/or bulleted form (preferably in MS Word form), accompanied by a detailed explanation and rationale for each requested change. However, commenters may include in their detailed explanation and rationale the relevant excerpt(s) from the document(s) with redline/strikeouts.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: *June 8, 2018.*

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–13660 Filed 6–25–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0051; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities. The ESA also requires that we invite public comment before issuing these permits.

DATES: We must receive comments by July 26, 2018.

ADDRESSES:

Document availability: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection online in Docket No. FWS–HQ–IA–2018–0051 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2018–0051.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0051; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods listed under *Submitting Comments* in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

As described in **ADDRESSES**, the applications, as well as any comments we receive, will be available for public inspection online at *http://www.regulations.gov.* Comments may also be viewed in person at the specified address; to make an appointment, contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

C. Who will see my comments?

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

II. Background

With some exceptions, the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits activities with listed species unless Federal authorization is acquired that allows such activities. Permits under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species. To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the ESA, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

We invite public comment on the following permit applications. Please reference the applicant and the permit number in your comments.

Applicant: Zoological Society of San Diego, dba San Diego Zoo, San Diego, CA; Permit No. 93218C

The applicant requests a permit to re-export one live wild giant panda (*Ailuropoda melanoleuca*) to the China Conservation and Research Center for the Giant Panda Dujiangyan Base, Dujiangyan City, China, for the purpose of enhancing the propagation or survival of the species. This notification is for a single re-export.

Applicant: San Diego Global, dba San Diego Zoo Safari Park, San Diego, CA; Permit No. 76759C

The applicant requests a permit to export one live captive-bred black rhinoceros (*Diceros bicornis*) to the Singita Grumet Fund, Mugumu, Mara, Tanzania, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

IV. Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the **Federal Register** notice announcing the permit issuance date by searching in *www.regulations.gov* under the permit number listed above in this document.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–13601 Filed 6–25–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 18X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the U.S. Department of Justice, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on July 26, 2018.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a

telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven 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 plat and field notes of the dependent resurvey and subdivision of section 4 in Township 32 North, Range 5 East, New Mexico Principal Meridian, Colorado, were accepted on May 3, 2018.

The plat, in 4 sheets, incorporating the field notes of the dependent resurvey in Township 4 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on May 31, 2018.

The plat, in 5 sheets, incorporating the field notes of the dependent resurvey and survey in Township 4 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on June 7, 2018.

The plat and field notes of the dependent resurvey in partially surveyed Township 42 North, Range 1 West, New Mexico Principal Meridian, Colorado, were accepted on June 13, 2018.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, 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 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2018–13649 Filed 6–25–18; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–608 and 731–TA–1420 (Preliminary)]

Steel Racks From China; Institution of Antidumping 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–608 and 731–TA–1420 (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 steel racks from China, provided for in subheadings 9403.20.00 and 7326.90.86 (statistical reporting numbers 9403.20.0080 and 7326.90.8688) 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 China. 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 August 6, 2018. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 13, 2018.

DATES: June 20, 2018.

FOR FURTHER INFORMATION CONTACT: Amelia Shister (202–205–2047), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on June 20, 2018, by Bulldog Rack Company, Weirton, West Virginia; Hannibal Industries, Inc., Los Angeles, California; Husky Rack and Wire, Denver, North Carolina; Ridg-U-Rak, Inc., North East, Pennsylvania; SpaceRAK, A Division of Heartland Steel Products, Inc., Marysville, Michigan; Speedrack Products Group, Ltd., Sparta, Michigan; Steel King Industries, Inc., Stevens Point, Wisconsin; Tri-Boro Shelving & Partition Corp., Farmville, Virginia; and UNARCO Material Handling, Inc., Springfield, Tennessee.

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, July 11, 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 July 9, 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 July 16, 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 Act; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 21, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–13727 Filed 6–25–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Powered Cover Plates, DN 3325;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of SnapRays, LLC d/b/a SnapPower on June 20, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain powered cover plates. The complaint names as respondents: Ontel Products Corporation of Fairfield, NJ; Dazone LLC of Ontario, CA; Shenzhen C-Myway of China; E-Zshop4u LLC of Howey in the Hills, FL; Desteny Store of Fort Meyers, FL; Zhongshan Led-Up Co. Ltd. of China; AllTrade Tools LLC of Cypress, CA; Guangzhou Sailu Info Tech. Co., Ltd. of China; NEPCI-Zhejiang New-Epoch Communication Industry Co., Ltd. of China; KCC Industries of Eastvale, CA; Vistek Technology Co., Ltd. of China; Enstant Technology Co. Ltd. of China; and Manufacturers Components Incorporated of Pompano Beach, FL. The complainant requests that the Commission issue a general exclusion order and in the alternative issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States

relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3325) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, [2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 21, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–13726 Filed 6–25–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automated Driving Behaviors Consortium

Notice is hereby given that, on June 1, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automated Driving Behaviors Consortium (''ADB Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: FCA USA LLC, Auburn Hills, MI; Ford Motor Company, Dearborn, MI; General Motors LLC, Warren, MI; Hyundai America Technical Center, Inc., Superior Township, MI; Mercedes-Benz Research & Development North America, Ann Arbor, MI; Nissan Technical Center N.A., Farmington Hills, MI; Toyota Motor North America, Plano, Texas; and Volkswagen Group of America, Inc., Auburn Hills, MI.

The general area of ADB Consortium's planned activity is to fund and conduct multiple research projects limited to specific areas with specifically-defined technical goals which the participants believe will speed the development and ultimate consumer access to safe vehicles equipped with Automated Driving Systems (ADS). ADB Consortium's objectives are to gain further knowledge and understanding of ADS-equipped vehicle interactions with public safety through research into common operational use cases.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–13674 Filed 6–25–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on June 8, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ketchum Trading LLC, Chicago, IL, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on December 21, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 31, 2017 (82 FR 8845).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–13673 Filed 6–25–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Training Division is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until July 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin R. Furtick, Chief, Evaluation and Assessment Unit, 1234 Range Road, Quantico, VA, *krfurtick@fbi.gov,* 703–632–3222. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice, Federal Bureau of Investigation, Training Division, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* FBI Training Generic Clearance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Training Division, Evaluation and Assessment Unit.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents of this collection include members of the State, Local or Tribal Government Law Enforcement community and Federal Government Law Enforcement partners. This collection will gather feedback from FBI training programs to ensure the training delivered is realistic and relevant to today's law enforcement partners.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Respondents are estimated to be 1,100 annually with an estimated seven surveys per respondent that are estimated to be completed in less than 10 minutes per collection.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated time for respondents to complete these evaluations per respondent is 70 minutes.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 21, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–13717 Filed 6–25–18; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–047]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that it has submitted to OMB for approval the information collections described in this notice. We invite you to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before July 26, 2018.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for these information collections on March 19, 2018 (83 FR 13024) and on March 21, 2018 (83 FR 12413) and received no comments. We are therefore submitting these collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its

accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including the through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collections:

1. *Title:* Selective Service System Record Request.

OMB number: 3095–0071.

Agency form numbers: NA Form 13172.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 2 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 50.

Abstract: The National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers the Selective Service System (SSS) records. The SSS records contain both classification records and registration cards of registrants born before January 1, 1960. When registrants or other authorized individuals request information from or copies of SSS records they must provide on forms or letters certain information about the registrant and the nature of the request. Requesters use NA Form 13172, Selective Service Record Request to obtain information from SSS records stored at NARA facilities.

2. *Title:* Use of NARA Official Seals and/or Logos.

OMB number: 3095–0052.

Agency form number: N/A.

Type of review: Regular.

Affected public: Business or other for-profit, Not-for-profit institutions, Federal government.

Estimated number of respondents: 175.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 44 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the Nationals Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2018–13622 Filed 6–25–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–046]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that it has submitted to OMB for approval the information collections described in this notice. We invite you to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before July 26, 2018.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for these information collections on April 10, 2018 (83 FR 15410), and we received no comments. We are therefore submitting them to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including the through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collections:

1. *Title:* National Historical Publications and Records Commission (NHPRC) Grant Program Budget Form and Instructions and NHPRC Grant Offer Acknowledgement.

OMB number: 3095–0013.

Agency form number: NA Form 17001 and 17001a.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, and Federally-acknowledged or state-recognized Native American tribes or groups, who apply for and receive NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 244 per year submit applications; approximately 25 grantees need to submit revised budgets.

Estimated time per response: 10 hours per application; 5 hours per revised budget.

Frequency of response: On occasion for the application; as needed for revised budget. Currently, the NHPRC considers grant applications 2 times per year. Respondents usually submit no more than one application per year, and, for those who need to submit revised budgets, only one revised budget per year.

Estimated total annual burden hours: 1,765 hours.

Abstract: The NHPRC posts grant announcements to their website and to grants.gov (*www.grants.gov*), where the information will be specific to the grant opportunity named. The basic information collection remains the same. The NA Form 17001 is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The NA Form 17001a, NHPRC Grant Offer Acknowledgement, is used after the Archivist of the United States, as chair of the Commission, recommends a grant for approval. The prospective grantee must acknowledge the offer of the grant and agree to meet

the requirements of applicable Federal regulations. In addition, they must verify the existence of an indirect cost agreement with a cognizant Federal agency if they are claiming indirect costs in the project's budget.

2. *Title:* Accounting System and Financial Capability Questionnaire.

OMB number: 3095–0072.

Agency form numbers: NA Form 17003.

Type of review: Regular.

Affected public: Not-for-profit institutions and State, Local, or Tribal Government.

Estimated number of respondents: 75.

Estimated time per response: 4 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 300.

Abstract: Pursuant to the Title 2, Section 215 of the Code of Federal Regulations, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly Office of Management and Budget (OMB) Circular A–110) and Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, grant recipients are required to maintain adequate accounting controls and systems in managing and administering Federal funds. Some of the recipients of grants from the National Historical Publications and Records Commission (NHPRC) have proven to have limited experience with managing Federal funds. This questionnaire is designed to identify those potential recipients and provide appropriate training or additional safeguards for Federal funds. Additionally, the questionnaire serves as a pre-audit function in identifying potential deficiencies and minimizing the risk of fraud, waste, abuse, or mismanagement, which we use in lieu of a more costly and time consuming formal pre-award audit.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2018–13621 Filed 6–25–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on External Engagement (EE), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, June 29, 2018, from 3:00–4:00 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Prepare for the July NSB meeting; discuss the recent Community College Innovation Challenge listening session; plan for the next session in South Carolina; and discuss future directions and opportunities for the committee.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Nadine Lymn (*nlymn@nsf.gov*), 2415 Eisenhower Avenue, Alexandria, VA 22314.

Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2018–13790 Filed 6–22–18; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on July 11–14, 2018, 11545 Rockville Pike, Rockville, Maryland 20852.

Wednesday, July 11, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Brunswick Steam Electric Plant, Units 1 and 2 MELLLA+ Application (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and Duke Energy Progress regarding the safety evaluation associated with the Maximum Extended Load Line Limit Analysis Plus (MELLLA+) license amendment request. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

10:15 a.m.–12:15 p.m.: Digital Instrumentation & Controls Interim Staff Guidance-06, ''Task Working Group #6: Licensing Process'' (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topics.

1:45 p.m.–4:45 p.m.: APR1400: Selected Safety Evaluations Associated with Reactor Design Application (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and Korea Hydro & Nuclear Power (KNHP) regarding safety evaluations associated with the APR1400. [**Note:** This session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

5:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

Thursday, July 12, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:15 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information

designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

Friday, July 13, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 p.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

Saturday, July 14, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 p.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and potential retreat items. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)] [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Note: This notice is late due to the adjustment of accurate meeting topics for APR1400. Specifically, the related Subcommittees which occurred in late May affected the schedule.

Dated at Rockville, Maryland, this 20th day of June, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–13624 Filed 6–25–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0104]

State of Wyoming: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed state agreement; request for comment.

SUMMARY: By letter dated November 14, 2017, Governor Matthew H. Mead of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over the management and disposal of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material associated with uranium or thorium milling within the State. Pursuit to Commission direction, the proposed Agreement would state that the NRC will retain regulatory authority over the American Nuclear Corporation (ANC) license.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities in the State of Wyoming from portions of the Commission's regulatory

authority. Radioactive materials not covered by the proposed Agreement will continue to be subject to the Commission's regulatory authority. Section 274e. of the AEA requires that the NRC publish these exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the NRC's regulations.

DATES: Submit comments by July 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by the following method:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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: Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7135, email: *Stephen.Poy@nrc.gov;* or Paul Michalak, telephone: 301–415–5804, email: *Paul.Michalak@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0104 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–2018–0104.

• *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, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft application for a Section 274 Atomic Energy Act Agreement from the State of Wyoming, the final Wyoming Agreement State application, and the Draft Assessment of the Proposed Wyoming Program for the Regulation of Agreement Materials documents are available in ADAMS under Accession Nos. ML16300A294, ML17319A921, and ML18094B074.

• *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–2018–0104 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. Additional Information on Agreements Entered Under Section 274 of the AEA

Since Section 274 of the AEA was added in 1959, the Commission has entered into Agreements with 37 States (Agreement States). The 37 Agreement States currently regulate approximately 16,500 Agreement material licenses, while the NRC regulates approximately 2,800 licenses. Under the proposed Agreement, 14 NRC uranium mill licenses will transfer to the State of Wyoming. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

III. Proposed Agreement With the State of Wyoming

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State of Wyoming requests authority over are the possession and use of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (source material associated with milling activities).

(b) The proposed Agreement contains articles that

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, and restricted data and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the State of

Wyoming Statute Section 35–11–2001, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated November 14, 2017, Governor Mead certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Wyoming licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC draft staff assessment finds that the Wyoming Department of Environmental Quality, Land Quality Division, Uranium Recovery Program, is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials. Pursuant to Commission direction, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that, prior to the requisite amendment of Wyoming Statute Section 35–11–2004(c), the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the Agreement contains a provision that requires the State of Wyoming to revise Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). If the Wyoming Statute Section 35–11–2004(c) is not amended by the end of the 2019 legislative session, the Agreement will terminate.

Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Agreement Materials

The NRC staff has examined the State of Wyoming's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA-700, ''Processing an Agreement'' (available at *https://scp.nrc.gov/procedures/sa700.pdf* and *https://scp.nrc.gov/procedures/sa700_hb.pdf*). The Policy Statement has 36 criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. These areas were reviewed under Criteria 1, 2, 20, 24, 33, and 34 in the draft staff assessment. The State of Wyoming's proposed Agreement materials program for the regulation of radioactive materials is the Uranium Recovery Program. The Uranium Recovery Program will be located within the existing Land Quality Division of the Wyoming Department of Environmental Quality.

The educational requirements for the Uranium Recovery Program staff members are specified in the State of Wyoming's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Bachelor of Science Degree or Master's Degree in one of the following subject areas: Environmental science, health physics, nuclear engineering, geology, or ecology. All have training and work experience in radiation protection. Supervisory level staff have at least 5 years of working experience in radiation protection, with most having more than 10 years of experience.

The State of Wyoming performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Wyoming will employ the equivalent of 7.2 full-time professional and technical staff to support the Uranium Recovery Program.

The State of Wyoming has indicated that the Uranium Recovery Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Uranium Recovery Program staff is accompanying the NRC staff on inspections of NRC licensees in Wyoming. The Uranium Recovery Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Wyoming and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Uranium Recovery Program staff identified by the State of Wyoming to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. These areas were reviewed under Criteria 1–14, 17, 19, 21, and 23–33 in the draft staff assessment. The Wyoming Statutes Sections 35–11–2001(a) through (c) provide the authority to enter into the Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Uranium Recovery Program. The Department has the requisite authority to promulgate regulations under Wyoming Statute Section 35–11–2002(b) for protection against radiation. The Wyoming Statutes Sections 35–11–2001 through -2005 also provide the Uranium Recovery Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Wyoming Statute Section 35–11–2003(d) requires licensees to provide access to inspectors.

The Wyoming Statute Section 35–11–2001(e) does not provide the State of Wyoming with authority over independent or commercial laboratories. Under the proposed Agreement, the NRC would retain regulatory authority over laboratory facilities that are not located at facilities licensed under the State of Wyoming's regulatory authority. The State of Wyoming would only regulate laboratory facilities located at uranium or thorium mills. The NRC staff verified that the State of Wyoming adopted the relevant NRC regulations in parts 19, 20, 40, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Wyoming Uranium Recovery Program Rules Chapters 1 through 9. Therefore, on the proposed effective date of the Agreement, the State of Wyoming will have adopted an adequate and compatible set of radiation

protection regulations that apply to byproduct materials as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. These areas were reviewed under Criteria 8, 9a, 11, 29, 30, 31, and 32 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material. The State of Wyoming has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities.

As a result of the class of byproduct material it will be regulating (Section 11e.(2) of the AEA), the State of Wyoming is not required to have regulations compatible to 10 CFR part 61 for waste disposal. Rather, the State of Wyoming is required to have regulations that are compatible with 10 CFR part 40 for the disposal of byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff confirmed that the State of Wyoming has adopted regulations that are compatible with the NRC regulations in 10 CFR part 40 for the disposal of byproduct material and source material associated with milling activities, which are equivalent to the applicable standards contained in 10 CFR part 61.

These regulations address the general requirements for waste disposal and are applicable to all licensees covered under this proposed Agreement.

The NRC staff identified one portion of the Wyoming Statute that is potentially not compatible with NRC requirements. Section 83b.(1)(A) of the AEA ensures that ownership of the byproduct material itself is inseparable from the site on which it is disposed. Consequently, the State of Wyoming has the option of taking title to the material and its disposal site, but the Uranium Mill Tailings Radiation Control Act (UMTRCA) does not permit a State to bifurcate ownership of the disposed byproduct material and the property rights necessary to ensure its safe disposal. The Wyoming Statute Section 35–11–2004(c), enacted in anticipation of the State of Wyoming's assumption of the NRC's regulatory authority for uranium and thorium milling, could permit the bifurcation of the disposed byproduct material and its disposal site by the State. As discussed in Criterion 30c. of the draft staff assessment, this bifurcation of the land and the disposed byproduct material could conflict with the AEA (as amended by UMTRCA), and Article II.B.2.b. in the proposed Agreement.

Based on Commission direction, the NRC staff concluded that Criterion 30c. is satisfied in the following manner: The Commission could complete the process for the final application package for the Agreement, including publishing the proposed Agreement for comment, by noting that the Commission's finding of compatibility is contingent on the State of Wyoming revising this provision, during the next legislative session, to be compatible with AEA Section 83b.(1)(A). Thus, an Agreement could be executed, but it would include a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The Agreement would also explicitly state that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the federal government. The NRC staff determined that there is little practical risk that the State of Wyoming's current statutory provisions would result in the bifurcation of the 11e.(2) byproduct material from the land since the NRC is required to review and approve any State-proposed termination of a uranium mill license.

(d) Transportation of Radioactive Material. This area was reviewed under Criteria 10 and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport.

Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. These areas were reviewed under Criteria 1, 11, and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. This area was reviewed under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, 25, and 29–35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State of Wyoming has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. These areas were reviewed under Criteria 1, 16, 18, 19, 23, 35, and 36 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's Uranium Recovery Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. This area was reviewed under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. This area was reviewed under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active uranium recovery NRC licenses issued to facilities in the State of Wyoming, with the exception of the ANC license, will be recognized as Wyoming Department of Environmental Quality licenses.

The State of Wyoming also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Wyoming regulations, in Chapter 4, Section 6(d), provide exemptions from the State's requirements for the NRC and the U.S.

Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. The State of Wyoming would be able to recognize the licenses of other jurisdictions by order or specific license.

There are six UMTRCA Title II sites in the State of Wyoming (ADAMS Accession No. ML16300A294) undergoing decommissioning. These sites are: (1) Anadarko Bear Creek, Powder River Basin; (2) Pathfinder, Lucky Mc, Gas Hills; (3) Umetco Minerals Corporation, Gas Hills; (4) Western Nuclear Inc., Split Rock, Jeffrey City; (5) Exxon Mobile, Highlands, Converse County; and (6) ANC, Gas Hills.

The State of Wyoming indicated it was opposed to assuming regulatory authority over the ANC site because the licensee is insolvent. To address the State of Wyoming's proposed exclusion of the ANC site from the proposed Agreement, the NRC staff provided SECY–17–0081 ''Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming'' (ADAMS Accession No. ML17087A355) to the Commission. In SRM–SECY–17–0081 (ADAMS Accession No. ML17277A783), the Commission approved the NRC staff's recommendation for the NRC to retain regulatory authority over the ANC site and stated that the Commission's retention of the ANC site ''is not a change to the Commission's current Agreement State policy, but is instead an exception to that policy based on case-specific facts.'' Article II.A.14. of the proposed Agreement specifies that the Commission retains regulatory authority over the ANC license.

With regard to the five other decommissioning UMTRCA sites, the NRC staff has developed a draft Memorandum of Understanding (MOU) between the NRC and the State of Wyoming as a separate document from the proposed Agreement. The objective of the MOU is to delineate specific actions that the NRC and the State of Wyoming would take to verify completion of the decommissioning of these sites. The MOU has been drafted and the NRC staff is currently working with the State of Wyoming to delineate how license termination will be addressed for each of the five sites. An assessment of the decommissioning status of the five UMTRCA sites and the activities that need to be completed prior to license termination (ADAMS Accession No. ML17040A501) has been completed. Once the MOU is completed and signed by both the NRC and the State of Wyoming, it will be published in the **Federal Register**.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Wyoming Governor Mead, and the supporting information provided by the Uranium Recovery Program of the Wyoming Department of Environmental Quality and Wyoming's Office of the Attorney General. Based upon this review, the NRC staff concludes that the State of Wyoming Uranium Recovery Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' As noted above, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A) or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the NRC staff finding of compatibility is contingent on the State of Wyoming revising Wyoming Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). The proposed State of Wyoming program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 20th day of June 2018.

For the Nuclear Regulatory Commission.

Andrea L. Kock,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

APPENDIX A

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF WYOMING FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14,

2017, that the State of Wyoming (hereinafter referred to as ''the State'') has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on **[date]** that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act; and,

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as ''source material associated with milling activities'').

ARTICLE II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe

and subject to a restriction against alienation imposed by the United States.

3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

ARTICLE III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement. The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35–11–2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.

B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [location] this [date] day of [month], 2018.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, Chairman.

Done at [location] this [date] day of [month], 2018.

For the State of Wyoming.

Matthew H. Mead, Governor

[FR Doc. 2018–13626 Filed 6–25–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2018–0123]

Duane Arnold Energy Center

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of NextEra Energy Duane Arnold, LLC (NextEra) to withdraw its application dated August 31, 2017, for a proposed amendment to Duane Arnold Energy Center (DAEC), Facility Operating License No. DPR–49. The proposed amendment would have modified the licensing basis by the addition of a license condition to allow for the implementation of the NRC's regulations on ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components (SSCs) for Nuclear Power Reactors.''

DATES: June 26, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0123 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–2018–0123. 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: Mahesh Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8371, email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of NextEra Energy Duane Arnold, LLC (NextEra) to withdraw its August 31, 2017 (ADAMS Accession No. ML17243A469), application for proposed amendment to Duane Arnold Energy Center (DAEC), Facility Operating License No. DPR–49, located in Linn County, Iowa.

The proposed amendment would have modified the licensing basis by the addition of a license condition to allow for the implementation of the provisions of section 50.69 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components (SSCs) for Nuclear Power Reactors.''

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on November 21, 2017 (82 FR 55407). However, by letter dated June 12, 2018, the licensee withdrew the proposed change (ADAMS Accession No. ML18166A172).

For further details with respect to this action, see the application for amendment dated August 31, 2017, and the licensee's letter dated June 12, 2018, which withdrew the application for license amendment.

Dated at Rockville, Maryland, on June 20, 2018.

For the Nuclear Regulatory Commission.

Mahesh L. Chawla,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–13606 Filed 6–25–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

DATE: Weeks of June 25, July 2, 9, 16, 23, 30, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 25, 2018

There are no meetings scheduled for the week of June 25, 2018.

Week of July 2, 2018—Tentative

There are no meetings scheduled for the week of July 2, 2018.

Week of July 9, 2018—Tentative

There are no meetings scheduled for the week of July 9, 2018.

Week of July 16, 2018—Tentative

There are no meetings scheduled for the week of July 16, 2018.

Week of July 23, 2018—Tentative

There are no meetings scheduled for the week of July 23, 2018.

Week of July 30, 2018—Tentative

There are no meetings scheduled for the week of July 30, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: June 22, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–13865 Filed 6–22–18; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC–248]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are

required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. OPIC received comments in response to the sixty (60) day notice. OPIC made no changes in response to these comments. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

The proposed changes to OPIC–248 modify existing questions to collect sex-disaggregated information, and add and modify questions to collect additional information related to OPIC's impact on women in order to better measure OPIC's impact on women's economic empowerment.

DATES: Comments must be received by July 26, 2018.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: OPIC received comments in response to the sixty (60) day notice published in **Federal Register** volume 83 page 16404 on April 16, 2018. OPIC made no changes in response to these comments. All mailed comments and requests for copies of the subject form should include form number OPIC–248 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC248.

Summary Form Under Review

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

Title: Office of Investment Policy Questionnaire.

Form Number: OPIC–248.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 644 (2.8 hours per form).

Number of Responses: 230 per year.

Federal Cost: $30,310.

Authority for Information Collection: Sections 231, 231A, 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Office of Investment Policy Questionnaire is the principal document used by OPIC to prepare a developmental impact profile and determine the projected impact on the United States, as well as to determine the project's compliance with environmental and labor policies, as consistent with OPIC's authorizing legislation.

Dated: June 21, 2018.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2018–13692 Filed 6–25–18; 8:45 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; comments request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. OPIC received comments in response to the sixty (60) day notice. OPIC made no changes in response to these comments. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

The proposed changes to OPIC–162 modify existing questions to collect sex-disaggregated information, and add and modify questions to collect additional information related to OPIC's impact on women in order to better measure OPIC's impact on women's economic empowerment.

DATES: Comments must be received within thirty (30) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: OPIC received comments in response to the sixty (60) day notice published in **Federal Register** volume 83 page 16403 on April 16, 2018. OPIC made no changes in response to these comments. All mailed comments and requests for copies of the subject form should include form number OPIC–162 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–162.

Summary Form Under Review

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

Title: Self-Monitoring Questionnaire.

Form Number: OPIC–162.

Frequency of Use: One per investor per project annually.

Type of Respondents: Business or other institutions and individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 2,186 (4.7 hours per form).

Number of Responses: 465 per year.

Federal Cost: $51,066.

Authority for Information Collection: Sections 231, 231A, 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Self Monitoring Questionnaire is the principal document used by OPIC to monitor the developmental effects of OPIC's investment projects, monitor the economic effects on the U.S. economy, and collect information on compliance with environmental and labor policies.

Dated: June 21, 2018.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2018–13691 Filed 6–25–18; 8:45 am]

BILLING CODE 3210–01–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 26, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 21, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 451 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–184, CP2018–258.

Elizabeth Reed

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–13702 Filed 6–25–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 26, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 21, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 452 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–185, CP2018–259.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–13703 Filed 6–25–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form 1–U, SEC File No. 270–660, OMB Control No. 3235–0722

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 1–U (17 CFR 239.93) is used to file current event reports by Tier 2 issuers under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C 77a *et seq.*). Form 1–U provides information to the public within four business days of fundamental changes in the nature of the issuer's business and other significant events. We estimate that approximately 144 issuers file Form 1–U annually. We estimate that Form 1–U takes approximately 5.0 hours to prepare. We estimate that 85% of the 5.0 hours per response is prepared by the company for a total annual burden of 612 hours (4.25 hours per response × 144 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13683 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form 1–Z, SEC File No. 270–659, OMB Control No. 3235–0723

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 1–Z (17 CFR 239.94) is used to report terminated or completed offerings or to suspend the duty to file ongoing reports under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C 77a *et seq.*). The purpose of the Form 1–Z is to collect empirical data for the Commission on offerings conducted under Regulation A that have terminated or completed, to indicate to the Commission that issuers that have conducted Tier 2 offering are suspending their duty to file reports under Regulation A and to provide such information to the investing public. We estimate that approximately 17 issuers file Form 1–Z annually. We estimate that Form 1–Z takes approximately 1.5 hours to prepare. We estimate that 100% of the 1.5 hours per response is prepared by the company for a total annual burden of 26 hours (1.5 hours per response × 17 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information

collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13684 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83479; File No. SR–CboeBZX–2018–018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Principal Morley Short Duration Index ETF

June 20, 2018.

On April 23, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Principal Morley Short Duration Index ETF pursuant to BZX Rule 14.11(c)(4), which governs the listing and trading of Index Fund Shares based on fixed income securities indexes. The proposed rule change was published for comment in the **Federal Register** on May 8, 2018.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] 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 June 22, 2018. The Commission is extending this 45-day time period.

The Commission finds it 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 6, 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 No. SR–CboeBZX–2018–018).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13617 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83152 (May 2, 2018), 83 FR 20892.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Regulation A (Form 1–A); SEC File No. 270–110, OMB Control No. 3235–0286

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation A (17 CFR 230.251 through 230.263) provides an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain limited offerings of securities by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. The paperwork burden from Regulation A is imposed through the forms that are subject to the disclosure requirements in Regulation A and is reflected in the analysis of these forms. To avoid the Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation A to be a total of one hour. All information is provided to the public for review. The information required is filed on occasion and is mandatory. We estimate approximately 112 issuers file Forms 1–A annually. We estimate that Form 1–A takes approximately 751 hours to prepare, including one hour for Regulation A. We estimate that 75% of 751 hours per response (563.25 hours) is prepared by the company for a total annual burden of 63,084 hours (563.25 × 112 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13687 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, June 28, 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 Peirce, 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: June 21, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–13784 Filed 6–22–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form 1–K, SEC File No. 270–662, OMB Control No. 3235–0720

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 1–K (17 CFR 239.91) is used to file annual reports by Tier 2 issuers under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Tier 2 issuers under Regulation A conducting offerings of up to $50 million within a 12-month period are required to file Form 1–K. Form 1–K provides audited year-end financial statements and information about the issuer's business operation, ownership, management, liquidity, capital resources and operations on an annual basis. In addition, Part I of the Form 1–K collects information on any offerings under Regulation A that have been terminated or completed unless it has been previous reported on Form 1–Z. The purpose of the Form 1–K is to better inform the public about companies that have conducted Tier 2 offerings under Regulation A. We estimate that approximately 36 issuers file Form 1–K annually. We estimate that Form 1–K takes approximately 600 hours to prepare. We estimate that 75% of the 600 hours per response (450 hours) is prepared by the company for a total annual burden of 16,200 hours (450.0 hours per response × 36 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 18, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13681 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form 1–SA, SEC File No. 270–661, OMB Control No. 3235–0721

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 1–SA (17 CFR 239.92) is used to file semiannual reports by Tier 2 issuers under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Tier 2 issuers under Regulation A conducting offerings of up to $50 million within a 12-month period are required to file Form 1–SA. Form 1–SA provides semiannual, interim financial statements and information about the issuer's liquidity, capital resources and operations after the issuer's second fiscal quarter. The purpose of the Form 1–SA is to better inform the public about companies that have conducted Tier 2 offerings under Regulation A. We estimate that approximately 55 issuers file Form 1–SA annually. We estimate that Form 1–SA takes approximately 187.43 hours to prepare. We estimate that 85% of the 187.43 hours per response (159.32 hours) is prepared by the company for a total annual burden of 8,763 hours (159.32 hours per response × 55 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13682 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83474; File No. SR–FINRA–2018–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

June 20, 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 June 11, 2018, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend to July 18, 2019 the implementation of FINRA Rule 4240. FINRA Rule 4240 implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps that are security-based swaps.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 2009, the Commission approved FINRA Rule 4240,[4] which implements an interim pilot program (the ''Interim Pilot Program'') with respect to margin requirements for certain transactions in credit default swaps (''CDS'').[5] On June 14, 2017, FINRA filed a proposed rule change for immediate effectiveness extending the implementation of FINRA Rule 4240 to July 18, 2018.[6]

As explained in the Approval Order, FINRA Rule 4240, coterminous with certain Commission actions, was intended to address concerns arising from systemic risk posed by CDS, including, among other things, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.[7] On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') was signed into law.[8] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for swaps and security-based swaps,[9] including certain CDS. The legislation was intended, among other things, to enhance the authority of regulators to implement new rules designed to reduce risk, increase transparency, and promote market integrity with respect to such products.

The Commission and the CFTC have proposed or adopted rules with respect to swaps and security-based swaps pursuant to Title VII of the Dodd-Frank Act.[10] FINRA believes it is appropriate to extend the Interim Pilot Program for a limited period, to July 18, 2019, in light of the continuing development of the CDS business and ongoing regulatory developments. FINRA is considering proposing additional amendments to the Interim Pilot Program.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 18, 2018. The proposed rule change will expire on July 18, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because, in light of the continuing development of the CDS business and ongoing regulatory developments, extending the implementation of the margin requirements as set forth by FINRA Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR–FINRA–2009–012) (''Approval Order'').

[5] In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit at this time the rule's application to credit default swaps that are security-based swaps. *See* Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR–FINRA–2012–015).

[6] *See* Securities Exchange Act Release No. 81035 (June 27, 2017), 82 FR 30914 (July 3, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2017–019).

[7] *See* Approval Order, 74 FR at 25588–89.

[8] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[9] The terms ''swap'' and ''security-based swap'' are defined in Sections 721 and 761 of the Dodd-Frank Act. The Commodity Futures Trading Commission (''CFTC'') and the Commission jointly have approved rules to further define these terms. *See* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Joint Final Rule; Interpretations; Request for Comment on an Interpretation: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping). *See also* Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) (Joint Final Rule; Joint Interim Final Rule; Interpretations: Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant'').

[10] *See, e.g.,* Securities Exchange Act Release No. 79833 (January 18, 2017), 82 FR 8467 (January 25, 2017) (Order Extending Certain Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' To Encompass Security-Based Swaps and Request for Comment); Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Notice of Statement of General Policy with Request for Public Comment: Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act); Securities Exchange Act Release No. 68071 (October 18, 2012), 77 FR 70214 (November 23, 2012) (Proposed Rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers). *See also* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25194 (May 2, 2014) (Proposed Rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers).

[11] 15 U.S.C. 78*o*–3(b)(6).

4240 will help to stabilize the financial markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the implementation of FINRA Rule 4240 for a limited period, to July 18, 2019, in light of the continuing development of the CDS business and ongoing regulatory developments, helps to promote stability in the financial markets and regulatory certainty for members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Eduardo Aleman, Assistant Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–025. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–025 and should be submitted on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13614 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736

Extension:

Rule 15g–3, SEC File No. 270–346, OMB Control No. 3235–0392

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 15g–3—Broker or dealer disclosure of quotations and other information relating to the penny stock market (17 CFR 240.15g–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 195 broker-dealers will spend an average of 87 hours annually to comply with this rule. Thus, the total compliance burden is approximately 16,965 burden-hours per year.

Rule 15g–3 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange

Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or by sending an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13680 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83478; File No. SR–ISE–2018–54]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Rules Pertaining to Co-location and Direct Connectivity

June 20, 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 June 5, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate the Exchange's rules pertaining to co-location and direct connectivity, which are presently at Section VI, subsections E (co-location) and F–H (direct connectivity) of the Exchange's Schedule of Fees, to the Exchange's new rulebook shell, entitled ''General Rules,'' at new General 8 (''Connectivity''), Sections 1 and 2, respectively.

The text of the proposed rule change is available on the Exchange's website at *http://ise.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 Exchange proposes to relocate its rules governing co-location and direct connectivity services, which presently comprise Section VI, subsections E (co-location) and F–H (direct connectivity) of the Exchange's Schedule of Fees. The Exchange proposes to establish, within its new rulebook shell,[3] a new General 8 heading, entitled ''Connectivity,'' to renumber Section VI, subsection E as Section 1 thereunder, and to renumber Section VI, subsections F, G, and H as Section 2(a), (b), and (c) thereunder.[4] The Exchange also proposes to update internal cross-references in the renumbered Rules.

The Exchange considers it appropriate to relocate these Rules to better organize its Rulebook. The other Affiliated Exchanges intend to propose similar reorganizations of their co-location and direct connectivity rules so that these rules will be harmonized among all of the Affiliated Exchanges.

The relocation of the co-location and direct connectivity rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that moving the co-location and direct connectivity rules to their new location will facilitate the use of the Rulebook by Members of the Exchange who are members of other Affiliated Exchanges. Moreover, the proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their numbers and make conforming cross-reference changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way its Rulebook is organized, providing ease of reference in locating co-location and direct connectivity rules, and harmonizing the Exchange's Rules with those of the other Affiliated Exchanges. As previously stated, the proposed Rule relocation is non-substantive.

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 intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not impose a burden on competition because, as previously stated, they (i) are of a non-substantive nature, (ii) are intended to harmonize the Exchange's rules with those of its Affiliated Exchanges, and (iii) are intended to organize the Rulebook in a way that it will ease the Members' navigation and reading of the rules across the Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Recently, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges: The Nasdaq Stock Exchange, LLC; Nasdaq BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (together with ISE, the ''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82173 (November 29, 2017), 82 FR 57505 (December 5, 2017) (SR–ISE–2017–102).

[4] The Exchange notes that as a consequence of this proposal, it will list its fees, in part, in Section VI of the Rulebook and, in part, in General 8.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The proposed rule change merely relocates the co-location and direct connectivity rules in the Exchange's Schedule of Fees, as well as corrects a technical error.[11] Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2018–54 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–ISE–2018–54. 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–ISE–2018–54, and should be submitted on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13616 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] Specifically, with respect to Point of Presence (POP) Connectivity, the Exchange corrects an incorrect reference to GEMX in the rule text to ISE.

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83485; File No. SR–OCC–2017–021]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

June 20, 2018.

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2017–021 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] concerning enhanced and new tools for recovery scenarios.[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] To date, the Commission has received one comment letter to the Proposed Rule Change.[5] On March 22, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act[6] to determine whether to approve or disapprove the Proposed Rule Change.[7]

Section 19(b)(2)(B)(ii) of the Act provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 8, 2017, OCC also filed a related advance notice (SR–OCC–2017–810) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3224 (Jan. 23, 2018) (SR–OCC–2017–810).

[4] Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR–OCC–2017–021) (''Notice'').

[5] *See* Letter from Jacqueline H. Mesa, Senior Vice President of Global Policy, FIA, dated Jan. 16, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-020/occ2017020.htm*. Since the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice.

[6] 15 U.S.C. 78s(b)(2)(B)(i).

[7] *See* Securities Exchange Act Release No. 82927 (March 22, 2018), 83 FR 13176 (March 27, 2018) (SR–OCC–2018–021).

proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[8] The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9]

The 180th day after publication of the notice for the Proposed Rule Change in the **Federal Register** is June 24, 2018. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposed Rule Change so that it has sufficient time to consider the Proposed Rule Change and the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2)(B)(ii) of the Act,[10] designates August 23, 2018 as the date by which the Commission shall either approve or disapprove the Proposed Rule Change.

The Commission also seeks additional comment to help further inform its analysis of the Proposed Rule Change. Specifically, the Commission invites interested persons to provide views, data, and arguments concerning the Proposed Rule Change, including whether the Proposed Rule Change is consistent with the Act and the applicable rules or regulations thereunder. Please note that comments previously received on the substance of the Proposed Rule Change will be considered together with comments submitted in response to this notice. Therefore, while commenters are free to submit additional comments at this time, they need not re-submit earlier comments.

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–OCC–2017–021 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–OCC–2017–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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–OCC–2017–021 and should be submitted on or before July 11, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13638 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(2)(B)(ii).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83486; File No. SR–CBOE–2018–043]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rule Governing Crowd Space Disputes

June 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 7, 2018, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 24.21 relating to Crowd Space Disputes. The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Rule 24.21 (Index Crowd Space Dispute Resolution Procedures). By way of background, Rule 24.21 provides for guidelines and procedures to resolve disputes concerning the right of Trading Permit Holders (''TPHs'') to occupy a certain space in certain index option trading pits.

Particularly, the Exchange proposes to amend subparagraphs (b) and (g) of Rule 24.21, which provisions relate to the Space Mediator and the Crowd Space Dispute Resolution (''CSDR'') panel, respectively. Currently, the rule provides that the Space Mediator[3] will select a CSDR Panel (''Panel'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] As defined in Cboe Options Rule 24.21(b).

composed of seven TPHs to hear and resolve a space dispute. The rule provides that the Space Mediator selects six members of the Panel from members of the Exchange (other than the Space Mediator himself) and of those six members, three members shall be TPHs who trade in the trading station where the dispute has arisen and three shall be TPHs who do not trade in the trading station where the dispute has arisen. The seventh Panel member shall be a Floor Official designated by the Exchange.

The Exchange is seeking to reduce the number of TPHs that must be appointed to a Panel. Specifically, the Exchange proposes that Panels be comprised of 5 TPHs, two of whom trade in a trading station where the dispute has arisen and two of whom trade outside of the trading station where the dispute has arisen. The fifth Panel member would be a TPH Floor Official that may trade in or out of the trading station where the dispute has arisen. The Exchange desires this reduction in Panel size because it has become increasingly burdensome for the Exchange to designate a sufficient number of TPHs to sit on any given Panel, as fewer TPHs are willing to perform these functions and often times there are conflicts limiting the pools of available TPHs. The Exchange notes that the proposed change to state that the fifth panel member must be a ''TPH'' Floor Official is not a substantive change, but rather reflects the Exchange's current practice with respect to staffing Panels (*i.e.,* the Space Mediator does not appoint Floor Officials that are Exchange employees).

The Exchange also proposes to eliminate the language providing that the Space Mediator selects members of the Panel ''other than the Space Mediator himself''. Particularly, the Exchange notes that Space Mediator currently is, and has been for some time, an Exchange employee. Additionally, the Exchange does not intend in the future to appoint a Space Mediator that is a TPH. Since all Panels are to be comprised of TPHs (and thereby could not include the Space Mediator), the Exchange believes the above-mentioned language is unnecessary and therefore proposes to eliminate it. Similarly, the Exchange proposes to make clear in subparagraph (b) of Rule 24.21 that the Space Mediator shall be an Exchange employee, to provide clarity in the rules and reflect current practice. Lastly, the Exchange proposes to move the sentence ''The selection of all Panel members will be according to the sole discretion of the Space Mediator'' within subparagraph (g) to make the rule easier to read, as this sentence applies to the Panel in its entirety.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, over the years, fewer TPHs have made themselves available to serve on Panels. The Exchange notes that service on a Panel is voluntary and it cannot force any TPH to serve on a Panel. As such, it has become increasingly burdensome to appoint a sufficient number of TPHs to the Panels. The Exchange believes reducing the number of Panel members will remove impediments to, and perfect the mechanism of, a free and open market because it will assist the Exchange in being able to appoint a sufficient number of TPHs to a Panel in a timely manner. The Exchange notes that the composition requirements of ensuring there are Panel members both in and outside of the station where the dispute occurred still ensures a fair balance.

The Exchange also believes the proposed changes to make explicit that the Floor Official panel member must be a TPH and that the Space Mediator must be an Exchange employee provides transparency and clarity in the rules, which alleviates confusion, thereby protecting investors and the public interest. The Exchange also notes these changes do not reflect substantive changes from current practice, but rather clarifies and codifies the Exchange's current practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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 merely reduces the number of Panel members that must serve on a Panel and clarifies and codifies current practices relating to the spot dispute process and thus has no impact on current trading on Cboe Options. Therefore, the proposed rule change has no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–043 on the subject line.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

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–CBOE–2018–043. 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–CBOE–2018–043 and should be submitted on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13620 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83484; File No. SR–OCC–2017–020]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Concerning Enhanced and New Tools for Recovery Scenarios

June 20, 2018.

On December 18, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2017–020 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] concerning enhanced and new tools for recovery scenarios.[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] To date, the Commission has received one comment letter to the Proposed Rule Change.[5] On March 22, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act[6] to determine whether to approve or disapprove the Proposed Rule Change.[7]

Section 19(b)(2)(B)(ii) of the Act provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[8] The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9]

The 180th day after publication of the notice for the Proposed Rule Change in the **Federal Register** is June 24, 2018. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposed Rule Change so that it has sufficient time to consider the Proposed Rule Change and the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2)(B)(ii) of the Act,[10] designates August 23, 2018 as the date by which the Commission shall either approve or disapprove the Proposed Rule Change.

The Commission also seeks additional comment to help further inform its analysis of the Proposed Rule Change. Specifically, the Commission invites interested persons to provide views, data, and arguments concerning the Proposed Rule Change, including whether the Proposed Rule Change is consistent with the Act and the applicable rules or regulations thereunder. Please note that comments previously received on the substance of the Proposed Rule Change will be considered together with comments submitted in response to this notice. Therefore, while commenters are free to submit additional comments at this time, they need not re-submit earlier comments.

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–OCC–2017–020 on the subject line.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 8, 2017, OCC also filed this proposal as an advance notice SR–OCC–2017–809 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(e)(1)) and Rule 19b–4(n)(1)(i) of the Act (17 CFR 240.19b–4(n)(1)(i)). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3244 (Jan. 23, 2018) (SR–OCC–2017–809).

On January 22, 2018, the Commission sent OCC a request for additional information, which tolls the Commission's 60-day review period for the Advance Notice. *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-809/occ2017809.htm.* The new review period will be 60 days from the date the Commission receives the information requested. *See* Section 806(e)(1). The proposal in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Securities Exchange Act Release No. 82531 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017) (SR–OCC–2017–020).

[5] *See* Letter from Jacqueline H. Mesa, Senior Vice President of Global Policy, FIA, dated Jan. 16, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-020/occ2017020.htm.* Since the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice.

[6] 15 U.S.C. 78s(b)(2)(B)(i).

[7] *See* Securities Exchange Act Release No. 82926 (March 22, 2018), 83 FR 13171 (March 27, 2018) (SR–OCC–2018–020).

[8] 15 U.S.C. 78s(b)(2)(B)(ii).

[9] *Id.*

[10] *Id.*

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–OCC–2017–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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–OCC–2017–020 and should be submitted on or before July 11, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13637 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form 13F, SEC File No. 270–022, OMB Control No. 3235–0006

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least $100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f–1(c), to file quarterly reports with the Commission on Form 13F.[4]

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(6)(A) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

[4] 17 CFR 249.325.

The Commission staff estimates that 5,837 respondents make approximately 23,348 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 80.8 hours/year to prepare and submit the report. In addition, the staff estimates that 223 respondents file approximately 829 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 472,521.6 hours [(471,629.6 hours (5,837 filers × 80.8 hours)) + (892 (223 filers × 4 hours))].

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 18, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13685 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83476; File No. SR–CBOE–2018–044]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the SPX Select Market-Maker Program

June 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule relating to the SPX Select Market-Maker Program.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to clarify text in its Fees Schedule relating to the SPX Select Market-Maker (''SMM'') Program. By way of background, the Exchange recently established a financial incentive program for SPX SMMs, which provides that any appointed SPX SMM will receive a monthly waiver of the cost of one Market-Maker Trading Permit and one SPX Tier Appointment provided that the SMM satisfies a heightened quoting standard for that month, which standard is set forth in Footnote 49 of the Fees Schedule. Footnote 49 currently provides that an SMM will receive the monthly Trading Permit and SPX Tier Appointment waiver if it (1) provides continuous electronic quotes in 95% of all SPX series 90% of the time in a given month, (2) submits opening quotes that are no wider than the Opening Exchange Prescribed Width (''OEPW'') within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a qualifying quote, on all trading days, to ensure electronic quotes on the open that allow the series to open, (3) submits opening quotes that are no wider than the OEPW quote by 8:00 a.m. (CT) on volatility settlement days and (4) provides quotes for the end-of-month fair value closing rotation on a rotating basis.

The Exchange proposes to clarify the criteria currently set forth in the third prong of the heightened quoting standard, described above. Specifically, the Exchange proposes to add text that explicitly provides that to satisfy the third prong, an SMM must submit opening quotes that are no wider than the OEPW quote by 8:00 a.m. CST on volatility ''index derivative'' settlement days ''in the SPX series that expire in the month used to calculate the settlement value for expiring volatility index derivatives.'' The Exchange notes that this prong was included as part of the heightened quoting standard to encourage SMM participation prior to the opening on volatility index derivative settlement days to increase liquidity in the SPX series used to calculate the settlement value, which is desirable to ensure these series open at competitive prices on expiration days for volatility index derivatives and thus ensure a fair and orderly opening and settlement process. While liquidity is important to open all series on the Exchange, given the potential impact on the exercise settlement value determined for expiring volatility index derivatives, the Exchange believes it is appropriate to ensure a fair and orderly opening of the series used to calculate the exercise settlement value. The Exchange calculates the settlement value for expiring volatility index derivatives using the opening pricings of SPX options that expire 30 days later. All other SPX series are not used by the Exchange to determine the exercise settlement value. As such, the Exchange doesn't believe that it is appropriate to require SMMs to submit opening quotes that are no wider than the OEPW by 8:00 a.m. (CT) on volatility index derivative settlement days in all SPX options series, if only a subset of SPX options series are used in the settlement value calculation. In order to alleviate any confusion, the Exchange wishes to make clear that the third prong, as originally written, does not encompass all SPX options series. Rather, the third prong requires only the submission of opening quotes prior to 8:00 a.m. CT on volatility index derivative settlement days that are no wider than the OEPW in the series that expire in the month used to calculate the volatility index derivative settlement value. With respect to the remaining SPX options series, the Exchange notes that SMMs already are required pursuant to prong 2 to submit opening quotes that are no wider than the OEPW within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a qualifying quote, on all trading days, to ensure electronic quotes on the open that allow the series to open.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes clarifying the third prong in Footnote 49 helps avoid confusion by making clear which SPX series are subject to the quoting criteria in the third prong of the SMM heighted quoting standard. The alleviation of confusion removes impediments to, and perfects the mechanism of, a free and open market and a national market system and protects investors and the public interest. Additionally, the Exchange believes that the proposed clarification in Footnote 49 is reasonable because the third prong is meant to specifically address liquidity on volatility index derivative settlement days that ensure a fair and orderly opening and settlement process and not address liquidity in SPX options series generally.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed clarification is intended to make clear in the Fees Schedule which SPX options series are subject to the criteria contained in the third prong of the heightened quoting standard in order to maintain transparency in the rules and alleviate confusion. The proposed change also applies to SPX, which is only traded on Cboe Options. The Exchange believes the proposed change therefore does not raise any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the five-day prefiling requirement and the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, without the waivers, the Fees Schedule would reflect a quoting standard that may be confusing to SPX SMMs. The Commission hereby waives the prefiling requirement and finds that waiver of the operative delay is consistent with the protection of investors and the public interest. In particular, the proposal does not raise any new or novel issues, and waiver of the prefiling requirement and operative delay will allow to the Exchange to immediately clarify the operation of its SPX Select Market-Maker Program. Therefore, the Commission hereby waives the prefiling requirement and the operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–044 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–CBOE–2018–044. 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–CBOE–2018–044 and should be submitted on or before July 17, 2018.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has asked the Commission to waive this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13615 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form F–X, SEC File No. 270–336, OMB Control No. 3235–0379

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate it takes approximately 2 hours per response to prepare Form F–X and the information is filed by approximately 114 respondents for a total annual reporting burden of 228 hours (2 hours per response × 114 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13686 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83477; File No. 4–709]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC

June 20, 2018.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on June 13, 2018, pursuant to Rule 17d–2 of the Act,[2] by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and BOX Options Exchange LLC (''BOX'') (collectively, ''Participating Organizations'' or ''parties''). This agreement amends and restates the agreement entered into between FINRA and BOX on March 2, 2017, entitled ''Agreement Between Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On April 6, 2017, the Commission declared effective the Plan entered into between FINRA and BOX for allocating regulatory responsibility pursuant to Rule 17d–2.[11] The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and BOX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every BOX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to BOX members that are also members of FINRA and the associated persons therewith (''Certification'').

III. Proposed Amendment to the Plan

On June 13, 2018, the parties submitted a proposed amendment to the Plan (''Amended Plan''). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, as well as certain provisions of Regulation SHO. The text of the proposed Amended Plan is as follows (additions are *italicized*; deletions are [bracketed]):

* * * * *

Agreement Between Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (''FINRA'') and BOX Options Exchange LLC (''BOX''), is made this [2nd day of March, 2017] *13th day of June, 2018* (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BOX may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates this agreement entered into between FINRA and BOX on March 2, 2017, entitled ''Agreement between Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

Whereas, FINRA and BOX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and BOX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and BOX hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*BOX Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of BOX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean BOX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) [compliance with other referenced]*incorporation by reference of* BOX Rules that are not Common Rules, (iii) exercise of discretion *in a manner that differs from FINRA's exercise of discretion* including, but not limited to exercise of exemptive authority[,] by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

(c) ''*Dual Members*'' shall mean those BOX members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall be the date this Agreement is approved by the Commission.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. *The term ''Regulatory Responsibilities'' shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (''Rule 14e–4''), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).*

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, BOX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BOX Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BOX or FINRA, BOX shall submit an updated list of Common Rules to FINRA for review which shall add BOX Rules not

[11] *See* Securities Exchange Act Release No. 80388 (April 6, 2017), 82 FR 17712 (April 12, 2017).

included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BOX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BOX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and BOX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BOX's own marketplace;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any BOX Rules that are not Common Rules as provided in paragraph 6.

3. *Dual Members.* Prior to the Effective Date, BOX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to BOX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BOX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BOX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BOX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that FINRA becomes aware of apparent violations of any BOX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BOX of those apparent violations for such response as BOX deems appropriate. In the event that BOX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, BOX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BOX, BOX may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.*

(a) FINRA shall make available to BOX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BOX any information it obtains about Dual Members which reflects adversely on their financial condition. BOX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Statutory Disqualifications.* When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BOX advised of its actions in this regard for such subsequent proceedings as BOX may initiate.

9. *Customer Complaints.* BOX shall forward to FINRA copies of all customer complaints involving Dual Members received by BOX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume Regulatory Responsibility, to the extent applicable, to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by BOX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as agreed by the parties), except as provided in paragraph 4.

13. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, BOX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its

obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Separate Agreement.* This Agreement is wholly separate from the following agreement: (1) The multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, Miami International Securities Exchange, LLC, NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, ISE Gemini, LLC, EDGX Exchange, Inc., ISE Mercury, LLC and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered as approved by the SEC on February 2, 2017, and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., EDGX Exchange, Inc., BOX Options Exchange LLC, NASDAQ OMX BX, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX PHLX, Inc., Miami International Securities Exchange, LLC and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on February 2, 2017, and as may be amended from time to time.

15. *Notification of Members.* BOX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. *Amendment.* This Agreement may be amended in writing provided that the changes are approved by both parties. All such amendments must be filed with and approved by the Commission before they become effective.

17. *Limitation of Liability.* Neither FINRA nor BOX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BOX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BOX with respect to any of the responsibilities to be performed by each of them hereunder.

18. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and BOX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BOX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

* * * * *

Exhibit 1

BOX Options Exchange LLC Rules Certification for 17d–2 Agreement With FINRA

BOX Options Exchange LLC (''BOX'') hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified (''Common Rules'').

Common Rules shall not including any provisions regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) incorporation by reference of BOX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

BOX rules	FINRA (NASD) rules, exchange act provision or SEC rule
BOX Rule 3210 (a) [and (b)]	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.
BOX Rule 10070 Anti-Money Laundering Compliance Program #	FINRA Rule 3310 Anti-Money Laundering Compliance Program.

In addition, the following provisions shall be part of this 17d–2 Agreement:

SEA Rule 200 of Regulation SHO—Definition of ''Short Sale'' and Marking Requirements and

SEA Rule 201 of Regulation SHO—Circuit Breaker

SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements

SEA Rule 204 of Regulation SHO—Close-Out Requirement

SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers ^

^ *FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e–4(a)1)(ii)(D).*

[* FINRA shall not have Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among BATS BZX Exchange, Inc., BATS BYX Y-Exchange, Inc., Chicago Stock Exchange, Inc., BATS EDGA Exchange, Inc., BATS EDGX Exchange, Inc.,

Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc., effective August 3, 2016, as may be amended from time to time.]

[# FINRA shall not have any Regulatory Responsibilities regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–709 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 4–709. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and BOX. 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 4–709 and should be submitted on or before July 17, 2018.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act [12] and Rule 17d–2(c) thereunder [13] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and BOX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because BOX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, BOX and FINRA have allocated regulatory responsibility for those BOX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, BOX will review the Certification at least annually, or more frequently if required by changes in either the rules of BOX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add BOX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete BOX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be BOX rules that qualify as common rules.[14] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, BOX also will provide FINRA with a current list of Common Members and shall update the list no less frequently than once each quarter.[15] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all BOX rules that are substantially similar to the rules of FINRA for Common Members of BOX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to BOX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a BOX rule to the Certification that is not substantially similar to a FINRA rule; delete a BOX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BOX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[16]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

[14] *See* paragraph 2 of the Amended Plan.

[15] *See* paragraph 3 of the Amended Plan.

[16] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, as well as certain provisions of Regulation SHO. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[17] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–709. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–709, between the FINRA and BOX, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

It is further ordered that BOX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–709.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13594 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 12 (citing to Securities Exchange Act Release No. 72137).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83483; File No. SR–MSRB–2018–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To, Among Other Things, Amend MSRB Rule G–3 To Restructure the MSRB's Current Municipal Securities Representative Qualification Examination and Harmonize Certain MSRB Qualification Requirements With FINRA Rules

June 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2018 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule G–3, on professional qualification requirements, to (i) restructure the MSRB's current Municipal Securities Representative Qualification Examination (''Series 52''); (ii) harmonize certain MSRB qualification requirements with the Financial Industry Regulatory Authority's (''FINRA'') rule change to make modifications to its representative-level qualification program, consolidate NASD and Incorporated NYSE registration and qualification rules, and amend its continuing education (''CE'') requirements (hereinafter ''FINRA's consolidated rule change'');[3] and (iii) make technical changes to Rule G–3 (collectively the ''proposed rule change''). The MSRB has filed the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder. The MSRB proposes an operative date of October 1, 2018, to coincide with the effective date of FINRA's consolidated rule change.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx,* at the MSRB'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 MSRB 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 MSRB 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

MSRB The MSRB is charged with setting professional qualification standards for brokers, dealers, and municipal securities dealers (''dealers''), and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe ''standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.''[6] Section 15B(b)(2)(A)(iii) of the Act also provides that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board.[7] Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each classification category. The purpose of the proposed rule change is to generally harmonize Rule G–3 with approved amendments to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 7, 2017, the SEC approved FINRA's consolidated rule change to: (1) restructure FINRA's representative-level qualification examination program; (2) adopt amendments to consolidate NASD and Incorporated NYSE rules as FINRA's consolidated qualification and registration rules; and (3) amend FINRA's CE requirements. *See* Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* 15 U.S.C. 78*o*–4(b)(2)(A).

[7] *See* 15 U.S.C. 78*o*–4(b)(2)(A)(iii).

FINRA's professional qualification and registration rules in furtherance of promoting regulatory consistency with respect to qualification requirements. To that end, the MSRB is proposing to (i) require the Securities Industry Essentials (SIE) examination as a prerequisite for the Series 52 examination; (ii) restructure the Series 52 examination into a specialized knowledge examination; (iii) amend Rule G–3 to further harmonize with FINRA's consolidated rule change by providing for permissive registrations and relief to individuals from having to requalify by examination by recognizing the financial services affiliate (''FSA'') waiver program; and (iv) make other amendments that are technical in nature.

Background

FINRA's consolidated rule change reflected a multi-year effort to not only create a consolidated FINRA rulebook, but to create the SIE and tailored, specialized knowledge examinations for its particular registration categories, and also to enhance its registration rules to afford firms greater flexibility to develop and maintain a depth of registered associated persons with professional qualifications. The consolidated rule change began, in part, in December 2009, with the publication of FINRA Regulatory Notice 09–70 [8] requesting comment on, among other things: (i) Revising the categories of permissive registrations to allow any associated person to obtain and maintain any registration permitted by the member; and (ii) establishing a process by which a person working for a financial services affiliate of a member would be permitted to re-associate with a member without having to meet the necessary qualification requirements.[9]

In May 2015, in connection with its continued efforts to streamline its registration and qualification rules, FINRA published Regulatory Notice 15–20 [10] seeking comment on a proposal to restructure its representative-level qualification examination program. The restructured program consists of the SIE examination paired with specialized knowledge examinations for specific representative-level qualifications. The SIE examination is designed to cover fundamental knowledge that is commonly tested across the representative-level examinations, such as product knowledge, functions of the regulatory agencies, and structure of the securities markets. Each specialized knowledge examination would test knowledge of concepts and rules specifically corresponding to a particular representative-level qualification.

In March 2017, FINRA's consolidated rule change was filed with the SEC to: (i) Consolidate, with amendments, the NASD and Incorporated NYSE qualification and registration rules; (ii) restructure FINRA's representative-level qualification examination program with the creation of the SIE; and (iii) amend FINRA's CE requirements. All proposed amendments were subject to notice and comment through FINRA's previous requests for comments. FINRA's proposed rule change was published for comment in the **Federal Register** on April 10, 2017; the SEC received 18 comments in response to the proposal, which FINRA responded to on June 26, 2017.[11] The SEC found that the proposal was consistent with the requirements of the Exchange Act and the rules and regulations thereunder and approved FINRA's proposed rule changes.[12] Thereafter, FINRA announced that its consolidated rule change would become effective on October 1, 2018 in Regulatory Notice 17–30 (October 2017).

The MSRB conducted a review of its qualifications program to determine where it was appropriate to harmonize with FINRA's consolidated rule change. Provided below is a detailed description of the proposed amendments to Rule G–3.

Description of the Proposed Amendments to Rule G–3—Designed To Promote Regulatory Consistency With FINRA's Consolidated Rule Change

Permissive Registrations

FINRA's consolidated rule change expanded the scope of permissive registrations under NASD Rules 1021 and 1031 to eliminate a constraint that only certain associated persons of a member could obtain permissive registrations and to codify such provisions as FINRA Rule 1210.02. Specifically, as approved, FINRA Rule 1210.02 allows any associated person of a member to obtain and maintain any registration permitted by the member irrespective of the functional role of the person at the firm. In addition, FINRA Rule 1210.02 provides that a person maintaining a permissive registration would be deemed a registered person of the firm and be assigned an appropriately registered supervisor who would be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not engaging in activities outside the scope of his or her current role.[13] The individual would nevertheless be subject to all FINRA rules to the extent relevant to their activities.[14]

The MSRB is proposing to amend Rule G–3 to adopt Supplementary Material .03 that would similarly allow dealers to have any associated person at a dealer maintain certain MSRB qualifications. More specifically, any individual associated with a dealer would be allowed, if permitted by the dealer, to obtain and maintain a registration as a municipal securities representative, a municipal securities principal or a municipal fund securities limited principal. Additionally, proposed Supplementary Material .03 would make clear that individuals maintaining permissive registrations pursuant to Rule G–3 would be considered qualified persons and, to the extent relevant to the person's activities, the person would be subject to applicable MSRB rules.[15] The MSRB recognizes that allowing dealers to

[8] *See* Regulatory Notice 09–70 (FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements) (December 2009).

[9] FINRA received over 20 comments in response to Regulatory Notice 09–70.

[10] *See* Regulatory Notice 15–20 (FINRA Requests Comment on a Concept Proposal to Restructure the Representative-Level Qualification Examination Program) (May 2015). FINRA received over 20 comments in response to Regulatory Notice 15–20.

[11] The SEC received another comment letter in response to FINRA's response to comments. *See* Letter from Michele Van Tassel, President, Association of Registration Management, to Afshin Atabaki, Associate General Counsel, Financial Industry Regulatory Authority (July 21, 2017).

[12] Specifically, the Commission found that the proposed rule change was consistent with Section 15A(b)(6) of the Exchange Act, 15 U.S.C. 78*o*–3(b)(6), which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15(A)(g)(3) of the Exchange Act, 15 U.S.C. 78*o*–3(g)(3), which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

[13] An individual's day-to-day supervisor may be a non-registered person, however an appropriately registered supervisor would be responsible for periodic check-ins to make sure that the individual is not acting outside the scope of his or her assigned functions.

[14] For example, FINRA rules that relate to interactions with customers would not be applicable to the conduct of a permissively-registered individual who does not have any customer contact.

[15] At this time, the MSRB does not believe it is necessary to be prescriptive in this area and identify each potential rule that a permissively-qualified person would be subject to based on a particular set of activities. For example, the MSRB notes that a rule such as Rule G–47, on time of trade disclosure, would have very little application to a person holding a permissive qualification who does not have customer contact regarding the purchase or sale of municipal securities. Bearing that in mind, a facts and circumstances analysis would apply as to the securities laws and regulations applicable to persons holding permissive qualifications, and such a determination would need to be made by the dealer, as part of its supervisory obligations, under Rule G–27.

maintain permissive qualifications for associated persons would support a greater regulatory understanding of the municipal securities market by persons currently in capacities not requiring a qualification classification, and would further develop the knowledge and skills of qualified persons, as it relates to the municipal securities market, by allowing permissive qualifications specific to the municipal securities business. Additionally, by harmonizing with FINRA's related rule on permissive registrations, the industry is afforded the opportunity to continue to develop a robust workforce and a depth of associated persons holding professional qualifications for purposes of better managing unanticipated staffing changes.

FSA-Waiver Program

FINRA's consolidated rule change adopted Rule 1210.09, which established a waiver program for any individual registered with a member who subsequently leaves the firm to work for a financial services industry affiliate of a member,[16] whereby, upon re-association with a member, an individual may be granted a waiver from having to requalify by examination (''FSA-waiver''). In order to be granted a waiver under FINRA Rule 1210.09, an individual must be initially designated as FSA-eligible at the time the individual terminates association with a member and the individual must have satisfied the criteria, under FINRA Rule 1210.09 for an FSA-waiver.

Additionally, under FINRA Rule 1210.09, to be eligible for an initial designation as an FSA-eligible person by a FINRA member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation. Once designated as FSA-eligible, the individual is eligible for an FSA-waiver for up to seven years, so long as the individual is continuously working for a financial services industry affiliate of a member and other conditions are satisfied.

Pursuant to FINRA Rule 1240, during the period an FSA-eligible person is working for a financial services industry affiliate, the person is required to complete the Regulatory Element portion of CE that correlates with such person's most recent registration category and based on the same CE cycle had the person remained registered. Consequently, a person loses the ability to qualify for an FSA-waiver if such person fails to complete the mandatory Regulatory Element portion of CE. FINRA Rule 1210.09 provides that once an FSA-eligible person re-associates with a FINRA member, the firm can file a Form U4 (Uniform Application for Securities Industry Registration or Transfer) and request that the individual's prior FINRA registration(s) be reinstated without having to requalify by examination.

The MSRB is proposing to amend Rule G–3 to adopt Supplementary Material .04 that would allow a municipal securities representative, municipal securities principal and/or a municipal fund securities limited principal[17] to be eligible for a waiver from having to requalify by examination, for such MSRB qualifications, if the following conditions are met:

1. An individual must have been registered with a dealer for a total of five years within the most recent 10-year period prior to working for a financial services industry affiliate, which shall be a legal entity that controls, is controlled by or is under common control with a dealer and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

2. The individual has continuously worked for a financial services industry affiliate(s) of a dealer since terminating association with a dealer;

3. The individual has completed the Regulatory Element portion of CE consistent with the requirements under Rule G–3(i)(i)(A) based on the person's most recent registration status and such CE has been completed based on the same cycle, as if the person had remained registered;

4. The individual does not have any pending or adverse regulatory matters, or terminations and has not otherwise been subject to a statutory disqualification while working for a financial services industry affiliate(s) of a dealer; and

5. The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person.

The MSRB is also proposing to amend Rule G–3(h)(i) to provide that associated persons that have met the conditions under Supplementary Material .04 shall be granted an FSA-waiver consistent with Rule G–3(h)(i)(A) and (B). Providing for such waivers allows associated persons of dealers a greater opportunity to enhance their financial services industry knowledge without having to requalify by examination each time a person decides to explore different career opportunities with a financial services industry affiliate of a dealer.

Qualified Persons Functioning as Principals for a Limited Period

Currently Rule G–3(b)(ii)(D) provides that an individual qualified as a municipal securities representative, general securities representative or general securities principal may function as a municipal securities principal for a period of 90 days before passing the Series 53 exam; and pursuant to Rule G–3(b)(iv)(B)(4) an individual qualified as a general securities representative, investment company/variable contracts limited representative, general securities principal or investment company/variable contracts limited principal may function as a municipal fund securities limited principal for a period of 90 days before passing the Series 51 exam. In addition, Rule G–3(c)(ii)(D) provides that an individual qualified as a municipal securities representative, general securities representative or general securities principal may function as a municipal securities sales principal for a period of 90 days before passing the General Securities Sales Supervisory Qualification Examination (Series 9/10).

FINRA's consolidated rule change modified a similar FINRA provision[18] permitting a registered person of a member to function as a principal before passing the applicable principal examination, increasing the time period from 90 calendar days to 120 calendar days, to better align the time frame with the current examination enrollment window.[19] In addition, FINRA imposed an experience requirement providing that a registered person must have at least 18 months of experience functioning as a registered representative within the five-year period immediately prior to being permitted to function as a principal,

[16] The term ''financial services industry affiliate of a member'' as defined under FINRA Rule 1210.09 is ''a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.''

[17] An individual who has passed the Municipal Securities Representative Qualification Examination (Series 52), Municipal Securities Principal Qualification Examination (Series 53) and Municipal Fund Securities Limited Principal Qualification Examination (Series 51), respectively.

[18] FINRA's consolidated rule change amended NASD Rule 1021 as FINRA Rule 1210.04.

[19] An examination enrollment window is the timeframe between a person registering for a professional qualification examination and taking the examination.

without the applicable principal qualification examination.

Accordingly, the MSRB is proposing to amend Rule G–3(b) and (c) to extend the limited time period in which a person could function as a principal without being qualified with a principal examination, assuming other qualification requirements are met, from 90 days to 120 calendar days in furtherance of also better aligning with the current examination enrollment window. The MSRB is also proposing to amend Rule G–3(b) and (c) to require that, before a qualified representative can be permitted to function as a principal for 120 calendar days without passing a principal examination, the qualified representative must have at least 18 months of experience within the five-year period immediately preceding the designation as principal. The MSRB believes that establishing an experience requirement ensures that individuals designated to supervise activities have an appropriate level of experience as a qualified representative before acting as a principal without passing the principal examination. For this reason, the 18-month experience requirement will not apply to a qualified principal who is designated to function in another principal capacity for 120 days before passing the additional principal qualification examination.

Continuing Education Program Requirements

A. Regulatory Element

Currently, Rule G–3(i)(i)(A)(2) provides that any registered persons who have not completed the Regulatory Element portion of CE within the prescribed time frames will have their municipal securities registration(s) deemed inactive until the Regulatory Element requirements have been satisfied. Rule G–3(i)(i)(A)(2) also requires for any person whose registration has been deemed inactive that such person must cease all activities as a registered person and prohibits such person from performing any duties and functioning in any capacity requiring registration.

FINRA's consolidated rule change codified existing guidance in NASD's Notice to Members 95–35, regarding the impact of failing to complete the Regulatory Element portion of CE on a person's activities and compensation, as FINRA Rule 1240(a)(2). Specifically, approved FINRA Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities.[20] FINRA's approved rule also prescribes that a person deemed inactive for failing to complete the Regulatory Element portion of CE within the prescribed time frames may, if it does not violate the firm's policy, receive trail or residual commissions resulting from transactions that were completed before the person's registration status was deemed inactive. The MSRB is proposing to amend Rule G–3(i)(i)(A)(2) to adopt the provision restricting any person whose municipal securities registration(s) have been deemed inactive for failing to complete the Regulatory Element portion of CE from receiving any compensation for transactions in municipal securities, except for trails, residual commissions, or like compensation resulting from transactions completed before the person's inactive status, unless the dealer's policy prohibits such trails, residual commissions or like compensation. The MSRB recognizes that, by adding the clause ''like compensation,'' the proposed amendment would provide flexibility as to the types of compensation permitted under the rule as compared to FINRA's approved rule. However, the MSRB believes that such differentiation is warranted to recognize the various compensation arrangements for associated persons of dealers with respect to transactions in municipal securities. For example, the compensation received by an associated person that is part of a dealer's public finance underwriting team is generally not characterized as commissions.

B. Firm Element

Currently, Rule G–3(i)(i)(B), on Firm Element continuing education, requires that a dealer maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. The MSRB has supported a principles-based approach to compliance in this area and afforded dealers' considerable flexibility in developing the scope and content for their Firm Element portion of CE subject to the enumerated minimum standards for a firm's training programs. A dealer's Firm Element portion of CE, as prescribed in Rule G–3(i)(i)(B)(2)(b), must cover, with respect to municipal securities products, services and strategies offered by the dealer, at a minimum:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; and

(iii) Applicable regulatory requirements.

FINRA's consolidated rule change also requires, pursuant to FINRA Rule 1240, that each member maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism and that the training be appropriate for the business of the member and, at a minimum, cover, among other things, training in ethics and professional responsibility. The MSRB is proposing to amend Rule G–3(i)(i)(B)(2)(b) to adopt a similar provision to require dealers to also include training in ethics and professional responsibility for its registered persons. The MSRB believes such training promotes high standards of professionalism for registered persons.

Registration Status of Armed Forces

The MSRB does not currently have a rule that provides an inactive status for an associated person that volunteers for or is called to active military service in the Armed Forces of the United States that would allow such person's registration to be tolled.

FINRA's consolidated rule change consolidated NASD Rule IM–1000–2 as FINRA Rule 1210.10 with certain changes, which affords relief to a registered person who volunteers for or is called to active military service in the Armed Forces of the United States by tolling such person's lapse of registration and CE obligations. More specifically, FINRA Rule 1210.10 allows, after proper notification to FINRA, for a member to place a registered person on inactive status, whereby such person does not have to re-register upon returning to active employment. An associated person who is placed on inactive status may either return to active employment with the firm the person remained registered with during the person's inactive status period or associate with a different firm. FINRA Rule 1210.10 also relieves registered persons on such inactive status from having to complete either the Regulatory Element or Firm Element portion of CE during their active military service.

Additionally, during the pendency of the registered person's inactive status, the person may continue to receive transaction-based compensation, including continuing commissions. The employing member may also allow an inactive person to enter into an

[20] The MSRB believes that this prohibition is adequately addressed currently in Rule G–3(i)(i)(A)(2) and, therefore, is not proposing to adopt FINRA's provision that more specifically articulates that such persons are prohibited from accepting or soliciting business.

agreement with a registered person of the member to take over and service clients' accounts, on behalf of the person, and to share transaction-related compensation based upon business generated by the accounts.

A person who is no longer registered with a member will generally have their professional qualifications lapse after a period of two years. However, FINRA Rule 1210.10 provides that, for purposes of determining the two year period, a formerly registered person who volunteers for or is called to active military service will have that time tolled, commencing on the date the person began active service.[21] FINRA Rule 1210.10 also provides that a sole proprietor who volunteers for or is called to active military service will be placed on inactive status and, in addition to the relief provided under FINRA Rule 1210.10, as a registered person, the sole proprietor will not be required to pay dues or assessments during the inactive period and will not be required to pay an admission fee upon returning to his or her investment banking or securities business.

Rule G–3 generally provides that an individual who is not associated with a dealer or municipal advisor for a period of more than two years will have his or her professional qualifications lapse, requiring such person to requalify by examination upon re-associating with a dealer or municipal advisor. The MSRB is proposing to amend Rule G–3 to adopt Supplementary Material .05, which would provide that, for purposes of determining the two-year period, a formerly qualified associated person who volunteers for or is called to active U.S. military service will have that time tolled commencing on the date the person began active military service. Importantly, Supplementary Material .05 would preserve the time tolled by establishing that the MSRB must receive notice of the person's period of active U.S. military service within 90 days following the completion of such person's active U.S. military service.[22] Absent such notice, the deferral will terminate and the period of time while on active U.S. military service will not have been tolled.

In addition, proposed Supplementary Material .05 would permit an associated person of a dealer or municipal advisor that is qualified under Rule G–3, upon volunteering for or being called to active U.S. military service, to be deemed inactive until the associated person returns from active U.S. military service. Additionally, under the proposed rule change, during the period the associated person is on active U.S. military service, the person would remain eligible for transaction-related compensation, including continuing commissions and the firm could permit the inactive person to enter into an agreement with a qualified associated person of the dealer or municipal advisor to have such qualified associated person service clients on behalf of the inactive person and share transaction-related compensation resulting from the municipal securities or municipal advisory business generated by the accounts. In addition, an associated person of a dealer or municipal advisor would not be subject to the applicable CE obligations under Rule G–3(i) during the period of active U.S. military service, provided the MSRB receives notice of the associated person's period of active U.S. military service within 30 days of completion of such service.[23]

Proposed Supplementary Material .05 would also provide that a dealer or municipal advisor sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active U.S. military service shall be placed, on an inactive status after notice to the MSRB. As a result, in addition to the relief provided to the sole proprietor as a qualified associated person, the sole proprietor will not be required to pay fees pursuant to Rules A–11 or A–12 that, if applicable, accrue during the inactive period. Further, upon returning from active U.S. military service, the dealer or municipal advisor sole proprietor must provide the MSRB notice within 30 calendar days that the sole proprietor has returned to his or her business.[24]

Waiting Periods for Retaking a Failed Examination

Rule G–3(g) allows any associated person of a broker, dealer, municipal securities dealer or municipal advisor who fails to pass an MSRB qualification examination to take the examination again after a period of 30 days has elapsed from the date of the prior examination, except that any person who fails to pass an examination three or more times in succession shall be prohibited from taking the examination again until a period of six months has elapsed from the date of such person's last attempt to pass the examination.

FINRA's consolidated rule change consolidated NASD Rule 1070(e) as FINRA Rule 1210.06 to provide that a person who fails a FINRA examination may retake the examination after 30 calendar days from the date of the person's last attempt to pass the examination, except a person who fails an examination three or more times in succession within a two-year period may only retake the examination after 180 calendar days from the date of the person's last attempt to pass the examination. In addition, FINRA Rule 1210.06 extended these provisions to the SIE examination.

Although generally consistent with FINRA's approved rule, to promote regulatory consistency, the MSRB is proposing to amend to Rule G–3(g), on retaking of qualification examinations, to change the term ''six months'' to ''180 calendar days'' and to add ''within a two-year period'' after the phrase ''three of more times in succession.'' The addition of the phrase is intended to clarify the frequency with which FINRA's test delivery system resets a candidate's exam history data.

Restructuring of the MSRB's Professional Qualification Examination Program

A. Accepting the SIE Examination and Revising the Municipal Securities Representative Qualification Examination

FINRA's consolidated rule change established the SIE exam to eliminate the duplicative testing of general securities knowledge across its current representative-level qualification examinations by moving such content into the SIE exam.[25] With the establishment of the SIE exam, FINRA restructured its representative-level exams into specialized knowledge examinations to test knowledge of

[21] More specifically, FINRA's rule states that the two-year period for lapse of registration of its representative and principal-level qualifications and the four-year expiration for the SIE examination would be tolled for the period the individual is on active service.

[22] The notice required to preserve such deferral shall be in the form of a letter to the MSRB that includes the individual's name (including, if applicable, the individual's CRD number), the start and end dates of the individual's active U.S. military service and the branch of service. Such notice shall be provided to the MSRB electronically at *Compliance@msrb.org.*

[23] The notice required shall be in the form of a letter to the MSRB on firm letterhead that includes the firm's MSRB ID number, the individual's name (including, if applicable, the individual's CRD number), the start and end dates of the individual's active U.S. military service and the branch of service. Such notice shall be provided to the MSRB electronically at *Compliance@msrb.org.*

[24] The notice required shall be in the form of a letter to the MSRB on firm letterhead that includes the firm's MSRB ID number, the individual's name (including, if applicable, the individual's CRD number), the start and end dates of the individual's active military service and the branch of service. Such notice shall be provided to the MSRB electronically at *Compliance@msrb.org.*

[25] Individuals do not have to be associated with a FINRA member to take the SIE examination, unlike FINRA's representative-level qualification examinations.

concepts and rules specifically corresponding to a particular representative-level qualification. FINRA Rule 1210.03, on qualification examinations, provides that before a person can become registered as a representative, such person must pass the SIE exam and an appropriate representative-level qualification examination.

In developing the SIE exam, FINRA established a committee of industry professionals to create the content outline for the SIE exam and invited staff from the MSRB's Professional Qualifications department to participate on the committee.[26] The SIE exam content outline is divided into four sections, with each section addressing the essential areas of general knowledge. The SIE exam will consist of 75 scored multiple-choice questions.[27] Pursuant to FINRA Rule 1210.08, a passing score on the SIE exam would be valid for four years and a person that passes the SIE exam would have up to four years to pass a representative-level qualification examination in order to become registered in a representative-level capacity.

The sections and the associated number of questions for each section are:

- Section 1: Knowledge of Capital Markets (12 questions);
- Section 2: Understanding Products and Their Risks (33 questions);
- Section 3: Understanding Trading, Customer Accounts and Prohibited Activities (23 questions); and
- Section 4: Overview of the Regulatory Framework (7 questions).

Rule G–3(a)(ii), on qualification requirements, provides that ''every municipal securities representative shall take and pass the Municipal Securities Representative Qualification Examination prior to being qualified as a municipal securities representative.'' [28] The Series 52 is designed to establish that persons associated with dealers that effect transactions in municipal securities have attained specified levels of competence and knowledge to become registered as municipal securities representatives.

The Series 52, in its current format, has general securities knowledge content that will be tested on the future SIE exam. The MSRB, therefore, intends to restructure the Series 52 as a specialized knowledge examination to better focus the content of the examination more specifically to municipal securities knowledge. Accordingly, the MSRB is proposing an amendment to Rule G–3(a)(ii) that would require an individual to pass both the SIE exam and the revised Series 52 [29] in order to become qualified as a municipal securities representative.[30] Additionally, the MSRB will continue to recognize, in their revised forms as specialized knowledge examinations, the Municipal Securities Sales Limited Representative Examination (Series 7) and the Limited Representative-Investment Company Variable Contracts Product Representative Examination (Series 6) in furtherance of regulatory consistency and for purposes of avoiding impact to the current distribution channel for the sale of municipal securities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,[31] which provides that the MSRB's rules shall prescribe:

> such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. In connection with the definition and application of such standards the Board may . . . specify that all or any portion of such standards shall be applicable to any such class; and require persons in any such class to pass tests . . .

The MSRB believes that, by requiring persons to take and pass a professional qualification examination, such requirement promotes public confidence by ensuring the minimum standards of training, experience and competence required by the Board are being achieved. The MSRB also believes that the restructuring of its current qualification examination program is consistent with and in furtherance of the stated objectives of Section 15B(b)(2)(A) of the Act because by ensuring the Series 52 specialized knowledge examination focuses on the most relevant laws, rules and regulations of the municipal securities market, investors are more well protected. Also, by more closely aligning the Series 52 specialized knowledge examination content to the functions and activities performed by a municipal securities representative, such associated persons are more likely to fully grasp the prescribed regulatory standards, which aides to preserve the integrity of the municipal securities market. Importantly, without compromising the qualification standards, the proposed rule change would improve the efficiency of the examination program by eliminating duplicative testing of general securities knowledge.

Moreover, consistent with Section 15B(b)(2)(A) of the Act, permitting such persons to work at an industry affiliate of a dealer without having to requalify by examination upon re-registering with a dealer, by permitting them to seek a waiver from re-examination, lends itself to a greater understanding of the financial services industry. Further, the proposed rule change would allow individuals to maintain their knowledge base while working in areas ancillary to the municipal securities market, thereby providing such market professionals additional securities knowledge, which, in turn, promotes confidence in market professionals. The proposed rule change would also expand the scope of permissive qualifications, which, among other things, would allow dealers to develop a depth of associated persons with qualifications to respond to unanticipated personnel changes and would encourage a greater understanding of the municipal securities markets. As proposed, by allowing individuals to function in a principal capacity for a limited period of time before having to pass a principal-level examination would

[26] MSRB staff reviewed the SIE content outline and provided substantive comments to ensure relevant MSRB rules were incorporated and content specific to municipal securities was addressed on the outline. FINRA filed the content outline and selection specifications for the new SIE examination with the SEC for immediate effectiveness. *See* Exchange Act Release No. 82578 (January 24, 2018), 83 FR 4375 (January 30, 2018) (SR–FINRA–2018–002).

[27] The passing score for the SIE exam will be published on FINRA's website prior to the first administration of the examination in October 2018.

[28] An exception to the rule, allows only persons having been duly qualified as a general securities representative by reason of having passed the General Securities Representative Qualification Examination before November 7, 2011 to qualify as a municipal securities representative.

[29] The content outlines for MSRB's qualification examinations serve as a guide to the subject matters tested on each examination. The MSRB's Series 52/53 Subcommittee of the Professional Qualification Advisory Committee has been reviewing the current content covered on the Series 52 examination to determine the revisions that will be necessary to appropriately modify the Series 52 into a specialized knowledge examination. In connection with the filing of this proposed rule change, and in advance of the October 1, 2018 effective date of the proposed rule change, the MSRB anticipates filing with the SEC a revised Series 52 content outline to reflect the modifications to the Series 52 examination and the removal of duplicative content that would appear on the SIE exam.

[30] Since the SIE examination is meant to eliminate duplicative testing of general content across representative-level examinations and thereby, affording the opportunity for representative-level examinations to become more specialized knowledge examinations there is no impact to the Series 51 exam and Series 53 exam that would necessitate restructuring of those principal-level exams.

[31] 15 U.S.C. 78*o*–4(b)(2)(A).

minimize operational disruptions to a dealer.

Lastly, under the proposed rule change, allowing associated persons that volunteer for or are called into active U.S. military service to be placed in an inactive status allows for regulatory consistency and promotes the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change reflects the MSRB's belief that its registration requirements should be generally harmonized with FINRA's consolidated rule change for purposes of regulatory efficiency and that such changes do not attach additional burdens on dealers, and as applicable, municipal advisors. In addition, the MSRB's restructuring of its qualification examination program to better align with the functions and associated tasks currently performed by a municipal securities representative makes for a more effective qualification examination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not solicit comment on the proposed change. Therefore, there are no comments on the proposed rule change received from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33]

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.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6).

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–MSRB–2018–04 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2018–04. 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 MSRB. 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–MSRB–2018–04 and should be submitted on or before July 17, 2018.

For the Commission, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13619 Filed 6–25–18; 8:45 am]

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[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–83482; File No. SR–NASDAQ–2018–046)

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4702

June 20, 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 June 8, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702(b)(12)(A) so that Participants can choose to have their Limit On Close Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2017, the Exchange filed a proposed rule change to enhance the Nasdaq Closing Cross by permitting Participants to submit Limit On Close (''LOC'') Orders until immediately prior to 3:55 p.m. ET subject to certain conditions, including that such LOC Orders would be re-priced in certain situations.[3] This rule change was approved by the Commission on September 8, 2017.[4] The Exchange now proposes to amend Rule 4702(b)(12)(A) so that Participants can choose to have their Limit On Close Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET.

A LOC Order is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered.[5] Subject to the qualifications provided below, LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an LOC Order may be entered provided that there is a First Reference Price.[6] Currently, an LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET will be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC Order to buy (sell), in which case the LOC Order will be re-priced to the First Reference Price.[7]

The Exchange now proposes to permit Participants to choose to have LOC Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET. While the Exchange believes that accepting LOC Orders after the regular 3:50 p.m. ET cutoff enhances price discovery, in order to promote price stability during the Nasdaq Closing Cross, the Exchange re-prices these LOC Orders if the First Reference price is less aggressive than the Order's limit price. Nevertheless, certain Participants may prefer not to have LOC Orders re-priced. A re-priced LOC Order would only have priority at the less aggressive First Reference Price, and as a result would be less likely to receive an execution in the Nasdaq Closing Cross than if it had been accepted at its stated limit price. For example, if the First Reference Price in ABC is $10, an LOC Order to buy entered at 3:52 with a stated limit price of $12 would be accepted at $10 today. If the Nasdaq Closing Cross is subsequently executed at a price of $11, the LOC Order would not participate even though its stated limit price indicates a willingness to pay up to $12. Some Participants would therefore prefer to have this LOC Order rejected at the outset to avoid this possibility when the Nasdaq Closing Cross is ultimately executed. Giving the option to have those LOC Orders rejected on entry rather than re-priced will give Participants more flexibility with respect to how such LOC Orders are handled. Participants that would prefer that LOC Orders be accepted to participate in the Nasdaq Closing Cross can continue to enter these LOC Orders subject to the current re-pricing logic, which will be the default configuration for Participants that have not chosen to have these LOC Orders rejected instead.

Implementation

The Exchange proposes to introduce the change described in this proposed rule change in Q3 or Q4 2018. The Exchange will announce the implementation date of this change in an Equity Trader Alert issued to Participants prior to implementing the change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes that the proposed changes will give Participants more flexibility with respect to how their LOC Orders are handled, to the benefit of Participants and investors.

While the Exchange permits Participants to submit LOC Orders between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, the Exchange re-prices these LOC Orders to the First Reference Price if the First Reference price is less aggressive than the Order's limit price. As mentioned in the purpose section of this proposed rule change, this re-pricing is done to promote stability in the Nasdaq Closing Cross price. However, certain Participants may prefer not to have LOC Orders re-priced, and instead would like to have these LOC Orders rejected on entry instead. The Exchange therefore proposes to facilitate this by giving Participants the choice to have LOC Orders handled in this manner. The Exchange believes that this is consistent with the protection of investors and the public interest as it allows Participants to have more flexibility in how they may achieve their trading goals. Specifically, Participants that choose to have an LOC Order rejected instead of re-priced could thereafter execute their trading interest in a different manner, such as by entering it onto the continuous book, rather than waiting for an uncertain execution in the Nasdaq Closing Cross where the LOC Order may have a lower priority at the re-priced price. Participants that consume and house the First Reference Price in their systems can already do this themselves today by checking if an LOC Order would be subject to re-pricing (*i.e.,* because the limit price is more aggressive than the First Reference Price disseminated by the Exchange) prior to entering this interest on the Exchange. The Exchange believes, however, that many Participants would benefit from the Exchange performing this determination for them, and is therefore proposing to do so.

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 proposed functionality would be available to all Participants of the Exchange, who will now have the flexibility to choose to have LOC Orders

[3] *See* Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (July 27, 2017) (SR–NASDAQ–2017–061).

[4] *See* Securities Exchange Act Release No. 81556 (September 8, 2017), 82 FR 43264 (September 14, 2017) (SR–NASDAQ–2017–061) (Approval Order).

[5] *See* Rule 4702(b)(12).

[6] ''First Reference Price'' is the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET. *See* Rule 4754(a)(9). During this time period an LOC Order can also be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.,* Side, Size, Symbol, or Price, or duplication of an Order).

[7] If the First Reference Price is not at a permissible minimum increment, the First Reference Price will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

rejected on entry in situations where those LOC Orders would otherwise be re-priced to the First Reference Price. Although Participants could implement this logic themselves, implementing it on the Exchange will ensure that it is readily available to all Participants. Furthermore, other exchanges are free to offer similar functionality if they so desire.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–2018–046 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–2018–046. 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–2018–046 and should be submitted on or before July 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13618 Filed 6–25–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10451]

60-Day Notice of Proposed Information Collection: Petition To Classify Special Immigrant Under INA 203(b)(4) as Employee or Former Employee of the U.S. Government Abroad

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 August 27, 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–2018–0026'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

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:* Petition to Classify Special Immigrant Under INA 203(b)(4) as Employee or Former Employee of the U.S. Government Abroad.
- *OMB Control Number:* 1405–0082.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–1884.
- *Respondents:* Aliens petitioning for immigrant visas under INA 203(b)(4) as a special immigrant described in INA section 101(a)(27)(D).
- *Estimated Number of Respondents:* 75.
- *Estimated Number of Responses:* 75.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 12.5 hours.
- *Frequency:* Once per petition.
- *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

DS–1884 solicits information from petitioners claiming employment-based immigrant visa preference under section 203(b)(4) of the Immigration and Nationality Act on the basis of qualification as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act. A petitioner may file the DS–1884 petition within one year of notification by the Department of State that the Secretary has approved a recommendation that such special immigrant status be accorded to the alien. DS–1884 solicits information that will assist the consular officer in ensuring that the petitioner is statutorily qualified to receive such status, including meeting the years of service and exceptional service requirements.

Methodology

The form can be obtained from posts abroad or through the Department's website. The application available on the Department's website allows an applicant to complete the application electronically and then print the application and submit it to post.

Edward J Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–13641 Filed 6–25–18; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval and Merger of Collections: Statutory Authority To Preserve Rail Service

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) an extension of approval for the information collections required under section 8(d) of the National Trails System Act (Trails Act). The Board is also seeking approval to merge into this collection (OMB Control Number: 2140–0022) the collection of information about notifications of Trails Act agreement and substitute sponsorship (OMB Control Number: 2140–0017). The Board previously published a notice about this collection in the **Federal Register** (Apr. 18, 2018). That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on this information collection should be submitted by July 26, 2018.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Statutory Authority to Preserve Rail Service.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Joseph B. Nye, Surface Transportation Board Desk Officer: by email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503. Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *pra@stb.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0284 or at *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board currently collects information from those seeking statutory authority to preserve rail carrier service under OMB Control Number 2140–0022. The authority under OMB Control Number 2140–0022 includes the collection of information under the Trails Act, such as the notifications of Trails Act agreement and substitute sponsorship, which is also addressed under OMB Control Number 2140–0017. This request proposes to combine collections under Control Numbers 2140–0017 and 2140–0022, with 2140–0022 being the survivor. The Board will request to discontinue Control Number 2140–0017 upon OMB approval of the merger.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection 1

Title: Statutory Authority to Preserve Rail Service.

OMB Control Number: 2140–0022.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant.

Number of Respondents: 40.

Frequency: On occasion.

TABLE—NUMBER OF YEARLY RESPONSES

Type of filing	Number of filings
Offer of Financial Assistance	1
OFA—Railroad Reply to Request for Information	1
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	1
Feeder Line Application	5
Trail Use Request	23
Trail Use Request Extension	84

Total Burden Hours (annually including all respondents): 826 Hours

(sum total of estimated hours per response × number of responses for each type of filing).

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response
Offer of Financial Assistance	32
OFA—Railroad Reply to Request for Information	10
OFA—Request to Set Terms and Conditions	4
Request for Public Use Condition	2
Feeder Line Application	70
Trail Use Request	4
Trail Use Request Extension	4

Total ''Non-hour Burden'' Cost: None identified. Filings may be submitted electronically to the Board.

Needs and Uses: Under Interstate Commerce Act, *amended by* the ICC Termination Act of 1995, Public Law No. 104–88, 109 Stat. 803 (1995), *amended by* the Surface Transportation Board Reauthorization Act of 2015, Public Law 114–110 (2015), and under Section 8(d) of the Trails Act, and the related regulations, persons seeking to preserve rail service over a rail line that is in the process of being abandoned may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose what is known as a trail use/railbanking or public use condition.

First, under 49 U.S.C. 10904, the filing of an ''Offer of Financial Assistance'' (OFA) starts a process of negotiations to define the financial assistance needed to purchase or subsidize the rail line sought for abandonment. Once the OFA is filed, the offeror may request additional information from the railroad, which the railroad must provide. If the parties cannot agree to the sale or subsidy, either party also may file a request for the Board to set the terms and conditions of the financial assistance. Or, under section 10905, a public use request allows the Board to impose a 180-day public use condition on the abandonment of a rail line, permitting the parties to negotiate a public use for the rail line. Alternatively, under section 10907, a feeder line application provides the basis for authorizing an involuntary sale of a rail line.

Finally, under the Trails Act, a trail use request, if agreed upon by the abandoning carrier, requires the Board to condition the abandonment by issuing what is known as a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU). The CITU/NITU permits parties, for 180 days, to negotiate for an interim trail use/railbanking agreement for the rail line. If parties reach an agreement, the CITU/NITU automatically authorizes interim trail use/railbanking, and the parties must notify the Board that they have reached an agreement. The interim trails use/railbanking preserves the rail corridor for possible future use as an active rail line again. If no agreement is reached, then upon expiration of the negotiation period, the CITU/NITU authorizes the railroad to exercise its option to fully abandon the line without further action by the Board.

The collection by the Board of these offers, requests, and applications, and the railroad's replies (when required), enables the Board to meet its statutory duty to regulate the referenced rail transactions.

Description of Collection 2

Title: Notifications of Trails Act Agreement and Substitute Sponsorship.

OMB Control Number: 2140–0017.

STB Form Number: None.

Type of Review: Merger.

Respondents: Rail carriers; parties to an interim trail use agreement; substitute trail sponsors; and state and local governments.

Number of Respondents: 40.

Estimated Time per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): 40 hours.

Total ''Non-hour Burden'' Cost: None identified. Filings may be submitted electronically to the Board.

Needs and Uses: As described in ''Description of Collection 1'' above, the STB will issue a CITU or NITU to a prospective trail sponsor who seeks a trails use/railbanking agreement with the rail carrier of the rail line that is being abandoned. The CITU/NITU permits parties, for 180 days, to negotiate for a trails use/railbanking agreement. If parties reach an agreement, then, under 49 CFR 1152.29, they must jointly notify the Board of that fact and must identify the exact location of the right-of-way subject to the agreement, including a map and milepost marker information. The rules also require parties to file a petition to modify or vacate the CITU/NITU if the trail use/railbanking agreement applies to less of the right-of-way than what is covered by the CITU/NITU. Finally, the rules require that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time. The collection by the Board of this information enables the agency to ensure that the documentation for activities under the Trails Act remains current.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information.

Dated: June 21, 2018.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–13698 Filed 6–25–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0102]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KAT ATOMIC; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0102. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KAT ATOMIC is:

—*Intended Commercial Use of Vessel:* ''Taking small charter groups of 6 people in and around Marina Del Rey CA. Usually 4 hour charters that can be extended by one or two hours''

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2018–0102 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13655 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0099]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MISS SANDY RITA; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0099. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MISS SANDY RITA is:

—*Intended Commercial Use of Vessel:* ''Sunset charters and day charters''

—*Geographic Region:* ''Florida''

The complete application is given in DOT docket MARAD–2018–0099 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13656 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0101]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PRIVATE RESERVE; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0101. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIVATE RESERVE is:

—*Intended Commercial Use of Vessel:* ''We would like to do limited payed cruises in Puget Sound and Lake Washington. We hope to do between 15 and 30. We would not be transporting people or cargo from one port to another. Rather short cruises from one port and back to the same port. We would not be outside Washington State waters at anytime''

—*Geographic Region:* ''Washington State''

The complete application is given in DOT docket MARAD–2018–0101 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13657 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0100]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel EAGLE; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0100. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EAGLE is:

—*Intended Commercial Use of Vessel:* ''Vessel will be used for youth sail training and instruction, as well as occasional bay cruises, San Diego, California, and as far north as Channel Islands, California''

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2018–0100 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from

the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Date: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13653 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2018–0093]

Waiver Request for Aquaculture Support Operations for the 2018 Calendar Year: MILDRED 1

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue waivers allowing documented vessels with only registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. A request for such a waiver has been received by the Maritime Administration (MARAD). This notice is being published to solicit comments intended to assist MARAD in determining whether suitable vessels of the United States is available that could perform the required services. If no suitable U.S.-flag vessels is available, the Maritime Administrator may issue a waiver necessary to comply with USCG Aquaculture Support regulations. A brief description of the proposed aquaculture support service is listed in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0093 by any of the following methods:

• *On-line via the Federal Electronic Portal: http://www.regulations.gov.* Search using ''MARAD–2018–0093'' and follow the instructions for submitting comments.

• *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Reference Materials and Docket Information: You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via *http://www.regulations.gov.* Search using ''MARAD–2018–0093.'' All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: As a result of the enactment of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 12102, the Secretary of Transportation has the discretionary authority to issue waivers allowing documented vessels with registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. The Secretary has delegated this authority to the Maritime Administrator. Pursuant to this authority, MARAD is providing notice of the service requirements proposed by Cooke Aquaculture (Cooke) in order to make a U.S.-flag vessel availability determination. Specifics can be found in Cooke's application letter posted in the docket.

To comply with USCG Aquaculture Support regulations at 46 CFR part 106, Cooke is seeking a MARAD Aquaculture Waiver to operate the vessel MILDRED 1 as follows:

—*Intended Commercial Use of Vessel:* ''to use highly-specialized foreign-flag vessels referred to as a ''wellboat'' (or ''live fish carrier'') to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health.''

—*Geographic Region:* ''off Maine's North Atlantic Coast''.

Requested Time Period: ''2018 calendar year, from June 1, 2018 to December 31, 2018''.

Interested parties may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the required aquaculture support services. If MARAD determines, in accordance with 46 U.S.C. 12102(d)(1) and MARAD's regulations at 46 CFR part 388, that suitable U.S.-flag vessels are available to perform the required services, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria set forth in 46 CFR 388.4.

Privacy Act

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from the public to inform its process to determine the availability of suitable vessels. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(w).

* * * * *

Dated: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13658 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0103]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FROM RUSSIA WITH LOVE; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 26, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0103. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FROM RUSSIA WITH LOVE is:

—*Intended Commercial Use of Vessel:* ''Family boat, we will occasionally take clients out on day charters''

—*Geographic Region:* ''Illinois''

The complete application is given in DOT docket MARAD–2018–0103 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: June 21, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–13654 Filed 6–25–18; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL REGISTER

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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 Hawaii-Southern California Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170918908–8501–01]

RIN 0648–BH29

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California 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 Hawaii-Southern California Training and Testing (HSTT) 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 (LOA) 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 rule. 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 August 9, 2018.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2018–0071, 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-2018-0071*, 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 September 13, 2017, NMFS received an application from the Navy requesting incidental take regulations and two 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, air guns, and impact pile driving/vibratory extraction in the HSTT Study Area over five years. In addition, the Navy is requesting incidental take authorization by serious injury or mortality of ten takes of two species due to explosives and for up to three takes of large whales from vessel

strikes over the five-year period. The Navy's training and testing activities would occur over five years beginning in December 2018. On October 13, 2017, the Navy sent an amendment to its application and Navy's rulemaking/LOA application was considered final and complete.

The Navy requests two five-year LOAs, one for training and one for testing activities to be conducted within the HSTT Study Area (which extends from the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line), including the Hawaii and Southern California (SOCAL) Range Complexes, as well as the Silver Strand Training Complex and overlapping a small portion of the Point Mugu Sea Range. The Hawaii Range Complex encompasses ocean areas around the Hawaiian Islands, extending from 16 degrees north latitude to 43 degrees north latitude and from 150 degrees west longitude to the International Date Line. The SOCAL Range Complex is located approximately between Dana Point and San Diego, California, and extends southwest into the Pacific Ocean and also includes a small portion of the Point Mugu Sea Range. The Silver Strand Training Complex is an integrated set of training areas located on and adjacent to the Silver Strand, a narrow, sandy isthmus separating the San Diego Bay from the Pacific Ocean. Please refer to Figure 1–1 of the Navy's rulemaking/LOA application for a map of the HSTT Study Area, Figures 2–1 to 2–4 for the Hawaii Operating Area (where the majority of training and testing activities occur within the Hawaii Range Complex), Figures 2–5 to 2–7 for the SOCAL Range Complex, and Figure 2–8 for the Silver Strand Training Complex. 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), surface warfare (in-water detonations), mine warfare (sonar and other transducers, in-water detonations), and other warfare activities (sonar and other transducers, pile driving, air guns).

This will be NMFS's third rulemaking (Hawaii and Southern California were separate rules in Phase I) for HSTT activities under the MMPA. NMFS published the first two rules for Phase I effective from January 5, 2009, through January 5, 2014, (74 FR 1456; on January 12, 2009) and effective January 14, 2009, through January 14, 2014 (74 FR 3882 on January 21, 2009) for Hawaii and Southern California, respectively. The rulemaking for Phase II (combined both Hawaii and Southern California) is applicable from December 24, 2013, through December 24, 2018 (78 FR 78106; on December 24, 2013). For this third rulemaking, the Navy is proposing to conduct similar activities as they have conducted over the past nine years under the previous 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 training and testing at sea, often in designated operating areas (OPAREA) and testing and training ranges. The Navy must be able to access and utilize these areas and associated sea space and air space in order to develop and maintain skills for conducting naval activities.

The Navy proposes to conduct training and testing activities within the HSTT Study Area. The Navy has been conducting similar military readiness activities in the Study Area since the 1940s. 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 influence the frequency, duration, intensity, and location of required training and testing activities, but the basic nature of sonar and explosive events conducted in the HSTT Study Area has remained the same.

The Navy's rulemaking/LOA application 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 account for fluctuations in training and testing in order to meet evolving or emergent military readiness requirements.

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 HSTT Draft Environmental Impact Statement (DEIS)/Overseas EIS (OEIS) (DEIS/OEIS) and in the Navy's rule making/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 and tests in the HSTT Study Area in preparation for national defense missions. Training and testing activities covered in the Navy's rulemaking/LOA application are briefly described below, and in more detail within Chapter 2 of the HSTT DEIS/OEIS.

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 HSTT 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. Activities that do not fall within one of these areas are listed as ''other activities.'' Each warfare community (surface, subsurface, aviation, and special 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 HSTT DEIS/OEIS and the Navy's rulemaking/LOA application. In its assessment, the Navy concluded that sonar and other transducers, in-water detonations, air guns, and pile driving/removal were the stressors that would result in impacts on marine mammals that could rise to the level of harassment (and serious injury or mortality by explosives or by vessel strike) as defined under the MMPA. The Navy's rulemaking/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);
- ASW (sonar and other transducers, in-water detonations);
- SUW (in-water detonations);
- MIW (sonar and other transducers, in-water detonations); and
- Other warfare activities (sonar and other transducers, impact pile driving/vibratory removal, air guns).

The Navy's training and testing activities in air warfare, electronic warfare, and expeditionary warfare do not involve sonar or other transducers, in-water detonations, pile driving/removal, air guns or any other stressors that could result in harassment, serious injury, or mortality of marine mammals. Therefore, activities in the air, electronic or expeditionary warfare areas are not discussed further in this proposed rule, but are analyzed fully in the Navy's HSTT 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 range from 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. Large scale 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 is 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

The mission of ASW 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 detecting 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 ASW 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 training 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 crews in the use of new or newly enhanced systems during a large-scale, complex exercise.

Mine Warfare

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. Towed influence mine sweep systems mimic a particular ship's magnetic and acoustic signature, which would trigger a real mine causing it to explode.

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 or classification, and mine countermeasure and neutralization. Mine detection or 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 detection systems, countermeasure and neutralization systems. 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 or the crews conducting the training or testing 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 conduct offensive action against other surface, subsurface, and air targets while also defending against enemy forces. In conducting SUW, aircraft use guns, 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, bombing, and missile exercises; submarine missile or torpedo launch events, and the use of 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 munitions 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, testing and maintenance activities, which fall under other primary mission areas that are not listed above. The HSTT DEIS/OEIS combines these training and testing activities together in an ''other activities'' grouping for simplicity. These training and testing activities include, but are not limited to, sonar maintenance for ships and submarines, submarine navigation and under-ice certification, elevated causeway system (pile driving and removal), and acoustic and oceanographic research. These activities include the use of various sonar systems, impact pile driving/vibratory extraction, and air guns.

Overview of Major Training Exercises and Other Exercises Within the HSTT Study Area

A major training exercise (MTE) 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 an MTE, 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 an MTE, however, these disparate training tasks are conducted in concert, rather than in isolation. Some integrated or coordinated ASW exercises are similar in that they are comprised of several unit level exercises but are generally on a smaller scale than an MTE, are shorter in duration, use fewer assets, and use fewer hours of hull-mounted sonar per exercise. For the purpose of analysis, three key factors are used to identify and group major, integrated, and coordinated exercises including 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, integrated, and coordinated training exercises in this proposed rule.

Overview of Testing Activities Within the HSTT 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 included in the Navy's rulemaking/LOA application are the Naval Air Systems Command, the Naval Sea Systems Command, the Office of Naval Research, and the Space and Naval Warfare Systems Command.

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, activities, 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.

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.

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/LOA application, for testing activities occurring at Navy shipyards and piers, only system testing is included.

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, torpedoes, 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.

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 HSTT Study Area includes acoustic and oceanographic research, large displacement unmanned underwater vehicle (an innovative naval prototype) research, and emerging mine countermeasure technology research.

Space and Naval Warfare Systems Command Testing Activities

Space and Naval Warfare Systems Command is the information warfare systems command for the U.S. Navy. The mission of the Space and Naval Warfare Systems Command is to acquire, develop, deliver, and sustain decision superiority for the warfighter. Space and Naval Warfare Systems Command Systems Center Pacific is the research and development part of Space and Naval Warfare Systems Command focused on developing and transitioning technologies in the area of command, control, communications, computers, intelligence, surveillance, and reconnaissance. Space and Naval Warfare Systems Command Systems Center Pacific conducts research, development, test, and evaluation projects to support emerging technologies for intelligence, surveillance, and reconnaissance; anti-terrorism and force protection; mine countermeasures; anti-submarine warfare; oceanographic research; remote sensing; and communications. These activities include, but are not limited to, the testing of surface and subsurface vehicles; intelligence, surveillance, and reconnaissance/information operations sensor systems; underwater surveillance technologies; and underwater communications.

The proposed training and testing activities were evaluated to identify specific components that could act as stressors (*e.g.,* 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 or shock waves from explosives into the environment. The Navy's rulemaking/LOA application describes specific components that could act as stressors by having direct or indirect impacts on the environment. This analysis includes identification of the spatial variation of the identified stressors. The following subsections describe the acoustic and explosive stressors for biological resources within the Study Area. Stressor/resource interactions that were determined to have de minimus or no impacts (*i.e.,* vessel, aircraft, weapons noise, and explosions in air) were not carried forward for analysis in the Navy's rulemaking/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 air guns, 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 hazardous 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, air guns, and explosives, a series of source classifications, or source bins, was developed. The source classification bins do not include the broadband sounds produced incidental to pile driving, vessel or aircraft transits, weapons firing and bow shocks.

The use of source classification bins provides the following benefits: Provides the ability for new sensors or munitions to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;'' improves efficiency of source utilization data collection and reporting requirements anticipated under the MMPA authorizations; ensures a conservative approach to all impact estimates, as all sources within a given class are modeled as the most impactful source (highest source level, longest duty cycle, or largest net explosive weight) within that bin; allows analyses to be conducted in a more efficient manner, without any compromise of analytical results; and provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total numbers of takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

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/LOA application, 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. 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 HSTT Study Area.

The sound sources and platforms typically used in naval activities analyzed in the Navy's rulemaking/LOA application are described in Appendix A (Navy Activity Descriptions) of the HSTT DEIS/OEIS. The effects of these factors are explained in Appendix D (Acoustic and Explosive Concepts) of the HSTT 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/LOA application. 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 (the percentage of time acoustic energy is transmitted) can vary widely, from intermittently active to continuously active. For the duty cycle for the AN/SQS–53C, nominally they produce a 1–2 sec ping every 50–60 sec. Continuous active sonars often have substantially lower source levels but transmit the sonar signal much more frequently (greater than 80 percent of the time) when they are on. The beam width of 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 in waters greater than 200 meters (m) which can vary from beyond three nautical miles (nmi) to 12 nmi or more from shore depending on local bathymetry. Exceptions include use of dipping sonar by helicopters, maintenance of vessel systems while in port, and system checks while vessels transit 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 but, 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. Most 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 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 HSTT 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 HSTT 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 HSTT 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–60).
	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).
	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%.
	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.,* AQS–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 submerged 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: Antisubmarine 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.

Air Guns

Air guns 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 air guns with capacities up to 60 cubic inches (in^3) would be used during testing activities in various offshore areas of the Southern California Range Complex and in the Hawaii Range Complex.

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 m from the air gun would be approximately 215 dB re 1 μPa and 227 dB re 1 μPa, respectively, if operated at the full capacity of 60 in^3. The size of the air gun 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 (ELCAS), 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 Silver Strand Training Complex and at Camp Pendleton, both in the Southern California 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 (note this shock wave has very low peak pressure compared to a shock wave from an explosive) (Reinhall and Dahl, 2011). 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 ELCAS 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 rms. 182 dB re 1 $\mu Pa^2 s$ SEL (single strike).
24-in. Steel Pipe Pile	Vibratory [2]	146 dB re 1 μPa SPL rms. 145 dB re 1 $\mu Pa^2 s$ SEL (per second of duration).

[1] Illingworth and Rodkin (2016).
[2] Illingworth and Rodkin (2015).
Notes: in = inch, SEL = Sound Exposure Level, SPL = Sound Pressure Level, rms = root mean squared, dB re 1 μPa = decibels referenced to 1 micropascal.

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 ELCAS event is approximately 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 6 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/LOA application that use explosives are described in Appendix A (Navy Activity Descriptions) of the HSTT DEIS/OEIS. Explanations of the terminology and metrics used when describing explosives in the Navy's rulemaking/LOA application are also in Appendix D (Acoustic and Explosive Concepts) of the HSTT 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 HSTT 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 in the air or at the water's surface. Explosive detonations associated with torpedoes and explosive sonobuoys could 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 most mine warfare, demolition, and some testing detonations would occur in shallow water close to shore. Those that occur close to shore are typically conducted on designated ranges.

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/LOA application.

Explosives detonated in water are binned by net explosive weight. The bins of explosives that are proposed for use in the 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.
E13 [2]	>1,000–1,740	Mat weave.

[1] Net Explosive Weight refers to the equivalent amount of TNT.
[2] E13 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. In addition, activities are confined to small cove without regular marine mammal occurrence. These are not single charges, but multiple smaller charges detonated simultaneously or within a short time period.

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) of the HSTT 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 HSTT Study Area.

Explosive Fragments

Marine mammals could be exposed to fragments from underwater explosions associated with the specified activities. When explosive ordnance (*e.g.,* bomb or missile) detonates, fragments of the weapon are thrown at high-velocity from the detonation point, which can injure or kill marine mammals if they are struck. These fragments may be of variable size and are ejected at supersonic speed from the detonation. The casing fragments will be ejected at velocities much greater than debris from any target due to the proximity of the casing to the explosive material. Risk of fragment injury reduces exponentially with distance as the fragment density is reduced. Fragments underwater tend to be larger than fragments produced by in-air explosions (Swisdak and Montaro, 1992). Underwater, the friction of the water would quickly slow these fragments to a point where they no longer pose a threat. Opposingly, the blast wave from an explosive detonation moves efficiently through the seawater. Because the ranges to mortality and injury due to exposure to the blast wave are likely to far exceed the zone where fragments could injure or kill an animal, the threshold are assumed to encompass risk due to fragmentation.

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 have the potential to result in incidental take from serious injury and/or mortality. 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 and 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 (kn) and submarines generally operate at speeds in the range of 8–13 kn, 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 kn (Bonney and Leach, 2010). Additional information on Navy vessel movements is provided in the Specified Activities section.

The Center for Naval Analysis conducted studies to determine traffic patterns of Navy and non-Navy vessels in the HSTT Study Area (Mintz, 2016; Mintz and Filadelfo, 2011; Mintz, 2012; Mintz and Parker, 2006). The most recent analysis covered the 5-year period from 2011 to 2015 for vessels over 65 ft in length (Mintz, 2016). Categories of vessels included in the study were U.S. Navy surface ship traffic and non-military civilian traffic such as cargo vessels, bulk carriers, commercial fishing vessels, oil tankers, passenger vessels, tugs, and research vessels (Mintz, 2016). In the Hawaii Range Complex, civilian commercial shipping comprised 89 percent of total vessel traffic while Navy ship traffic accounted for eight percent (Mintz, 2016). In the Southern California Range Complex civilian commercial shipping comprised 96 percent of total vessel traffic while Navy ship traffic accounted for four percent (Mintz, 2016).

Navy ships transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. Small craft (for purposes of this analysis, less than 18 m in length) have much more variable speeds (0–50+ kn, dependent on the activity). Submarines generally operate at speeds in the range of 8–13 kn. While these speeds are considered averages and representative of most events, some vessels need to operate outside of these parameters for certain times or during certain activities. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier engaged in flight operations must adjust its speed through the water accordingly. Also, there are other instances such as launch and recovery of a small rigid hull inflatable boat; vessel boarding, search, and seizure training events; or retrieval of a target when vessels would be dead in the water or moving slowly ahead to maintain steerage. There are a few specific events, including high-speed tests of newly constructed vessels, where vessels would operate at higher speeds.

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 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.

Specified Activities

Proposed Training Activities

The Navy's Specified 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 actual level of training that occurs year after year in any five-year period. Using a representative level of activity rather than a maximum tempo of training activity in every year is more reflective of the amount of hull-mounted mid-frequency active sonar estimated to be necessary to meet training requirements. It also means that the Navy is requesting fewer hours of hull-mounted mid-frequency active sonar. Both unit-level training and major training exercises have been adjusted to meet this representative year, as discussed below. For the purposes of the Navy's rulemaking/LOA application, the Navy assumes that some unit-level training would be conducted using synthetic means (*e.g.,* simulators). Additionally, the Specified Activities analysis assumes that some unit-level active sonar training will be accounted for during the conduct of coordinated and 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 Specified Activities 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 Specified Activities 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 3 years (described in Estimate Take section).

The training activities that the Navy proposes to conduct in the HSTT 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 the Navy's rulemaking/LOA application, description of the activity, sound source bin, the locations of those activities in the HSTT Study Area, and the number of Specified Activities. For further information regarding the primary platform used (*e.g.,* ship or aircraft type) see Appendix A (Navy Activity Descriptions) of the HSTT DEIS/OEIS.

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Table 4. Proposed Training Activities Analyzed within the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Location*	*Annual # of Activities*	*5-Year # of Activities*	*Duration per Activity*
Major Training Exercises – Large Integrated Anti-Submarine Warfare							
Acoustic	Composite Training Unit Exercise[1]	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment that certifies them ready to deploy.	ASW1, ASW2, ASW3, ASW4, ASW5, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12	SOCAL	2-3	12	21 days
Acoustic	Rim of the Pacific Exercise[1]	A biennial multinational training exercise in which navies from Pacific Rim nations and others assemble in Pearl Harbor, Hawaii, to conduct training throughout the Hawaiian Islands in a number of warfare areas. Marine mammal systems may be used during a Rim of the Pacific exercise. Components of a Rim of the Pacific exercise, such as certain mine warfare and amphibious training, may be conducted in the Southern California Range Complex.	ASW2, ASW3, ASW4, HF1, HF3, HF4, M3, MF1, MF3, MF4, MF5, MF11	HRC	0-1	2	30 days
				SOCAL	0-1	2	

Major Training Exercises – Medium Integrated Anti-Submarine Warfare							
Acoustic	Fleet Exercise/Sustainment Exercise[1]	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment to maintain ability to deploy.	ASW1, ASW2, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12	HRC	1	3	Up to 10 days
				SOCAL	5	22	
Acoustic	Undersea Warfare Exercise	Elements of the anti-submarine warfare tracking exercise combine in this exercise of multiple air, surface, and subsurface units, over a period of several days. Sonobuoys are released from aircraft. Active and passive sonar used.	ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12	HRC	3	12	4 days
Integrated/Coordinated Training – Small Integrated Anti-Submarine Warfare Training							
Acoustic	Navy Undersea Warfare Training and Assessment Course Surface Warfare Advanced Tactical Training	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.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5	HRC	1	2	2-5 days
				SOCAL	2-3	12	
Integrated/Coordinated Training – Medium Coordinated Anti-Submarine Warfare Training							
Acoustic	Submarine Commanders Course	Train prospective submarine Commanding Officers to operate against surface, air, and subsurface threats.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, TORP1, TORP2	HRC	2	10	2-3 days
				SOCAL	2	2	

Integrated/Coordinated Training – Small Coordinated Anti-Submarine Warfare Training							
Acoustic	Amphibious Ready Group/Marine Expeditionary Unit Exercise Group Sail Independent Deployer Certification Exercise/Tailored Anti-Submarine Warfare Training	Small-scale, short duration, coordinated anti-submarine warfare exercises	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11	HRC	2	10	2-3 days
				SOCAL	10-14	58	
Amphibious Warfare							
Explosive	Naval Surface Fire Support Exercise – at Sea	Surface ship uses large-caliber gun to support forces ashore; however, land target simulated at sea. Rounds impact water and are scored by passive acoustic hydrophones located at or near target area.	Large-caliber HE rounds (E5)	HRC (W188)	15	75	8 hours
Acoustic	Amphibious Marine Expeditionary Unit Exercise	Navy and Marine Corps forces conduct advanced integration training in preparation for deployment certification.	ASW1, LF6, MF1, MF3, MF11, MF12, HF1	SOCAL	2-3	12	5-7 days
Acoustic	Amphibious Marine Expeditionary Unit Integration Exercise	Navy and Marine Corps forces conduct integration training at sea in preparation for deployment certification.	None	SOCAL	2-3	12	Up to 21 days

Acoustic	Marine Expeditionary Unit Composite Training Unit Exercise	Amphibious Ready Group exercises are conducted to validate the Marine Expeditionary Unit's readiness for deployment and includes small boat raids; visit, board, search, and seizure training; helicopter and mechanized amphibious raids; and a non-combatant evacuation operation.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11	SOCAL	2-3	12	Up to 21 days
Anti-Submarine Warfare							
Acoustic	Anti-Submarine Warfare Torpedo Exercise – Helicopter	Helicopter crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF4, MF5, TORP1	HRC	6	30	2-5 hours
				SOCAL	104	520	
Acoustic	Anti-Submarine Warfare Torpedo Exercise – Maritime Patrol Aircraft	Maritime patrol aircraft crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF5, TORP1	HRC	10	50	2-8 hours
				SOCAL	25	125	
Acoustic	Anti-Submarine Warfare Torpedo Exercise – Ship	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used during this event.	ASW3, MF1, TORP1	HRC	50	250	2-5 hours
				SOCAL	117	585	
Acoustic	Anti-Submarine Warfare Torpedo Exercise – Submarine	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this event.	ASW4, HF1, MF3, TORP2	HRC	48	240	8 hours
				SOCAL	13	65	
Acoustic	Anti-Submarine Warfare Tracking Exercise –	Helicopter crews search for, track, and detect submarines.	MF4, MF5	HRC	159	795	2-4 hours
				SOCAL, PMSR	524	2,620	

	Helicopter			HSTT Transit Corridor	6	30	
Acoustic	Anti-Submarine Warfare Tracking Exercise – Maritime Patrol Aircraft	Maritime patrol aircraft aircrews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF5	HRC	32	160	2-8 hours
				SOCAL, PMSR	56	280	
Acoustic	Anti-Submarine Warfare Tracking Exercise – Ship	Surface ship crews search for, track, and detect submarines.	ASW3, MF1, MF11, MF12	HRC	224	1,120	2-4 hours
				SOCAL, PMSR	423	2,115	
Acoustic	Anti-Submarine Warfare Tracking Exercise – Submarine	Submarine crews search for, track, and detect submarines.	ASW4, HF1, HF3, MF3	HRC	200	1,000	8 hours
				SOCAL, PMSR	50	250	
				HSTT Transit Corridor	7	35	
Explosive, Acoustic	Service Weapons Test	Air, surface, or submarine crews employ explosive torpedoes against virtual targets.	HF1, MF3, MF6, TORP2, Explosive torpedoes (E11)	HRC	2	10	8 hours
				SOCAL	1	5	
Mine Warfare							
Acoustic	Airborne Mine Countermeasure – Mine Detection	Helicopter aircrews detect mines using towed or laser mine detection systems.	HF4	SOCAL	10	50	2 hours
Explosive, Acoustic	Civilian Port Defense – Homeland Security Anti-Terrorism/Force Protection Exercises	Maritime security personnel train to protect civilian ports against enemy efforts to interfere with access to those ports.	HF4, SAS2 E2, E4	Pearl Harbor, HI	1	5	Multiple days
				San Diego, CA	1-3	12	

Explosive	Marine Mammal Systems	The Navy deploys trained bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*) as part of the marine mammal mine-hunting and object-recovery system.	E7	HRC	10	50	Varies
				SOCAL	175	875	
Acoustic	Mine Countermeasure Exercise – Ship Sonar	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HF4, HF8, MF1K	HRC	30	150	Up to 15 hours
				SOCAL	92	460	
Acoustic	Mine Countermeasure Exercise - Surface	Mine countermeasure ship crews detect, locate, identify, and avoid mines while navigating restricted areas or channels, such as while entering or leaving port.	HF4	SOCAL	266	1,330	Up to 15 hours
Explosive, Acoustic	Mine Countermeasures Mine Neutralization Remotely Operated Vehicle	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles.	HF4, E4	HRC	6	30	1.5 to 4 hours
				SOCAL	372	1,860	
Explosive	Mine Neutralization Explosive Ordnance Disposal	Personnel disable threat mines using explosive charges.	E4, E5, E6, E7	HRC (Puuloa)	20	100	Up to 4 hours
				SOCAL (IB, TAR 2, TAR 3, TAR 21, SWAT 3, SOAR)	194	970	
Acoustic	Submarine Mine Exercise	Submarine crews practice detecting mines in a designated area.	HF1	HRC	40	200	6 hours
				SOCAL	12	60	

Acoustic	Surface Ship Object Detection	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K, HF8	HRC	42	210	Up to 15 hours
				SOCAL	164	820	
Explosive	Underwater Demolitions Multiple Charge – Mat Weave and Obstacle Loading	Military personnel use explosive charges to destroy barriers or obstacles to amphibious vehicle access to beach areas.	E10, E13	SOCAL (TAR 2, TAR 3)	18	90	4 hours
Explosive	Underwater Demolition Qualification and Certification	Navy divers conduct various levels of training and certification in placing underwater demolition charges.	E6, E7	HRC (Puuloa)	25	125	Varies
				SOCAL (TAR 2)	120	600	
Surface Warfare							
Explosive	Bombing Exercise Air-to-Surface	Fixed-wing aircrews deliver bombs against surface targets.	E12[2]	HRC	187	935	1 hour
				SOCAL	640	3,200	
				HSTT Transit Corridor	5	25	
Explosive	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber	Small boat crews fire medium-caliber guns at surface targets.	E1, E2	HRC	10	50	1 hour
				SOCAL	14	70	
Explosive	Gunnery Exercise Surface-to-Surface Ship Large-caliber	Surface ship crews fire large-caliber guns at surface targets.	E5	HRC	32	160	Up to 3 hours
				SOCAL	200	1,000	
				HSTT Transit Corridor	13	65	
Explosive	Gunnery Exercise Surface-to-Surface Ship Medium-Caliber	Surface ship crews fire medium-caliber guns at surface targets.	E1, E2	HRC	50	250	2-3 hours
				SOCAL	180	900	
				HSTT Transit Corridor	40	200	

Explosive, Acoustic	Independent Deployer Certification Exercise/Tailored Surface Warfare Training	Multiple ships, aircraft and submarines conduct integrated multi-warfare training with a surface warfare emphasis. Serves as a ready-to-deploy certification for individual surface ships tasked with surface warfare missions.	E1, E3, E6, E10	SOCAL	1	5	15 days
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	HRC (W188A)	1	5	6-8 hours
				SOCAL (SOAR)	1	5	
Explosive	Missile Exercise Air-to-Surface	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E6, E8, E10	HRC	10	50	1 hour
				SOCAL	210	1,050	
Explosive	Missile Exercise Air-to-Surface Rocket	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	HRC	227	1,135	1 hour
				SOCAL	246	1,230	
Explosive	Missile Exercise Surface-to-Surface	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E10	HRC (W188)	20	100	2-5 hours
				SOCAL (W291)	10	50	
Explosive, Acoustic	Sinking Exercise	Aircraft, ship, and submarine crews	TORP2, E5, E10,	HRC	1–3	7	4-8 hours, over 1-2

		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.	E12	SOCAL	0–1	1	days
Pile driving	Elevated Causeway System	A pier is constructed off of the beach. Piles are driven into the bottom with an impact hammer. Piles are removed from seabed via vibratory extractor. Only in-water impacts are analyzed.	Impact hammer or vibratory extractor	SOCAL	2	10	Up to 30 days
Acoustic	Kilo Dip	Functional check of the dipping sonar prior to conducting a full test or training event on the dipping sonar.	MF4	HRC	60	300	1.5 hours
				SOCAL	2,400	12,000	
Acoustic	Submarine Navigation Exercise	Submarine crews operate sonar for navigation and object detection while transiting into and out of port during reduced visibility.	HF1, MF3	Pearl Harbor, HI	220	1,100	Up to 2 hours
				San Diego Bay, CA	80	400	
Acoustic	Submarine Sonar Maintenance and Systems Checks	Maintenance of submarine sonar systems is conducted pierside or at sea.	MF3	HRC	260	1,300	Up to 1 hour
				Pearl Harbor, HI	260	1,300	
				SOCAL	93	465	
				San Diego Bay, CA	92	460	
				HSTT Transit Corridor	10	50	

Acoustic	Submarine Under Ice Certification	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events.	HF1	HRC	12	60	5 days
				SOCAL	6	30	
Acoustic	Surface Ship Sonar Maintenance and Systems Checks	Maintenance of surface ship sonar systems is conducted pierside or at sea.	HF8, MF1	HRC	75	375	Up to 4 hours
				Pearl Harbor, HI	80	400	
				SOCAL	250	1,250	
				San Diego, CA	250	1,250	
				HSTT Transit Corridor	8	40	
Acoustic	Unmanned Underwater Vehicle Training – Certification and Development	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	FLS2, M3, SAS2	HRC	25	125	2 days
				SOCAL	10	50	

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, PMRF = Pacific Missile Range Facility, BARSTUR = Barking Sands Tactical Underwater Range, BSURE = Barking Sands Underwater Range Expansion, PMSR = Point Mugu Sea Range Overlap, TAR = Training Area and Range, SOAR = Southern California Anti-Submarine Warfare Range, IB = Imperial Beach Minefield

1. Any non-antisubmarine warfare activity that could occur is captured in the individual activities.

2. For the Bombing Exercise Air-to-Surface, all activities were analyzed with exact bins NEW.

Proposed Testing Activities

Testing activities covered in the Navy's rulemaking/LOA application are described in Table 5 through Table 8. The five-year Specified Activities 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 Specified Activities includes the testing of new platforms, systems, and related equipment that will be introduced after December 2018 and during the period of the rule. The majority of testing activities that would be conducted under the Specified Activities are the same or similar as those conducted currently or in the past. The Specified Activities includes the testing of some new systems using new technologies and takes into account inherent uncertainties in this type of testing.

Under the Specified Activities, 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 Specified Activities contains a more realistic annual representation of activities, but includes years of a higher maximum amount of testing to account for these fluctuations.

The tables include the activity name, associated stressor(s), description of the activity, sound source bin, the areas where the activity is conducted, and the number of activities per year and per five years. Not all sound sources are used with each activity. Under the ''Annual # of Activities'' column, activities show either a single number or a range of numbers to indicate the number of times that activity could occur during any single year. The ''5-Year # of Activities'' is the maximum times an activity would occur over the 5-year period of this request. More detailed activity descriptions can be found in the HSTT DEIS/OEIS.

Naval Air Systems Command

Table 5 summarizes the proposed testing activities for the Naval Air Systems Command analyzed within the HSTT Study Area.

Table 5. Proposed Naval Air Systems Command Testing Activities Analyzed within the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Location*	*Annual # of Activities*	*5-Year # of Activities*	*Typical 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 and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	MF5, TORP1	HRC	17-22	95	2-6 hrs
				SOCAL	35-71	247	
Explosive, Acoustic	Anti-Submarine Warfare Tracking Test – Helicopter	This event is similar to the training event anti-submarine 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 systems perform to specifications.	MF4, MF5, E3	SOCAL	30-132	252	2 hrs
Explosive, Acoustic	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, MF5, MF6, E1, E3	HRC	54-61	284	4-6 hrs
				SOCAL	58-68	310	
Explosive, Acoustic	Sonobuoy Lot Acceptance Test	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a lot or group of sonobuoys in advance of delivery to the fleet for operational use.	ASW2, ASW5, HF5, HF6, LF4, MF5, MF6, E1, E3, E4	SOCAL	160	800	6 hrs
Mine Warfare							
Acoustic	Airborne Dipping Sonar Minehunting Test	A mine-hunting dipping sonar system that is deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HF4	SOCAL	0-12	12	2 hrs

Explosive	Airborne Mine Neutralization System Test	A test of the airborne mine neutralization system that evaluates the system's ability to detect and destroy mines from an airborne mine countermeasures capable helicopter (e.g., MH-60). 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	SOCAL	11-31	75	2.5 hrs
Acoustic	Airborne Sonobuoy Minehunting Test	A mine-hunting system made up of sonobuoys deployed from a helicopter. A field of sonobuoys, using high-frequency sonar, is used for detection and classification of bottom and moored mines.	HF6	SOCAL	3-9	21	2 hrs
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	HRC	8	40	2 hrs
				SOCAL	14	70	
Explosive	Air-to-Surface Gunnery Test	This event is similar to the training event gunnery exercise air-to-surface. Fixed-wing and rotary-wing aircrews evaluate new or enhanced aircraft guns against surface maritime targets to test that the gun, gun ammunition, or associated systems meet required specifications or to train aircrew in the operation of a new or enhanced weapons system.	E1	HRC	5	25	2-2.5 hrs
				SOCAL	30-60	240	
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 weapons system or as part of another systems integration test.	E6, E9, E10	HRC	18	90	2-4 hrs
				SOCAL	48-60	276	
Explosive	Rocket Test	Rocket tests are conducted to evaluate the integration, accuracy,	E3	HRC	2	10	1.5-2.5 hrs

		performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward flying helicopter or tilt rotor aircraft.		SOCAL	18-22	102	
Other Testing Activities							
Acoustic	Kilo Dip	Functional check of a helicopter deployed dipping sonar system (e.g., AN/AQS-22) prior to conducting a testing or training event using the dipping sonar system.	MF4	SOCAL	0-6	6	1.5 hrs
Acoustic	Undersea Range System Test	Post installation node survey and test and periodic testing of range Node transmit functionality.	MF9	HRC	11-28	90	8 hrs

Table 6 summarizes the proposed testing activities for the Naval Sea Systems Command analyzed within the HSTT Study Area.

Table 6. Proposed Naval Sea Systems Command Testing Activities Analyzed within the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Location*	*Annual # of Activities*	*5-Year # of Activities*	*Typical Duration per Activity*
Anti-Submarine Warfare							
Acoustic	Anti-Submarine Warfare Mission Package Testing	Ships and their supporting platforms (e.g., rotary-wing aircraft and unmanned aerial systems) detect, localize, and prosecute submarines.	ASW1, ASW2, ASW3, ASW5, MF1, MF4, MF5, MF12, TORP1	HRC	22	110	4-8 hrs per day over 1-2 weeks
				SOCAL	23	115	
Acoustic	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	ASW3, ASW4, HF1, LF4, LF5, M3, MF1, MF1K, MF2, MF3, MF5, MF9, MF10, MF11	HRC	16	78	4 hrs-11 days
				HRC - SOCAL	1	5	
				SOCAL	20-21	99	
Acoustic	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, and track incoming weapons, including marine vessel targets. Testing includes surface ship torpedo defense systems and marine vessel stopping payloads.	ASW3, ASW4, HF5, TORP1, TORP2	HRC	8	40	4 hrs-6 days
				HRC - SOCAL	4	20	
				SOCAL	11	55	
				HSTT Transit Corridor	2	10	
Acoustic	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities.	HF1, HF3, HF8, M3, MF1, MF3, MF9	Pearl Harbor, HI	7	35	Up to 3 weeks, intermittent sonar use
				San Diego, CA	7	35	
Acoustic	Submarine Sonar Testing/Maintenance	Pierside and at-sea testing of submarine systems occurs periodically following major maintenance periods and for routine maintenance.	HF1, HF3, M3, MF3	HRC	4	20	Up to 3 weeks, intermittent sonar use
				Pearl Harbor, HI	17	85	
				San Diego, CA	24	120	

Acoustic	Surface Ship Sonar Testing/Maintenance	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	ASW3, MF1, MF1K, MF9, MF10	HRC	3	15	Up to 3 weeks, intermittent sonar use
				Pearl Harbor, HI	3	15	
				San Diego, CA	3	15	
				SOCAL	3	15	
Explosive, Acoustic	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	HRC	8	40	1-2 days, daylight hours only
				HRC SOCAL	3	15	
				SOCAL	8	40	
Acoustic	Torpedo (Non-Explosive) Testing	Air, surface, or submarine crews employ non-explosive torpedoes against submarines or surface vessels.	ASW3, ASW4, HF1, HF6, M3, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, TORP3	HRC	8	40	Up to 2 weeks
				HRC SOCAL	9	45	
				SOCAL	8	40	
Mine Warfare							
Explosive, Acoustic	Mine Countermeasure and Neutralization Testing	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	HF4, E4	SOCAL	11	55	1-10 days, intermittent use of systems
Explosive, Acoustic	Mine Countermeasure Mission Package Testing	Vessels and associated aircraft conduct mine countermeasure operations.	HF4, SAS2, E4	HRC	19	80	1-2 weeks, intermittent use of systems
				SOCAL	58	290	
Acoustic	Mine Detection and Classification Testing	Air, surface, and subsurface vessels and systems detect and classify and avoid mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HF1, HF8, MF1, MF5	HRC	2	10	Up to 24 days, up to 12 hrs acoustic daily
				HRC SOCAL	2	6	
				SOCAL	11	55	
Surface Warfare							
Explosive	Gun Testing – Large-Caliber	Surface crews test large-caliber guns to defend against surface targets.	E3	HRC	7	35	1-2 weeks
				HRC - SOCAL	72	360	
				SOCAL	7	35	

Explosive	Gun Testing – Medium-Caliber	Surface crews test medium-caliber guns to defend against surface targets.	E1	HRC	4	20	1-2 weeks
				HRC - SOCAL	48	240	
				SOCAL	4	20	
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	HRC	13	65	1 day-2 weeks
				HRC - SOCAL	24	120	
				SOCAL	20	100	
Unmanned Systems							
Acoustic	Unmanned Surface Vehicle System Testing	Testing involves the production or upgrade of unmanned surface vehicles. This may include tests of mine detection capabilities, evaluations of the basic functions of individual platforms, or complex events with multiple vehicles.	HF4, SAS2	HRC	3	15	Up to 10 days
				SOCAL	4	20	
Acoustic	Unmanned Underwater Vehicle Testing	Testing involves the production or upgrade of unmanned underwater vehicles. This may include tests of mine detection capabilities, evaluations of the basic functions of individual platforms, or complex events with multiple vehicles.	HF4, MF9	HRC	3	15	Up to 35 days
				SOCAL	291	1,455	
Vessel Evaluation							
Acoustic	Submarine Sea Trials – Weapons System Testing	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	HF1, M3, MF3, MF9, MF10, TORP2	HRC	1	5	Up to 7 days
				SOCAL	1	5	
Explosive	Surface Warfare Testing	Tests the capabilities 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	HRC	9	45	7 days
				HRC - SOCAL	63	313	
				SOCAL	14-16	72	
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 undersea targets.	ASW4, HF4, HF8, MF1, MF4, MF5, MF6, TORP1, TORP2	HRC	7	35	Up to 10 days
				HRC SOCAL	12-16	32	
				SOCAL	11	51	

Acoustic	Vessel Signature Evaluation	Surface ship, submarine and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	ASW3	HRC	4	20	Typically 1-5 days, up to 20 days
				HRC SOCAL	36	180	
				SOCAL	24	120	
Other Testing Activities							
Acoustic	Insertion/Extraction	Testing of submersibles capable of inserting and extracting personnel and payloads into denied areas from strategic distances.	M3, MF9	HRC	1	5	Up to 30 days
				SOCAL	1	5	
Acoustic	Signature Analysis Operations	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	HF1, M3, MF9	HRC	2	10	Multiple days
				SOCAL	1	5	

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, CA = California, HI = Hawaii

Office of Naval Research

Table 7 summarizes the proposed testing activities for the Office of Naval Research analyzed within the HSTT Study Area.

Table 7. Proposed Office of Naval Research Testing Activities Analyzed within the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Location*	*Annual # of Activities*	*5-Year # of Activities*	*Typical Duration per Activity*
Acoustic and Oceanographic Science and Technology							
Explosive, Acoustic	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, BB9, LF3, LF4, LF5, MF8, MF9, MF9, MF9, E3	HRC	2	10	Up to 14 days
				SOCAL	4	20	
Acoustic	Long Range Acoustic Communications	Bottom mounted acoustic source off of the Hawaiian Island of Kauai will transmit a variety of acoustic communications sequences.	LF4	HRC	3	15	Year-round, 200 days of active transmission

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex

Space and Naval Warfare Systems Command

Table 8 summarizes the proposed testing activities for the Space and Naval Warfare Systems Command analyzed within the HSTT Study Area.

Table 8. Space and Naval Warfare Systems Command Proposed Testing Activities Within the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin*	*Location*	*Annual # of Activities*	*5-Year # of Activities*	*Typical Duration per Activity*
Acoustic	Anti-Terrorism/Force Protection	Testing sensor systems that can detect threats to naval piers, ships, and shore infrastructure.	SD1	San Diego, CA	14	70	1 day
				SOCAL	16	80	
Acoustic	Communications	Testing of underwater communications and networks to extend the principles of FORCEnet below the ocean surface.	ASW2, ASW5, HF6, LF4	HRC	0-1	3	5 days, 6-8 hrs per day
				SOCAL	10	50	
Acoustic	Energy and Intelligence, Surveillance, and Reconnaissance Sensor Systems	Develop, integrate, and demonstrate Intelligence, Surveillance, and Reconnaissance systems and in-situ energy systems to support deployed systems.	AG, HF2, HF7, LF4, LF5, LF6, MF10	HRC	11-15	61	5 days, 6-8 hrs per day
				SOCAL	49-55	253	
				HSTT Transit Corridor	8	40	
Acoustic	Vehicle Testing	Testing of surface and subsurface vehicles and sensor systems, which may involve Unmanned Underwater Vehicles, gliders, and Unmanned Surface Vehicles.	BB4, FLS2, FLS3, HF6, LF3, M3, MF9, MF13, SAS1, SAS2, SAS3	HRC	4	20	5 days, 6-8 hrs per day
				SOCAL	166	830	
				HSTT Transit Corridor	2	10	

Notes: HRC – Hawaii Range Complex, SOCAL – Southern California Range Complex, HSTT – Hawaii-Southern California Training and Testing, CA – California

Summary of Acoustic and Explosive Sources Analyzed for Training and Testing

Table 9 through Table 12 show the acoustic source classes and numbers, explosive source bins and numbers, air gun sources, and pile driving and removal activities associated with Navy training and testing activities in the HSTT Study Area that were analyzed in the Navy's rulemaking/LOA application. Table 9 shows the acoustic source classes (*i.e.,* LF, MF, and HF) that could occur in any year under the Specified Activities for training and testing activities. Under the Specified Activities, acoustic source class use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Specified Activities takes into account that annual variability.

Table 9. Acoustic Source Classes Analyzed and Numbers Used During Training and Testing Activities in the HSTT Study Area.

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	195	975
	LF4	LF sources equal to 180 dB and up to 200 dB	H	0	0	589 – 777	3,131
			C	0	0	20	100
	LF5	LF sources less than 180 dB	H	0	0	1,814 – 2,694	9,950
	LF6	LF sources greater than 200 dB with long pulse lengths	H	121 – 167	668	40–80	240
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1 and 10 kHz	MF1	Hull-mounted surface ship sonars (e.g., AN/SQS-53C and AN/SQS-61)	H	5,779 – 6,702	28,809	1,540	5,612
	MF1K	Kingfisher mode associated with MF1 sonars	H	100	500	14	70
	MF2[3]	Hull-mounted surface ship sonars (e.g., AN/SQS-56)	H	0	0	54	270
	MF3	Hull-mounted submarine sonars (e.g., AN/BQQ-10)	H	2,080 – 2,175	10,440	1,311	6,553
	MF4	Helicopter-deployed dipping sonars (e.g., AN/AQS-22 and AN/AQS-13)	H	414 – 489	2,070	311 – 475	1,717
	MF5	Active acoustic sonobuoys (e.g., DICASS)	C	5,704 – 6,124	28,300	5,250 – 5,863	27,120
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1 and 10 kHz	MF6	Active underwater sound signal devices (e.g., MK 84)	C	9	45	1,141 – 1,226	5,835
	MF8	Active sources (greater than 200 dB) not otherwise binned	H	0	0	70	350
	MF9	Active sources (equal to 180 dB	H	0	0	5,139 – 5,165	25,753

		and up to 200 dB) not otherwise binned					
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned	H	0	0	1,824–1,992	9,288
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%	H	718 – 890	3,597	56	280
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%	H	161 – 215	884	660	3,300
	MF13	MF sonar source	H	0	0	300	1,500
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10 and 100 kHz	HF1	Hull-mounted submarine sonars (e.g., AN/BQQ-10)	H	1,795 – 1,816	8,939	772	3,859
	HF2	HF Marine Mammal Monitoring System	H	0	0	120	600
	HF3	Other hull-mounted submarine sonars (classified)	H	287	1,345	110	549
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10 and 100 kHz	HF4	Mine detection, classification, and neutralization sonar (e.g., AN/SQS-20)	H	2,316	10,380	16,299 – 16,323	81,447
	HF5	Active sources (greater than 200 dB) not otherwise binned	H	0	0	960	4,800
			C	0	0	40	200
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned	H	0	0	1,000 – 1,009	5,007
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned	H	0	0	1,380	6,900
	HF8	Hull-mounted surface ship sonars (e.g., AN/SQS-61)	H	118	588	1,032	3,072

Anti-Submarine Warfare (ASW): Tactical sources (e.g., active sonobuoys and acoustic countermeasures systems) used during ASW training and testing activities	ASW1	MF systems operating above 200 dB	H	194 – 261	1,048	470	2,350
	ASW2	MF Multistatic Active Coherent sonobuoy (e.g., AN/SSQ-125)	C	688–790	3,346	4,334 – 5,191	23,375
	ASW3	MF towed active acoustic countermeasure systems (e.g., AN/SLQ-25)	H	5,005 – 6,425	25,955	2,741	13,705
Anti-Submarine Warfare (ASW): Tactical sources (e.g., active sonobuoys and acoustic countermeasures systems) used during ASW training and testing activities	ASW4	MF expendable active acoustic device countermeasures (e.g., MK 3)	C	1,284 – 1,332	6,407	2,244	10,910
	ASW5 [4]	MF sonobuoys with high duty cycles	H	220– 300	1,260	522–592	2,740
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	231–237	1,137	923 – 971	4,560
	TORP 2	Heavyweight torpedo (e.g., MK 48)	C	521 – 587	2,407	404	1,948
	TORP 3		C	0	0	45	225
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	28	140	448 – 544	2,432
	FLS3	VHF sources with short pulse lengths, narrow beam widths, and focused beam patterns	H	0	0	2,640	13,200
Acoustic Modems (M): Systems used to transmit data through the water	M3	MF acoustic modems (greater than 190 dB)	H	61	153	518	2,588
Swimmer Detection Sonars (SD): Systems used to detect divers and submerged swimmers	SD1	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for	H	0	0	10	50

		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	H	0	0	1,960	9,800
	SAS2	HF SAS systems	H	900	4,498	8,584	42,920
	SAS3	VHF SAS systems	H	0	0	4,600	23,000
	SAS4	MF to HF broadband mine countermeasure sonar	H	42	210	0	0
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes	BB4	LF to MF oceanographic source	H	0	0	810 – 1,170	4,434
	BB7	LF oceanographic source	C	0	0	28	140
	BB9	MF optoacoustic source	H	0	0	480	2,400

[1] H = hours; C = count (e.g., number of individual pings or individual sonobuoys).
[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 (Specified Activities).
[3] MF2/MF2K are sources on frigate class ships, which were decommissioned during Phase II.
[4] Formerly ASW2 (H) in Phase II.
Notes: dB = decibel(s), kHz = kilohertz

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Table 10 shows the number of air guns shots proposed in the HSTT Study Area for training and testing activities.

TABLE 10—TRAINING AND TESTING AIR GUN SOURCES QUANTITATIVELY ANALYZED IN THE HSTT STUDY AREA

Source class category	Bin	Unit [1]	Training		Testing	
			Annual	5-year total	Annual	5-year total
Air Guns (AG): Small underwater air guns	AG	C	0	0	844	4,220

[1] C = count. One count (C) of AG is equivalent to 100 air gun firings.

Table 11 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 5-year period of the rule, the Navy will drive a total of 1190 piles by impact pile driving. Annually, for vibratory pile extraction, the Navy will extract 119 piles, two times a year for a total of 238 piles. Over the 5-year period of the rule, the Navy will extract a total of 1190 piles by vibratory pile extraction.

TABLE 11—SUMMARY OF PILE DRIVING AND REMOVAL ACTIVITIES PER 24-HOUR PERIOD IN THE HSTT STUDY AREA

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 12 shows the number of in-water explosives that could be used in any year under the Specified Activities for training and testing activities. Under the Specified Activities, bin use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Specified Activities takes into account that annual variability.

TABLE 12—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBERS USED DURING TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA

Bin	Net explosive weight (lb)	Example explosive source	Modeled underwater detonation depths (ft) [1]	Training		Testing	
				Annual	5-year total	Annual	5-year total
E1	0.1–0.25	Medium-caliber projectiles	0.3, 60	2,940	14,700	8,916–15,216	62,880
E2	>0.25–0.5	Medium-caliber projectiles	0.3, 50	1,746	8,730	0	0
E3	>0.5–2.5	Large-caliber projectiles	0.3, 60	2,797	13,985	2,880–3,124	14,844
E4	>2.5–5	Mine neutralization charge	10, 16, 33, 50, 61, 65, 650	38	190	634–674	3,065
E5	>5–10	5 in projectiles	0.3, 10, 50	4,730–4,830	23,750	1,400	7,000
E6	>10–20	Hellfire missile	0.3, 10, 50, 60	592	2,872	26–38	166
E7	>20–60	Demo block/shaped charge.	10, 50, 60	13	65	0	0
E8	>60–100	Lightweight torpedo	0.3, 150	33–88	170	57	285
E9	>100–250	500 lb bomb	0.3	410–450	2,090	4	20
E10	>250–500	Harpoon missile	0.3	219–224	1,100	30	150
E11	>500–650	650 lb mine	61, 150	7–17	45	12	60
E12	>650–1,000	2,000 lb bomb	0.3	16–21	77	0	0
E13	>1,000–1,740	Multiple Mat Weave charges.	NA [2]	9	45	0	0

[1] Net Explosive Weight refers to the amount of explosives; the actual weight of a munition may be larger due to other components.
[2] Not modeled because charge is detonated in surf zone; not a single E13 charge, but multiple smaller charges detonated in quick succession.
Notes: in = inch(es), lb = pound(s), ft = feet.

Vessel Movement

Vessels used as part of the Specified Activities include ships, submarines, unmanned vessels, 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 kn for fuel conservation. Submarines generally operate at speeds in the range of 8 to 13 kn 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 activity). Speeds generally range from 10 to 14 kn. While these speeds for large and small craft are representative of most events, some vessels need to temporarily operate outside of these parameters.

The number of Navy vessels used in the HSTT 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 HSTT Study Area, but would be typically conducted near naval ports, piers, and range areas. Navy vessel traffic would especially be concentrated near San Diego, California and Pearl Harbor, Hawaii. There is no seasonal differentiation in Navy vessel use. The majority of large vessel traffic occurs between the installations and the OPAREAS. Support craft would be more concentrated in the coastal waters in the areas of naval installations, ports and ranges. Activities involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to two weeks.

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 to environmental, socioeconomic, public health and safety, and cultural resources.

Navy standard operating procedures have been developed and refined over years of experience and are broadcast via numerous naval instructions and manuals, including, but not limited to:

- Ship, submarine, and aircraft safety manuals;
- Ship, submarine, and aircraft standard operating manuals;
- Fleet Area Control and Surveillance Facility range operating instructions;
- Fleet exercise publications and instructions;
- Naval Sea Systems Command test range safety and standard operating instructions;
- Navy instrumented range operating procedures;
- Naval shipyard sea trial agendas;
- Research, development, test, and evaluation plans;
- Naval gunfire safety instructions;
- Navy planned maintenance system instructions and requirements;
- Federal Aviation Administration regulations; and
- International Regulations for Preventing Collisions at Sea.

Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the Specified Activities, and has included them in the environmental analysis. Standard operating procedures that are recognized as providing a potential benefit to marine mammals during training and testing activities are noted below and discussed in more detail within the HSTT DEIS/OEIS.

- Vessel Safety
- Weapons Firing Safety
- Target Deployment Safety
- Towed In-Water Device Safety
- Pile Driving Safety

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/LOA application for greater detail.

Duration and Location

Training and testing activities would be conducted in the HSTT Study Area throughout the year from 2018 through 2023 for the five-year period covered by the regulations. The HSTT Study Area (see Figure 1.1–1 of the Navy's rulemaking/LOA application) is comprised of established operating and

warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes (the Hawaii Range Complex, the SOCAL Range Complex, and the Silver Strand Training Complex), and overlaps a portion of the Point Mugu Sea Range (PMSR). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor [1] on the high seas where sonar training and testing may occur. A Navy range complex consists of geographic areas that encompasses a water component (above and below the surface), 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 OPAREAs and special use airspace, which may be further divided to provide better control of the area and events being conducted for safety reasons. Please refer to the regional maps provided in the Navy's rulemaking/LOA application (Figures 2–1 through 2–8) for additional detail of the range complexes and testing ranges. The range complexes and testing ranges are described in the following sections.

Hawaii Range Complex

The Hawaii Range Complex encompasses ocean areas located around the Hawaiian Islands chain. The ocean areas extend from 16 degrees north latitude to 43 degrees north latitude and from 150 degrees west longitude to the International Date Line, forming an area approximately 1,700 nmi by 1,600 nmi. The largest component of the Hawaii Range Complex is the Temporary OPAREA, extending north and west from the island of Kauai, and comprising over two million square nautical miles (nmi^2) of air and sea space. The Temporary OPAREA is used primarily for missile testing by the Pacific Missile Range Facility (PMRF), and those missile tests are not part of the Navy's rulemaking/LOA application and are covered under other NEPA analysis. Other non-Navy entities such as various academic institutions and other Department of Defense agencies (DoD) such as the U.S. Air Force conduct activities in the PMRF. The PMRF activities referred to in the HSTT EIS/DEIS are very high altitude missile defense tests conducted by the Missile Defense Agency (MDA) (a non-Navy DoD command). For this rulemaking/LOA application, the area is used for Navy ship transits throughout the year. Despite the Temporary OPAREA's size, nearly all of the training and testing activities in the Hawaii Range Complex (HRC) take place within the smaller Hawaii OPAREA, that portion of the range complex immediately surrounding the island chain from Hawaii to Kauai (Figures 2–1 through 2–4 of the Navy's application). The Hawaii OPAREA consists of 235,000 nmi^2 of special use airspace and ocean areas. The HRC includes over 115,000 nmi^2 of combined special use airspace and air traffic control assigned airspace. As depicted in Figure 2–1 of the Navy's application, this airspace is almost entirely over the ocean and includes warning areas, air traffic controlled assigned airspace, and restricted areas.

The Hawaii Range Complex includes the ocean areas as described above, as well as specific training areas around the islands of Kauai, Oahu, and Maui (Figures 2–2, 2–3, and 2–4 respectively of the Navy's application). The Hawaii Range Complex also includes the ocean portion of the PMRF on Kauai, which is both a fleet training range and a fleet and DoD testing range. The facility includes 1,100 nmi^2 of instrumented ocean area at depths between 129 ft and 15,000 ft. The Hawaii Range Complex also includes the ocean areas around the designated Papahanaumokuakea Marine National Monument, referred hereafter as the Monument. Establishment of the Monument in June 2006 triggered a number of prohibitions on activities conducted in the Monument area. However, all military activities and exercises were specifically excluded from the listed prohibitions as long as the military exercises and activities are carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on monument resources and qualities. In 2016, the Monument was expanded from its original 139,818 square miles (mi^2) to 582,578 mi^2. The expansion of the Monument was primarily to the west—away from the portion of the Hawaii Range Complex where most training and testing activities are proposed to occur— and retained the military exclusion language contained in the monument designation.

Southern California Range Complex

The SOCAL Range Complex is located between Dana Point and San Diego, and extends southwest into the Pacific Ocean (Figures 2–5, 2–6, and 2–7 of the Navy's application). Although the range complex extends more than 600 nmi beyond land, most activities occur with 200 nmi of Southern California. The two primary components of the SOCAL Range Complex are the ocean OPAREAs and the special use airspace. These components encompass 120,000 nmi^2 of sea space and 113,000 nmi^2 of special use airspace. Most of the special use airspace in the SOCAL Range Complex is defined by W–291 (Figure 2–5 of the Navy's application). This warning area extends vertically from the ocean surface to 80,000 ft above mean sea level and encompasses 113,000 nmi^2 of airspace. The SOCAL Range Complex includes approximately 120,000 nmi^2 of sea and undersea space, largely defined as that ocean area underlying the Southern California special use airspace described above. The SOCAL Range Complex also extends beyond this airspace to include the surface and subsurface area from the northeastern border of W–291 to the coast of San Diego County, and includes San Diego Bay.

Point Mugu Sea Range Overlap

A small portion (approximately 1,000 nmi^2) of the Point Mugu Sea Range is included in the HSTT Study Area (Figure 2–5 of the Navy's application). Only that part of the Point Mugu Sea Range is used by the Navy for anti-submarine warfare training. This training uses sonar, is conducted in the course of major training exercises, and is analyzed in this request.

Silver Strand Training Complex

The Silver Strand Training Complex is an integrated set of training areas located on and adjacent to the Silver Strand, a narrow, sandy isthmus separating the San Diego Bay from the Pacific Ocean. It is divided into two non-contiguous areas: Silver Strand Training Complex-North and Silver Strand Training Complex-South (Figure 2–8 of the Navy's application). The Silver Strand Training Complex-North includes 10 oceanside boat training lanes (numbered as Boat Lanes 1–10), ocean anchorage areas (numbered 101–178), bayside water training areas (Alpha through Hotel), and the Lilly Ann drop zone. The boat training lanes are each 500 yards (yd) wide stretching 4,000 yd seaward and forming a 5,000

[1] Vessel transit corridors are the routes typically used by Navy assets to traverse from one area to another. The route depicted in Figure 1–1 of the Navy's rulemaking/LOA application is the shortest route between Hawaii and Southern California, making it the quickest and most fuel efficient. Depicted vessel transit corridor is notional and may not represent the actual routes used by ships and submarines transiting from Southern California to Hawaii and back. Actual routes navigated are based on a number of factors including, but not limited to, weather, training, and operational requirements.

yd long contiguous training area. The Silver Strand Training Complex-South includes four oceanside boat training lanes (numbered as Boat Lanes 11–14) and the TA-Kilo training area.

The anchorages lie offshore of Coronado in the Pacific Ocean and overlap a portion of Boat Lanes 1–10. The anchorages are each 654 yd in diameter and are grouped together in an area located primarily due west of Silver Strand Training Complex-North, east of Zuniga Jetty and the restricted areas on approach to the San Diego Bay entrance.

Ocean Operating Areas Outside the Bounds of Existing Range Complexes (Transit Corridor)

In addition to the range complexes that are part of the Study Area, a transit corridor outside the boundaries of the range complexes is also included as part of the Study Area in the analysis. Although not part of any defined range complex, this transit corridor is important to the Navy in that it provides adequate air, sea, and undersea space in which vessels and aircraft conduct training and some sonar maintenance and testing while enroute between Southern California and Hawaii. The transit corridor, notionally defined by the great circle route (*e.g.,* shortest distance) from San Diego to the center of the Hawaii Range Complex, as depicted in Figure 1–1 of the Navy's application, is generally used by ships transiting between the SOCAL Range Complex and Hawaii Range Complex. While in transit, ships and aircraft would, at times, conduct basic and routine unit level activities such as gunnery, bombing, and sonar training, testing, and maintenance, as long as the activities do not interfere with the primary objective of reaching their intended destination.

Pierside Locations, Pearl Harbor, and San Diego Bay

The Study Area includes select pierside locations where Navy surface ship and submarine sonar maintenance testing occur. For purposes of the Navy's application, pierside locations include channels and routes to and from Navy ports, and facilities associated with Navy ports and shipyards. These locations in the Study Area are located at Navy ports and naval shipyards in Pearl Harbor, Hawaii and in San Diego Bay, California (Figure 2–9 of the Navy's application). In addition, some training and testing activities occur throughout San Diego Bay.

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species and their associated stocks that have the potential to occur in the HSTT Study Area are presented in Table 13 along with an abundance estimate, an associated coefficient of variation value, and best/minimum abundance estimates. 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, air guns, and impact pile driving/vibratory extraction activities. In addition, the Navy is requesting ten mortalities of two marine mammal stocks from explosives, and three takes of large whales by serious injury or mortality from vessel strikes over the five-year period. One marine mammal species, the Hawaiian monk seal, has critical habitat designated under the Endangered Species Act in the HSTT Study Area (described below).

Information on the status, distribution, abundance, population trends, and ecology of marine mammals in the HSTT Study Area may be found in Chapter 4 of the Navy's rulemaking/LOA application. Additional information on the general biology and ecology of marine mammals are included in the HSTT 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 HSTT Study Area and are found specifically in the U.S. Pacific Marine Mammal SAR (Carretta *et al.,* 2017) (see *https://www.fisheries.noaa.gov/resource/document/us-pacific-marine-mammal-stock-assessments-2016*).

The species carried forward for analysis (and described in Table 13 below) are those likely to be found in the HSTT 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 (*e.g.,* species which were extirpated because of factors such as nineteenth and twentieth century commercial exploitation). Extralimital species, species that would not be considered part of the HSTT seasonal species assemblage (*e.g.,* North Pacific right whale, any tropical odontocete species in SOCAL), were not included in the analysis.

TABLE 13—MARINE MAMMALS OCCURRENCE WITHIN THE HSTT STUDY AREA

Common name	Scientific name	Stock	Status		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population
			MMPA	ESA			
Blue whale	*Balaenoptera musculus.*	Eastern North Pacific.	Depleted	Endangered	Southern California.		1,647 (0.07)/1,551
		Central North Pacific.	Depleted	Endangered	Hawaii	Summer	81 (1.14)/38
Bryde's whale	*Balaenoptera brydei/edeni.*	Eastern Tropical Pacific.			Southern California.		unknown
		Hawaiian	Depleted		Hawaii		798 (0.28)/633
Fin whale	*Balaenoptera physalus.*	California, Oregon, and Washington.	Depleted	Endangered	Southern California.		9,029 (0.12)/8,127
		Hawaiian	Depleted	Endangered	Hawaii	Summer	58 (1.12)/27
Gray whale	*Eschrichtius robustus.*	Eastern North Pacific.			Southern California.		20,990 (0.05)/20,125
		Western North Pacific.	Depleted	Endangered	Southern California.		140 (0.04)/135
Humpback whale	*Megaptera novaeangliae.*	California, Oregon, and Washington.	Depleted	Threatened/Endangered [1].	Southern California.		1,918 (0.03)/1,876
		Central North Pacific.			Hawaii	Summer	10,103 (0.30)/7,890
Minke whale	*Balaenoptera acutorostrata.*	California, Oregon, and Washington.			Southern California.		636 (0.72)/369
		Hawaiian			Hawaii	Summer	unknown

TABLE 13—MARINE MAMMALS OCCURRENCE WITHIN THE HSTT STUDY AREA—Continued

Common name	Scientific name	Stock	Status		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population
			MMPA	ESA			
Sei whale	*Balaenoptera borealis.*	Eastern North Pacific.	Depleted	Endangered	Southern California.		519 (0.4)/374
		Hawaii	Depleted	Endangered	Hawaii	Summer	178 (0.90)/93
Sperm whale	*Physeter macrocephalus.*	California, Oregon, and Washington.	Depleted	Endangered	Southern California.		2,106 (0.58)/1,332
		Hawaiian	Depleted	Endangered	Hawaii		3,354 (0.34)/2,539
Pygmy sperm whale.	*Kogia breviceps*	California, Oregon, and Washington.			Southern California.	Winter and Fall	4,111 (1.12)/1,924
		Hawaiian			Hawaii		unknown
Dwarf sperm whale.	*Kogia sima*	California, Oregon, and Washington.			Southern California.		unknown
		Hawaiian			Hawaii		unknown
Baird's beaked whale.	*Berardius bairdii*	California, Oregon, and Washington.			Southern California.		847 (0.81)/466
Blainville's beaked whale.	*Mesoplodon densirostris.*	Hawaiian			Hawaii		2,338 (1.13)/1,088
Cuvier's beaked whale.	*Ziphius cavirostris.*	California, Oregon, and Washington.			Southern California.		6,590 (0.55)/4,481
		Hawaiian			Hawaii		1,941 na/1,142
Longman's beaked whale.	*Indopacetus pacificus.*	Hawaiian			Hawaii		4,571 (0.65)/2,773
Mesoplodon beaked whales.	*Mesoplodon spp.*	California, Oregon, and Washington.			Southern California.		694 (0.65)/389
Common Bottlenose dolphin.	*Tursiops truncatus.*	California Coastal.			Southern California.		453 (0.06)/346
		California, Oregon, and Washington Offshore.					1,924 (0.54)/1,255
		Hawaiian Pelagic			Hawain		5,950 (0.59)/3,755
		Kauai and Niihau			Hawaii		184 (0.11)/168
		Oahu			Hawaii		743 (0.54)/485
		4-Islands			Hawaii		191 (0.24)/156
		Hawaii Island			Hawaii		128 (0.13)/115
False killer whale	*Pseudorca crassidens.*	Main Hawaiian Islands Insular.	Depleted	Endangered	Hawaii		151 (0.20)/92
		Hawaii Pelagic			Hawaii		1,540 (0.66)/928
		Northwestern Hawaiian Islands.			Hawaii		617 (1.11)/290
Fraser's dolphin	*Lagenodelphis hosei.*	Hawaiian			Hawaii		16,992 (0.66)/10,241
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.			Southern California.		240 (0.49)/162
		Eastern North Pacific Transient/West Coast Transient[2].			Southern California.		243 unknown/243
		Hawaiian			Hawaii		101 (1.00)/50
Long-beaked common dolphin.	*Delphinus capensis.*	California			Southern California.		101,305 (0.49)/68,432
Melon-headed whale.	*Peponocephala electra.*	Hawaiian Islands			Hawaii		5,794 (0.20)/4,904
		Kohala Resident					447 (0.12)/404
Northern right whale dolphin.	*Lissodelphis borealis.*	California, Oregon, and Washington.			Southern California.		26,556 (0.44)/18,608
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	California, Oregon, and Washington.			Southern California.		26,814 (0.28)/21,195
Pantropical spotted dolphin.	*Stenella attenuata.*	Oahu			Hawaii		unknown
		4-Islands					unknown
		Hawaii Island			Hawaii		unknown
		Hawaii Pelagic			Hawaii		15,917 (0.40)/11,508
Pygmy killer whale	*Feresa attenuata*	Tropical			Southern California.	Winter & Spring	unknown
		Hawaiian			Hawaii		3,433 (0.52)/2,274
Risso's dolphins	*Grampus griseus*	California, Oregon, and Washington.			Southern California.		6,336 (0.32)/4,817
		Hawaiian			Hawaii		7,256 (0.41)/5,207
Rough-toothed dolphin.	*Steno bredanensis.*	na[3]			Southern California.		unknown
		Hawaiian			Hawaii		6,288 (0.39)/4,581

TABLE 13—MARINE MAMMALS OCCURRENCE WITHIN THE HSTT STUDY AREA—Continued

Common name	Scientific name	Stock	Status		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population
			MMPA	ESA			
Short-beaked common dolphin.	*Delphinus delphis.*	California, Oregon, and Washington.	.....	.....	Southern California.	.....	969,861 (0.17)/839,325
Short-finned pilot whale.	*Globicephala macrorhynchus.*	California, Oregon, and Washington.	.....	.....	Southern California.	.....	836 (0.79)/466
		Hawaiian	.....	.....	Hawaii	.....	12,422 (0.43)/8,782
Spinner dolphin	*Stenella longirostris.*	Hawaii Pelagic ...	.....	.....	Hawaii	.....	unknown
		Hawaii Island					631 (0.04)/585
		Oahu and 4-Islands.	.....	.....	Hawaii	.....	355 (0.09)/329
		Kauai and Niihau	.....	.....	Hawaii	.....	601 (0)/509
		Kure and Midway	.....	.....	Hawaii	.....	unknown
		Pearl and Hermes.	.....	.....	Hawaii	.....	unknown
Striped dolphin	*Stenella coeruleoalba.*	California, Oregon, and Washington.	.....	.....	Southern California.	.....	29,211 (0.20)/24,782
		Hawaiian	.....	.....	Hawaii	.....	20,650 (0.36)/15,391
Dall's porpoise	*Phocoenoides dalli.*	California, Oregon, and Washington.	.....	.....	Southern California.	.....	25,750 (0.45)/17,954
Harbor seal	*Phoca vitulina*	California	.....	.....	Southern California.	.....	30,968 na/27,348
Hawaiian monk seal.	*Neomonachus schauinslandi.*	Hawaiian	Depleted	Endangered	Hawaii	.....	1,272 na/1,205
Northern elephant seal.	*Mirounga angustirostris.*	California	.....	.....	Southern California.	.....	179,000 na/81,368
California sea lion	*Zalophus californianus.*	U.S. Stock	.....	.....	Southern California.	.....	296,750 na/153,337
Guadalupe fur seal.	*Arctocephalus townsendi.*	Mexico to California.	Depleted	Threatened	Southern California.	.....	20,000 na/15,830
Northern fur seal ..	*Callorhinus ursinus.*	California	.....	.....	Southern California.	.....	14,050 na/7,524

Notes:

[1] The two humpback whale Distinct Population Segments making up the California, Oregon, and Washington stock present in Southern California are the Mexico Distinct Population Segment, listed under ESA as Threatened, and the Central America Distinct Population Segment, which is listed under ESA as Endangered.

[2] This stock is mentioned briefly in the Pacific Stock Assessment Report (Carretta *et al.,* 2017) and referred to as the ''Eastern North Pacific Transient'' stock; however, the Alaska Stock Assessment Report contains assessments of all transient killer whale stocks in the Pacific and the Alaska Stock Assessment Report refers to this same stock as the ''West Coast Transient'' stock (Muto *et al.,* 2017).

[3] Rough-toothed dolphin has a range known to include the waters off Southern California, but there is no recognized stock or data available for the U.S west coast.

Below, we include additional information about the marine mammals in the area of the Specified Activities, where available, that will inform our analysis, such as identifying areas of important habitat or known behaviors, or where Unusual Mortality Events (UME) have been designated.

Critical Habitat

Currently there is one marine mammal, the ESA-listed Hawaiian monk seal, with designated critical habitat within the HSTT Study Area. However, critical habitat for ESA-listed Main Hawaiian Islands insular false killer whale was recently proposed in November 2017 (82 FR 51186; November 3, 2017), designating waters from the 45 m depth contour to the 3200 m depth contour around the main Hawaiian Islands from Niihau east to Hawaii. However, some areas were proposed for exclusion based on considerations of economic and national security impacts.

Critical habitat for Hawaiian monk seals was designated in 1986 (51 FR 16047; April 30, 1986) and later revised in 1988 (53 FR 18988; May 26, 1988) and in 2015 (80 FR 50925; August 21, 2015) (NOAA, 2015a) (Figure 4–1 of the Navy's application). The essential features of the critical habitat were identified as: (1) Adjacent terrestrial and aquatic areas with characteristics preferred by monk seals for pupping and nursing; (2) shallow, sheltered aquatic areas adjacent to coastal locations preferred by monk seals for pupping and nursing; (3) marine areas from 0 to 500 m in depth preferred by juvenile and adult monk seals for foraging; (4) areas with low levels of anthropogenic disturbance; (5) marine areas with adequate prey quantity and quality; and (6) significant areas used by monk seals for hauling out, resting, or molting (NOAA, 2015a).

In the Northwestern Hawaiian Islands Hawaiian monk seal critical habitat includes all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland as well as the seafloor and marine habitat 10 m in height above the seafloor from the shoreline out to the 200 m depth contour around Kure Atoll, Midway Atoll, Pearl and Hermes Reef, Lisianski Island, Laysan Island, Maro Reef, Gardner Pinnacles, French Frigate Shoals, Necker Island and Nihoa Island. In the main Hawaiian Islands, Hawaiian monk seal critical habitat includes the seafloor and marine habitat to 10 m above the seafloor from the 200 m depth contour through the shoreline and extending into terrestrial habitat 5 m inland from the shoreline between identified boundary points around Kaula Island (includes marine habitat only, some excluded areas see areas, Niihau (includes marine habitat from 10 m–200 m in depth; some excluded areas), Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), Hawaii.

The approximate area encompassed by the Northwestern Hawaiian Islands was designated as the Papahanaumokuakea Monument in 2006, in part to protect the habitat of the Hawaiian monk seal. Hawaiian monk seals are managed as a single stock. There are six main reproductive subpopulations at: French Frigate Shoals, Laysan Island, Lisianski Island,

Pearl and Hermes Reef, Midway Island, and Kure Atoll in the northwestern Hawaiian Islands.

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 (Van Parijs, 2015). 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. An interactive map of the BIAs may be found here: *https://cetsound.noaa.gov/biologically-important-area-map*.

In Hawaii, 21 BIAs fall within or overlap with the HSTT Study Area. These include 11 small and resident population areas for species including dwarf sperm whales, Blainville's beaked whales, Cuvier's beaked whales, pygmy killer whales, short-finned pilot whales, melon-headed whales, false killer whales, pantropical spotted dolphins, spinner dolphins, rough-toothed dolphins, and common bottlenose dolphins (see Appendix K of the HSTT DEIS/OEIS for figures depicting these areas). In addition, six non-contiguous areas located adjacent to the eight main Hawaiian Islands have been designated as a humpback whale reproductive BIA (Baird *et al.,* 2015c).

Five of the 28 BIAs that were identified for four species off the U.S. west coast (Calambokidis *et al.,* 2015a) are located within or overlapping the SOCAL portion of the Study Area (see Appendix K of the HSTT DEIS/OEIS for figures depicting these areas). These identified areas include four feeding areas for blue whales and a migration area for gray whales (Calambokidis *et al.,* 2015a).

Main Hawaiian Islands Humpback Whale Reproduction BIA

A single biologically important area around and between portions of eight islands was identified for breeding humpback whales in the Main Hawaiian Islands from December through April (Baird *et al.,* 2015a) (see Figure K.3–1 of the HSTT DEIS/OEIS). The Main Hawaiian Islands Humpback Whale Reproduction BIA contains several humpback whale breeding sub-areas off the coasts of Kauai, Niihau, Oahu, Maui, and Hawaii Island. The highest densities of whales occur in waters that are less than 200 m in depth. The Main Hawaiian Islands Humpback Whale Reproduction Area also overlaps the Navy's 4-Islands Region and Hawaii Island Mitigation Areas and Humpback Whale Special Reporting Areas described later in this document (and also shown in Appendix K of the HSTT DEIS/OEIS). The Main Hawaiian Islands Humpback Whale Reproduction BIA also encompasses the entire Humpback Whale National Marine Sanctuary.

Dwarf Sperm Whales Small and Resident Population

A year-round BIA has been identified for a small resident population of dwarf sperm whales located off the island of Hawaii (Mahaffy *et al.,* 2009; Baird *et al.,* 2013a) with sightings between 500 and 1,000 m in depth (Baird et *al.,* 2013a). This BIA also overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

Blainville's Beaked Whales Small and Resident Population

A year-round BIA for a small resident population of Blainville's beaked whales has been identified off the island of Hawaii (McSweeney *et al.,* 2007; Schorr *et al.,* 2009a) with the highest density of groups in water between 500 and 1,500 m in depth, and density decreasing offshore (Baird *et al.,* 2015c). This BIA also overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

Cuvier's Beaked Whales Small and Resident Population

A year-round BIA for a small resident population of Cuvier's beaked whales has been identified off the island of Hawaii with the highest density of groups in water between 1,500 and 4,000 m in depth, and density decreasing offshore (Baird *et al.,* 2015c). This BIA also mostly overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

Pygmy Killer Whales Small and Resident Population

A year-round BIA for a small resident population of pygmy killer whales has been identified for the Hawaii Island resident population. This BIA includes the west side of the island of Hawaii, from northwest of Kawaihae south to the south point of the island, and along the southeast coast of the island. This BIA also overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

Short-Finned Pilot Whales Small and Resident Population

A year- round BIA for a small resident population of short-finned pilot whales has been identified off the island of Hawaii (Baird *et al.,* 2011c, 2013a; Mahaffy, 2012). Short-finned pilot whales are primarily connected to slope habitats off the islands, with the highest density between 1,000 and 2,500 m in depth, dropping off significantly after 2,500 m (Baird e*t al.,* 2013a). This BIA also overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

Melon-Headed Whales Small and Resident Population

A year-round BIA has been identified for a small and resident population of melon-headed whales off the island of Hawaii, primarily using the Kohala area. This BIA also overlaps the Navy's Hawaii Island Mitigation Area described later in this document.

False Killer Whales Small and Resident Population

A year-round BIA has been identified for a small and resident insular population of false killer whales off the coasts of Oahu, Maui, Molokai, Lanai, and Hawaii Island. The known range of this population extends from west of Niihau to east of Hawaii, out to 122 km offshore (Baird *et al.,* 2012). This BIA also partially overlap the Navy's 4-Islands Region and Hawaii Island Mitigation Areas described later in this document.

Pantropical Spotted Dolphins Small and Resident Populations

Three year-round BIAs have been identified for small and resident populations of pantropical spotted dolphin. Three stocks of this species occurs around the main Hawaiian Islands (Oahu, the 4-Island Region, and off the main island of Hawaii). Two of these BIAs also overlap the Navy's 4-Islands Region and Hawaii Island Mitigation Areas described later in this document.

Spinner Dolphins Small and Resident Populations

Year-round BIAs have been identified for five small and resident populations of spinner dolphins. The boundaries of these populations are out to 10 nmi from shore around Kure and Midway Atolls, Pearl and Hermes Reef, Kauai and Niihau, Oahu and the 4-Islands Region and off the main island of Hawaii (Carretta *et al.,* 2014). Two of these BIAs also overlap the Navy's 4-Islands Region and Hawaii Island Mitigation Areas described later in this document.

Rough-Toothed Dolphins Small and Resident Population

A year-round BIA has been identified for a small demographically isolated resident population off the island of Hawaii (Baird *et al.,* 2008a; Albertson,

2015). This species is also found elsewhere among the Hawaiian Islands. The Navy's Hawaii Island Mitigation Area also overlaps with the majority of this BIA described later in this document.

Common Bottlenose Dolphins Small and Resident Populations

Year-round BIAs have been identified for the four insular stocks of bottlenose dolphins in Hawaiian waters. They are found both nearshore and offshore areas (Barlow, 2006), but around the main Hawaiian Islands they are primarily found in depths of less than 1,000 m (Baird *et al.,* 2013a). The Navy's 4-Islands Region Mitigation Area overlaps portions of the BIA off of Molokai, Maui, and Lanai and the Hawaii Island Mitigation Area (described later in this document) includes the entire BIA off of the Island of Hawaii.

Blue Whale Feeding BIAs

There are nine feeding area BIAs identified for blue whales off the U.S. west coast (Calambokidis *et al.,* 2015a), but only four overlap with the SOCAL portion of the HSTT Study Area (see Figure K.4–1 of the HSTT DEIS/OEIS). Two of these feeding areas (the Santa Monica Bay to Long Beach and the San Nicolas Island feeding area BIAs) are at the extreme northern edge and slightly overlap with the SOCAL portion of the HSTT Study Area. The remaining two feeding areas (the Tanner-Cortes Bank and the San Diego feeding area BIAs) are entirely within the SOCAL portion of the HSTT Study Area (Calambokidis *et al.,* 2015a). The feeding behavior for which these areas are designated occurs from June to October (Aquatic Mammals, 2015; Calambokidis *et al.,* 2015a). The San Diego blue whale feeding area overlaps with the Navy's San Diego Arc Mitigation Area as described later in this document.

Gray Whale Migration BIA

Calambokidis *et al.* (2015) identified a gray whale migration area off Southern California and overlapping with all the Southern California portion of the HSTT Study Area north of the border with Mexico (Figure K.4–7). This migration area covers approximately 22,300 km ^{2} of water space within the HSTT Study Area.

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. Separately, section 304(d) of the NMSA requires Federal agencies to consult with the Office of National Marine Sanctuaries whenever their Specified Activities are likely to destroy, cause the loss of, or injure a sanctuary resource. There are two national marine sanctuaries managed by the Office of National Marine Sanctuaries within the Study Area, the Hawaiian Islands Humpback Whale NMS and Channel Islands NMS (see Table 6.1–2 and Figures 6.1–3 and 6.1–4 of the HSTT DEIS/OEIS), which are described below.

Hawaiian Islands Humpback Whale NMS

The Hawaiian Islands Humpback Whale NMS is a single-species managed sanctuary, composed of 1,035 nmi^2 of the waters around Maui, Lanai, and Molokai; and smaller areas off the north shore of Kauai, off Hawaii's west coast, and off the north and southeast coasts of Oahu. The Sanctuary is entirely within the HRC of the HSTT Study Area and constitutes one of the world's most important Hawaii humpback whale Distinct Population Segment (DPS) habitats (81 FR 62259; September 8, 2016), and is a primary region for humpback reproduction in the United States (National Marine Sanctuaries Program, 2002). Scientists estimate that more than 50 percent of the entire North Pacific humpback whale population migrates to Hawaiian waters each winter to mate, calve, and nurse their young. The North Pacific humpback whale population has been split into two DPSs. The Hawaii humpback whale DPS migrates to Hawaiian waters each winter and is not listed under the ESA. In addition to protection under the MMPA, the Hawaii humpback whale DPS is protected in sanctuary waters by the Hawaiian Islands NMS. The sanctuary was created to protect humpback whales and shallow, protected waters important for calving and nursing (Office of National Marine Sanctuaries, 2010).

The Hawaiian Islands Humpback Whale NMS overlaps with the Main Hawaiian Islands Humpback Whale Reproduction Area (BIA) identified in Van Parijs (2015) and Baird et al. (2015) (shown in Figure K.3–1 of Appendix K and as discussed in Appendix K, Section K.3.1 (Main Hawaiian Islands Humpback Whale Reproduction Area of the HSTT DEIS/OEIS)).

Channel Islands NMS

The Channel Islands NMS is an ecosystem-based managed sanctuary consisting of an area of 1,109 nmi ^{2} around Anacapa Island, Santa Cruz Island, Santa Rosa Island, San Miguel Island, and Santa Barbara Island to the south. Only 92 nmi ^{2}, or about 8 percent of the sanctuary, occurs within the SOCAL portion of the Study Area (see Figure 6.1–4 of the HSTT DEIS/OEIS). The Study Area overlaps with the sanctuary at Santa Barbara Island. In addition, the Navy has proposed to implement the Santa Barbara Island Mitigation Area around Santa Barbara Island out to 6 nmi as described later in this document (also see Section K.2.2, Mitigation Areas to be Implemented of the HSTT DEIS/OEIS). As an ecosystem-based managed sanctuary, key habitats include kelp forest, surfgrass and eelgrass, intertidal zone, nearshore subtidal, deepwater benthic, and water column habitat. The diversity of habitats onshore and offshore contributes to the high species diversity in the Channel Islands NMS, with more than 195 species of birds, at least 33 species of cetaceans, 4 species of sea turtles, at least 492 species of algae and 4 species of sea grasses, a variety of invertebrates (including two endangered species (black abalone and the white abalone)), and 481 species of fish (NMS, 2009b).

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 16 formally recognized UMEs affecting marine mammals in California and Hawaii and involving species under NMFS's jurisdiction. Two UMEs that could be relevant to informing the current analysis are discussed below. Specifically, the California sea lion UME in California is still open, but will be closed soon. The Guadalupe fur seal UME in California is still active and involves an ongoing investigation.

California Sea Lion UME

Elevated strandings of California sea lion pups began in Southern California in January 2013. In 2013, over 1,600 California sea lions stranded alive along the Southern California coastline and

over 3,500 live stranded California sea lions stranded on beaches in 2015, which was the highest number on record. Approximately 13,000 California sea lions (both live and dead) stranded from January 1, 2013, through December 31, 2017. Strandings in 2017 have finally returned to baseline (approximately 1,400/yr). The UME is currently defined to include pup and yearling California sea lions (0–2 years of age). Many of the sea lions were emaciated, dehydrated, and very underweight for their age. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey, especially sardines, a high value food source for both weaned pups and nursing mothers. Current data show changes in availability of sea lion prey in Southern California waters was likely a contributor to the UME, and this change was most likely secondary to ecological factors (El Niño and Warm Water Blob). Sardine spawning grounds shifted further offshore in 2012 and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicate that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers and weaned pups. Current evidence does not support that this UME was caused by a single infectious agent, though a variety of disease-causing bacteria and viruses were found in samples from sea lion pups. This investigation will soon be closed. Please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california* for more information on this UME.

Guadalupe Fur Seal UME

Increased strandings of Guadalupe fur seals began along the entire coast of California in January 2015 and were eight times higher than the historical average (approximately 10 seals/yr). Strandings have continued since 2015 and have remained well above average through 2017. As of March 8, 2018, the total number of Guadalupe fur seals to date in the UME is 241. Strandings are seasonal and generally peak in April through June of each year. The Guadalupe fur seal strandings have been mostly weaned pups and juveniles (1–2 years old) with both live and dead strandings occurring. Current findings from the majority of stranded animals include primary malnutrition with secondary bacterial and parasitic infections. This UME is occurring in the same area as the ongoing 2013–2017 California sea lion UME. This investigation is ongoing. Please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2018-guadalupe-fur-seal-unusual-mortality-event-california* for more information on this UME.

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;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz; and
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 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 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 instances of take that could occur from these activities. 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 HSTT Study Area. The Navy analyzed potential impacts to marine mammals from acoustic and explosive sources as well as vessel strikes.

Other potential impacts to marine mammals from training and testing activities in the HSTT Study Area were analyzed in the HSTT DEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal take. Therefore, the Navy has not requested authorization for take of marine mammals incidental to other components of their Specified 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 acoustic or explosive stressors including non-impulsive (sonar and other active acoustic sources) and impulsive (explosives, impact pile driving, and air guns) stressors, and vessel strikes.

For the purpose of MMPA incidental take authorizations, NMFS's 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 activities would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activities would adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activities 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 HSTT Study Area, so this determination is inapplicable to the HSTT 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. Explosives 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 possibly 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 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'' (TS)) is the better-understood of these two effects, and the only one that is actually expected to occur. The second effect, 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 TS. An animal can experience a TTS and/or 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 air guns. Finneran *et al.* (2015) suggest that the potential for air guns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of air gun 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 air gun 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 air gun 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 because 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). 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. It has also been argued that traumas from some beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003); however, there is no conclusive evidence of this (Rommel *et al.,* 2006).

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, and 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, while there are several hypotheses, 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 support 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. In addition, 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 Navy's Study Area (Navy's Atlantic Fleet 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 low-frequency active sonar (LFAS)/mid-frequency active sonar (MFAS)/high-frequency active sonar (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 in terrestrial vertebrates; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000).

Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; 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 HSTT 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 notice 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 five-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). There are limited data on flight response for marine mammals; however, 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.

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 air gun 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 air guns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were six percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that air gun 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 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). 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 will help better inform a determination of whether foraging disruptions incur fitness consequences. Goldbogen *et al.* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed to 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. 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 United States 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 air gun 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 air gun survey. During the first 72 hrs 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 a Navy Study Area. This displacement persisted for a time period well beyond the 10-day duration of air gun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize tha 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 air gun 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 air gun 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 water gun (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 air gun surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active air gun 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, 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 received levels 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 California and Hawaii 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 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 *et al.* (2007) 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 (included in this preamble 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 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 5 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*) that reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2 × 103 kiloJoules/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-hr 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 mammal strandings have been linked to a variety of causes, such as illness from exposure to infectious agents, biotoxins, or parasites; starvation; unusual oceanographic or weather events; or anthropogenic causes including fishery interaction, ship strike, entrainment, entrapment, sound exposure, or combinations of these stressors sustained concurrently or in series. Historically, the cause or causes of most strandings have remained unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982), but the development of trained, professional stranding response networks and improved analyses have led to a greater understanding of marine mammal stranding causes (Simeone and Moore in press).

Numerous studies suggest that the physiology, behavior, habitat, social, 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).

Historically, stranding reporting and response efforts have been inconsistent, although significant improvements have occurred over the last 25 years. Reporting forms for basic (''Level A'') information, rehabilitation disposition, and Human Interaction have been standardized nationally (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/level-data-collection-marine-mammal-stranding-events*). However, data collected beyond basic information varies by region (and may vary from case to case), and are not standardized across the United States. Logistical conditions such as weather, time, location, and decomposition state may also affect the ability of the stranding network to thoroughly examine a specimen (Carretta *et al.,* 2016b; Moore *et al.,* 2013). While the investigation of stranded animals provides insight into the types of threats marine mammal populations face, full investigations are only possible and conducted on a small fraction of the total number of strandings that occur, limiting our understanding of the causes of strandings (Carretta *et al.,* 2016a). Additionally, and due to the variability in effort and data collected, the ability to interpret long-term trends in stranded marine mammals is complicated.

Along the coasts of the continental United States and Alaska between 2001 and 2009, there were on average approximately 12,545 cetacean strandings and 39,104 pinniped strandings (51,649 total) per year (National Marine Fisheries Service, 2016i). Several mass strandings (strandings that involve two or more individuals of the same species, excluding a single mother-calf pair) that have occurred over the past two decades have been associated with anthropogenic activities that introduced sound into the marine environment such as naval operations and seismic surveys. An in-depth discussion of strandings is in the Navy's Technical Report on Marine Mammal Strandings Associated with U.S. Navy Sonar Activities (U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017).

Worldwide, there have been several efforts to identify relationships between cetacean mass stranding events and military active sonar (Cox *et al.,* 2006, Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of mass stranding events around the world consisting of two or more individuals of Cuvier's beaked whales, records from the International Whaling Commission (IWC)(2005) show that a quarter (9 of 41) were associated with concurrent naval patrol, explosion, maneuvers, or MFAS. D'Amico *et al.* (2009) reviewed beaked whale stranding data compiled primarily from the published literature, which provides an incomplete record of stranding events, as many are not written up for publication, along with unpublished information from some regions of the world.

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. Other cetacean species with naval sonar implicated in stranding events include harbor porpoise (*Phocoena phocoena*) (Norman *et al.,* 2004, Wright *et al.,* 2013) and common dolphin (*Delphinus delphis*) (Jepson and Deaville 2009).

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.

Gulf of California, Mexico

One stranding event was contemporaneous with and reasonably associated spatially with the use of seismic air guns. 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 air guns with a total volume of 8,500 in^3 (Hildebrand, 2004; Taylor *et al.,* 2004).

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) (Cox et al., 2006; Fernandez, 2006; U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017). These five mass strandings have resulted in about 40 known cetacean deaths consisting mostly of beaked whales and with close linkages to mid-frequency active sonar activity. In these circumstances, exposure to non-impulsive acoustic energy was considered a potential indirect cause of death of the marine mammals (Cox *et al.,* 2006). Only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. 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. 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 the proposed mitigation measures 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 hrs 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, Kauai, 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 2 km) 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 Along Southern California and Hawaii

Stranding events, specifically UMEs that occurred along Southern California or Hawaii (inclusive of the HSTT Study

Area) were previously discussed in the Description of Marine Mammals section.

Data were gathered from stranding networks that operate within and adjacent to the HSTT Study Area and reviewed in an attempt to better understand the frequency that marine mammal strandings occur and what major causes of strandings (both human-related and natural) exist in areas around the HSTT Study Area (NMFS, 2015a). From 2010 through 2014, there were 314 cetacean and phocid strandings reported in Hawaii, an annual average of 63 strandings per year. Twenty-seven species stranded in this region. The most common species reported include the Hawaiian monk seal, humpback whale, sperm whale, striped and spinner dolphin. Although many marine mammals likely strand due to natural or anthropogenic causes, the majority of reported type of occurrences in marine mammal strandings in the HSTT Study Area include fisheries interactions, entanglement, vessel strike and predation. Bradford and Lyman (2015) address overall threats from human activities and industries on stocks in Hawaii.

In 2004, a mass out-of-habitat aggregation of melon-headed whales occurred in Hanalei Bay (see discussion above under ''Strandings Associated with Active Sonar''). It is speculated that sonar operated during a major training exercise may be related to the incident. Upon further investigation, sonar was only considered as a plausible, but not sole, contributing factor among many factors in the event. The Hanalei Bay incident does not share the characteristics observed with other mass strandings of whales coincident with sonar activity (*e.g.,* specific traumas, species composition, etc.) (Southall *et al.,* 2006; U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017). Additional information on this event is available in the Navy's Technical Report on Marine Mammal Strandings Associated with U.S. Navy Sonar Activities (U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017). In addition, on October 31, 2017, at least five pilot whales live-stranded in Nawiliwili Harbor on Kauai. NMFS has yet to determine a cause for that stranding, but Navy activities can be dismissed from consideration given there were no Navy training or testing stressors present in the area before or during the stranding (National Marine Fisheries Service, 2017b).

Records for strandings in San Diego County (covering the shoreline for the Southern California portion of the HSTT Study Area) indicate that there were 143 cetacean and 1,235 pinniped strandings between 2010 and 2014, an annual average of about 29 and 247 per year, respectively. A total of 16 different species have been reported as stranded within this time frame. The majority of species reported include long-beaked common dolphins and California sea lions, but there were also reports of pacific white-sided, bottlenose and Risso's dolphins, gray, humpback, and fin whales, harbor seals and Northern elephant seals (National Marine Fisheries Service, 2015b, 2016a). However, stranded marine mammals are reported along the entire western coast of the United States each year. Within the same timeframe, there were 714 cetacean and 11,132 pinniped strandings reported outside of the Study Area, an annual average of about 142 and 2,226 respectively. Species that strand along the entire west coast are similar to those that typically strand within the Study Area with additional reports of harbor porpoise, Dall's porpoise, Steller sea lions, and various fur seals. The most common reported type of occurrence in stranded marine mammals in this region include fishery interactions, illness, predation, and vessel strikes (NMFS, 2016a). It is important to note that the mass stranding of pinnipeds along the west coast considered part of a NMFS declared UME are still being evaluated. The likely cause of this event is the lack of available prey near rookeries due to warming ocean temperatures (NOAA, 2016a). Carretta *et al.* (2013b; 2016b) provide additional information and data on the threats from human-related activities and the potential causes of strandings for the U.S. Pacific coast marine mammal stocks.

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. Lethal 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, 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. 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 kn.

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 58 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 kn. The majority (79 percent) of these strikes occurred at speeds of 13 kn or greater. The average speed that resulted in serious injury or death was 18.6 kn. 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 kn, and exceeded 90 percent at 17 kn. 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 because of the required personnel training and lookouts (as described in the Proposed Mitigation Measures section), 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.

In the SOCAL portion of the HSTT Study Area, the Navy has struck a total of 16 marine mammals in the 20-year period from 1991 through 2010 for an average of one per year. Of the 16 Navy vessel strikes over the 20-year period in SOCAL, there were seven mortalities and nine injuries reported. The vessel struck species include: Two mortalities and eight injuries of unknown species, three mortalities of gray whales (one in 1993 and two in 1998), one mortality of a blue whale in 2004, and one morality and one injury of fin whales in 2009.

In the HRC portion of the HSTT Study Area, the Navy struck a total of five marine mammals in the 20-year period from 1991 through 2010, for an average of zero to one per year. Of the five Navy vessel strikes over the 20-year period in the HRC, all were reported as injuries. The vessel struck species include: one humpback whale in 1998, one unknown species and one humpback whale in 2003, one sperm whale in 2007, and an unknown species in 2008. No more than two whales were struck by Navy vessels in any given year in the HRC portion of the HSTT within the last 20 years. There was only one 12-month period in 20 years in the HRC when two whales were struck in a single year (2003).

Overall, there have been zero documented vessel strikes associated with training and testing in the SOCAL and HRC portions of the HSTT Study Area since 2010 and 2008, respectively.

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 2009, 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 (also see the Notification and Reporting Plan for this proposed rule). For over a decade, the Navy has implemented the Protective Measures Assessment Protocol software tool, which provides operators with notification of the required mitigation and a visual display of the planned training or testing activity location overlaid with relevant environmental data.

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 HSTT 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 HSTT 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). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, sharp sounds (such as pile driving or air guns) 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. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fishes, like other vertebrates, have variety of different sensory systems to glean information from ocean around them (Astrup and Mohl, 1993; Astrup, 1999; Braun and Grande, 2008; Carroll *et al.,* 2017; Hawkins and Johnstone, 1978; Ladich and Popper, 2004; Ladich and Schulz-Mirbach, 2016; Mann, 2016; Nedwell *et al.,* 2004; Popper *et al.,* 2003; Popper *et al.,* 2005). 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) (terrestrial vertebrates generally only detect pressure). Most marine fishes primarily detect particle motion using the inner ear and lateral line system, while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande, 2008; Popper and Fay, 2011).

Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong 2016). In order to better understand acoustic impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features which result in varying degrees of hearing sensitivity (Popper and Hastings, 2009a). There are four hearing groups defined for all fish species (modified from Popper *et al.,* 2014) within this analysis and they include: Fishes without a swim bladder (*e.g.,* flatfish, sharks, rays, etc.); fishes with a

swim bladder not involved in hearing (*e.g.,* salmon, cod, pollock, etc.); fishes with a swim bladder involved in hearing (*e.g.,* sardines, anchovy, herring, etc.); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.,* shad and menhaden). Most marine mammal fish prey species would not be likely to perceive or hear Navy mid- or high-frequency sonars (see Figure 9–1 of the Navy's rulemaking/LOA application). Within Southern California, the Clupeiformes order of fish include the Pacific sardine (Clupeidae), and northern anchovy (Engraulidae), key forage fish in Southern California. While hearing studies have not been done on sardines and northern anchovies, it would not be unexpected for them to have hearing similarities to Pacific herring (up to 2–5 kHz) (Mann *et al.,* 2005). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder. In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fish from exposure to low- and mid-frequency sonar and other sounds (Halvorsen *et al.,* 2012; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper *et al.,* 2016; Watwood *et al.,* 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz source without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive Navy sonar, or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.,* 2012; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.,* 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz) such as herring (Halvorsen *et al.,* 2012; Mann *et al.,* 2005; Mann, 2016; Popper *et al.,* 2014) would have the potential to receive TTS or exhibit behavioral responses from exposure to mid-frequency sonar. In addition, any sonar induced TTS to fish whose hearing range could perceive sonar would only occur in the narrow spectrum of the source (*e.g.,* 3.5 kHz) compared to the fish's total hearing range (*e.g.,* 0.01 kHz to 5 kHz). Overall, Navy sonar sources are much narrower in terms of source frequency compared to a given fish species full hearing range (see examples in Figure 9–1 of the Navy's rulemaking/LOA application).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic soundscapes on fish, but the author's focus was on broader based sounds such as ship and boat noise sources. Watwood *et al.* (2016) also documented no behavioral responses by reef fish after exposure to mid-frequency active sonar. Doksaeter *et al.* (2009; 2012) reported no behavioral responses to mid-frequency naval sonar by Atlantic herring, specifically, no escape reactions (vertically or horizontally) observed in free swimming herring exposed to mid-frequency sonar transmissions. Based on these results (Doksaeter *et al.,* 2009; Doksaeter *et al.,* 2012; Sivle *et al.,* 2012), Sivle *et al.* (2014) created a model in order to report on the possible population-level effects on Atlantic herring from active naval sonar. The authors concluded that the use of naval sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fish exposed to any short-term noise within their hearing range might initially startle, but would quickly return to normal behavior.

The potential effects of air gun 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. Some studies have shown no or slight reaction to air gun 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 air gun 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 hrs 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.

Occasional behavioral reactions to intermittent explosions and impulsive sound sources are unlikely to cause long-term consequences for individual fish or populations. Fish that experience hearing loss as a result of exposure to explosions and impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.,* 2005; Popper *et al.,* 2014; Smith *et al.,* 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process. It is also possible for fish to be injured or killed by an explosion in the immediate vicinity of the surface from dropped or fired ordnance, or near the bottom from shallow water bottom-placed underwater mine warfare detonations. 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 and 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 and 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 and Finneran, 2006; O'Keeffe, 1984; O'Keeffe and Young, 1984; Wiley *et al.,* 1981; Yelverton *et al.,* 1975). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.,* 1976; Goertner *et al.,* 1994). Barotrauma injuries have been documented during controlled exposure to impact pile driving (an impulsive noise source, as are explosives and air guns) (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.

Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. 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). However, Navy explosive use avoids hard substrate to the best extent practical during underwater detonations, or deep-water surface detonations (distance from bottom). Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. 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 are expected to be short-term and localized. Long-term consequences for fish populations would not be expected. Several studies have demonstrated that air gun 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).

In conclusion, for fishes exposed to Navy sonar, there would be limited sonar use spread out in time and space across large offshore areas such that only small areas are actually ensonified (10's of miles) compared to the total life history distribution of fish prey species. There would be no probability for mortality and physical injury from sonar, and for most species, no or little potential for hearing or behavioral effects, except to a few select fishes with hearing specializations (*e.g.,* herring) that could perceive mid-frequency sonar. Training and testing exercises involving explosions are dispersed in space and time; therefore, repeated exposure of individual fishes are unlikely. Morality and injury effects to fishes from explosives would be localized around the area of a given in-water explosion, but only if individual fish and the explosive (and immediate pressure field) were co-located at the same time. Fishes deeper in the water column or on the bottom would not be affected by water surface explosions. Repeated exposure of individual fish to sound and energy from underwater explosions is not likely given fish movement patterns, especially schooling prey species. Most acoustic effects, if any, are expected to be short-term and localized. Long-term consequences for fish populations including key prey species within the HSTT Study Area would not be expected.

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). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (de Soto, 2016; Sole *et al.,* 2017b). 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 air gun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Sole *et al.* (2017b) reported physiological injuries to cuttlefish in cages placed at-sea when exposed during a controlled exposure experiment to low-frequency sources (315 Hz, 139 to 142 dB re 1 μPa^2 and 400 Hz, 139 to 141 dB re 1 μPa^2). Fewtrell and McCauley (2012) reported squids maintained in cages displayed startle responses and behavioral changes when exposed to seismic air gun sonar (136–162 re 1 $\mu Pa^2 \cdot s$). However, the sources Sole *et al.* (2017a) and Fewtrell and McCauley (2012) used are not similar and much lower than typical Navy sources within the HSTT Study Area. Nor do the studies address the issue of individual displacement outside of a zone of impact when exposed to sound. 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). Squids, like most fish species, are likely more sensitive to low frequency sounds, and may not perceive mid- and high-frequency sonars such as Navy sonars. Cumulatively for squid as a prey species, individual and population impacts from exposure to Navy sonar and explosives, like fish, are not likely to be significant, and explosive impacts would be short-term and localized.

Vessels and in-water devices do not normally collide with adult fish, most of which can detect and avoid them. Exposure of fishes to vessel strike stressors is limited to those fish groups that are large, slow-moving, and may occur near the surface, such as ocean sunfish, whale sharks, basking sharks, and manta rays. These species are distributed widely in offshore portions of the Study Area. Any isolated cases of a Navy vessel striking an individual could injure that individual, impacting the fitness of an individual fish. Vessel strikes would not pose a risk to most of the other marine fish groups, because many fish can detect and avoid vessel movements, making strikes rare and allowing the fish to return to their normal behavior after the ship or device passes. As a vessel approaches a fish, they could have a detectable behavioral or physiological response (*e.g.,* swimming away and increased heart rate) as the passing vessel displaces them. However, such reactions are not expected to have lasting effects on the survival, growth, recruitment, or reproduction of these marine fish groups at the population level and therefore would not have an impact on marine mammals species as prey items.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is very limited. In most cases, marine invertebrates would not respond to impulsive and non-impulsive sounds, although they may detect and briefly respond to nearby low-frequency sounds. These short-term responses would likely be inconsequential to invertebrate populations. Impacts to benthic communities from impulsive sound generated by active acoustic sound sources are not well documented. (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007; 2008; Boudreau *et al.,* 2009). There are no published data that indicate whether temporary or permanent threshold shifts, auditory masking, or behavioral effects occur in benthic invertebrates (Hawkins *et al.,* 2014) and some studies showed no

short-term or long-term effects of air gun exposure (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007; 2008; Boudreau *et al.,* 2009). Exposure to air gun 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. Explosions and pile driving could potentially kill or injure nearby marine invertebrates; however, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall stocks or populations.

Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop, 2008). The propeller wash (water displaced by propellers used for propulsion) from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and is a likely cause of zooplankton mortality (Bickel *et al.,* 2011). The localized and short-term exposure to explosions or vessels could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall stocks or populations.

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 air gun 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 air gun 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.

Overall, the combined impacts of sound exposure, explosions, vessel strikes, and military expended materials resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. 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 air gun 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 air gun 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. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the Study Area. Military expended materials resulting from training and testing activities could potentially result in minor long-term changes to benthic habitat. Military expended materials may be colonized over time by benthic organisms that prefer hard substrate and would provide structure that could attract some species of fish or invertebrates.

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 air gun 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 HSTT 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 HSTT 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 HSTT 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 HSTT 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 and 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 HSTT 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.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize which is based on the amount of take that NMFS anticipates could or is 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 estimated for authorization, are appropriate and based on the best available science.

Takes are predominantly in the form of harassment, but a small number of mortalities are also estimated. For a 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 in the form of Level B harassment, as use of the acoustic and explosive sources (*i.e.,* sonar, air guns, pile driving, explosives) is likely to result in the disruption of natural behavioral patterns to a point where they are abandoned or significantly altered (as defined specifically at the beginning of this section, but referred to generally as 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 California sea lion and short-beaked common dolphin (10 mortalities total between the two species over the 5-year period) from explosives, and no more than three serious injuries or mortalities total (over the five-year period) of large 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 (*i.e.,* further lower the already low probability) that ship strike or these 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 (in this case, as defined in the military readiness definition included above) or incur some degree of temporary or 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 during which activities might occur. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, and in coordination with the Navy, NMFS has established acoustic thresholds above which exposed marine mammals would reasonably be expected to experience a disruption in behavioral patterns to a point where they are abandoned or significantly altered, 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 Tissue Damage and Mortality)

Non-Impulsive and Impulsive

NMFS's 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 Specified Activities includes the use of non-impulsive (sonar, vibratory pile driving/removal) sources and impulsive (explosives, air guns, impact pile driving) sources.

These thresholds (Tables 14–15) 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 14—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF TTS AND PTS FOR NON-IMPULSIVE SOUND SOURCES BY FUNCTIONAL HEARING GROUPS

Functional hearing group	Non-impulsive	
	TTS threshold SEL (weighted)	PTS threshold SEL (weighted)
Low-Frequency Cetaceans	179	199
Mid-Frequency Cetaceans	178	198
High-Frequency Cetaceans	153	173
Phocid Pinnipeds (Underwater)	181	201
Ottarid Pinnipeds (Underwater)	199	219

Note: SEL thresholds in dB re 1 $\mu Pa^2 s$.

Based on the best available science, the Navy (in coordination with NMFS) used the acoustic and pressure thresholds indicated in Table 15 to predict the onset of TTS, PTS, tissue damage, and mortality for explosives (impulsive) and other impulsive sound sources.

TABLE 15—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 Peak SPL	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 Peak SPL.		
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 Peak SPL.		
Phocidae	Harbor seal, Hawaiian monk seal, Northern elephant seal.	170 dB SEL or 212 dB Peak SPL.	185 dB SEL or 218 dB Peak SPL.	237 dB Peak SPL.		
Otariidae	California sea lion, Guadalupe fur seal, Northern fur seal.	188 dB SEL or 226 dB Peak SPL.	203 dB SEL or 232 dB Peak SPL.	237 dB Peak SPL.		

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—Air Guns 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 air guns, as well as explosives (see Table 15 above) (see Hearing Loss from air guns in Section 6.4.3.1, Methods for Analyzing Impacts from air guns in the Navy's rulemaking/LOA application). Refer to the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c) 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 ELCAS) 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 14 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/LOA application). Refer to the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c) 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 for the reasons explained in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat

section under ''*Acoustically Mediated Bubble Growth and other Pressure-related Injury*'' 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 in order to qualify as a take, the current state of science for determining those thresholds is still evolving and indefinite. In its analysis of impacts associated with sonar acoustic sources (which was coordinated with NMFS), the Navy proposes, and NMFS supports, an updated conservative approach that likely overestimates the number of takes by Level B harassment due to behavioral disturbance and response. Many of the responses estimated using the Navy's quantitative analysis are most likely to be moderate severity (see Southall *et al.,* 2007 for behavior 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 variation in daily behavioral patterns in feeding, reproduction, resting, migration/movement, or social cohesion. Many of the behavioral reactions predicted by the Navy's quantitative analysis are only expected to exceed an animal's behavioral threshold for a single exposure lasting several minutes. It is therefore likely that some of the exposures that are included in the estimated behavioral harassment takes would not actually constitute significant alterations or abandonment of natural behavior patterns. The Navy and NMFS have used the best available science to address the challenge of differentiating between behavioral reactions that rise to the level of a take and those that do not, but have erred on the side of caution where uncertainty exists (*e.g.,* counting these lower duration reactions as take). This conservative choice 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.

Air Guns 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 air guns) or intermittent (*e.g.,* scientific sonar) sources. To estimate behavioral effects from air guns, the existing NMFS Level B harassment threshold of 160 dB re 1 μPa (rms) is used. The root mean square calculation for air guns 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 16).

TABLE 16—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. Behavioral response criteria are used to estimate the number of animals that may exhibit a behavioral response to sonar and other transducers. The way the criteria were derived is discussed in detail in the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c). Developing the new behavioral criteria involved multiple steps. All peer-reviewed published 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. NMFS supported the development of this methodology and considered it appropriate to calculate take and support the preliminary determinations made in the proposed rule.

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 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. It should be noted that in the HSTT Study Area there are no harbor porpoise.

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 better 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 cutoff 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/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 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 farther ranges as shown in Table 17, versus less intense events.

TABLE 17—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	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.
There are no harbor porpoise in the HSTT Study Area, but are included in Table 16 for consistency with other Navy Proposed Rules.

Tables 18–22 show the range to received sound levels in 6-dB steps from 5 representative sonar bins and the percentage of animals that may be taken under each behavioral response function. 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. See Section 6.4.2.1.1 (Methods for Analyzing Impacts from Sonars and Other Transducers) of the Navy's application for further details on the derivation and use of the behavioral response functions, thresholds, and the cutoff distances, which were coordinated with NMFS. Table 18 illustrates the potentially significant behavioral response for LFAS.

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Table 18. Ranges to a Potentially Significant Behavioral Response for Sonar Bin LF5 over a Representative Range of Environments within the HSTT Study Area.

Received Level (dB re 1 µPa-s)	*Average Range (m) (Minimum – Maximum)*	*Probability of Behavioral Response for Sonar Bin LF5M*			
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*
178	1 (1–1)	97%	59%	92%	100%
172	2 (1–2)	91%	30%	76%	99%
166	3 (1–5)	78%	20%	48%	97%
160	7 (1–13)	58%	18%	27%	93%
154	16 (1–30)	40%	17%	18%	83%
148	35 (1–85)	29%	16%	16%	66%
142	81 (1–230)	25%	13%	15%	45%
136	183 (1–725)	23%	9%	15%	28%
130	404 (1–1,525)	20%	5%	15%	18%
124	886 (1–3,025)	17%	2%	14%	14%
118	1,973 (725–5,775)	12%	1%	13%	12%
112	4,472 (900–18,275)	6%	0%	9%	11%
106	8,936 (900–54,525)	3%	0%	5%	11%
100	27,580 (900–88,775)	1%	0%	2%	8%

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. dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

Tables 19 through Table 21 illustrates the potentially significant behavioral response for MFAS.

Table 19. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF1 over a Representative Range of Environments within the HSTT Study Area.

Received Level (dB re 1 μPa-s)	*Average Range (m) (Minimum – Maximum)*	*Probability of Behavioral Response for Sonar Bin MF1*			
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*
196	109 (100–110)	100%	100%	100%	100%
190	239 (190–250)	100%	98%	99%	100%
184	502 (310–575)	99%	88%	98%	100%
178	1,024 (550–2,025)	97%	59%	92%	100%
172	2,948 (625–5,775)	91%	30%	76%	99%
166	6,247 (625–10,025)	78%	20%	48%	97%
160	11,919 (650–20,525)	58%	18%	27%	93%
154	20,470 (650–62,025)	40%	17%	18%	83%
148	33,048 (725–63,525)	29%	16%	16%	66%
142	43,297 (2,025–71,775)	25%	13%	15%	45%
136	52,912 (2,275–91,525)	23%	9%	15%	28%
130	61,974 (2,275–100,000*)	20%	5%	15%	18%
124	66,546 (2,275–100,000*)	17%	2%	14%	14%
118	69,637 (2,525–100,000*)	12%	1%	13%	12%
112	73,010 (2,525–100,000*)	6%	0%	9%	11%
106	75,928 (2,525–100,000*)	3%	0%	5%	11%
100	78,899 (2,525–100,000*)	1%	0%	2%	8%

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. dB re 1 μPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source.

Table 20. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF4 over a Representative Range of Environments within the HSTT Study Area.

Received Level (dB re 1 µPa-s)	*Average Range (m) (Minimum – Maximum)*	*Probability of Behavioral Response for Sonar Bin MF4*			
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*
196	8 (1–8)	100%	100%	100%	100%
190	17 (1–17)	100%	98%	99%	100%
184	34 (1–35)	99%	88%	98%	100%
178	68 (1–75)	97%	59%	92%	100%
172	145 (130–300)	91%	30%	76%	99%
166	388 (270–875)	78%	20%	48%	97%
160	841 (470–1,775)	58%	18%	27%	93%
154	1,748 (700–6,025)	40%	17%	18%	83%
148	3,163 (1,025–13,775)	29%	16%	16%	66%
142	5,564 (1,275–27,025)	25%	13%	15%	45%
136	8,043 (1,525–54,275)	23%	9%	15%	28%
130	17,486 (1,525–65,525)	20%	5%	15%	18%
124	27,276 (1,525–84,775)	17%	2%	14%	14%
118	33,138 (2,775–85,275)	12%	1%	13%	12%
112	39,864 (3,775–100,000*)	6%	0%	9%	11%
106	45,477 (5,275–100,000*)	3%	0%	5%	11%
100	48,712 (5,275–100,000*)	1%	0%	2%	8%

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. dB re 1 µPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source.

Table 21. Ranges to a Potentially Significant Behavioral Response for Sonar Bin MF5 over a Representative Range of Environments within the HSTT Study Area.

Received Level (dB re 1 μPa-s)	*Average Range (m) (Minimum – Maximum)*	*Probability of Behavioral Response for Sonar Bin MF5*			
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*
196	0 (0–0)	100%	100%	100%	100%
190	2 (1–3)	100%	98%	99%	100%
184	4 (1–7)	99%	88%	98%	100%
178	14 (1–15)	97%	59%	92%	100%
172	29 (1–30)	91%	30%	76%	99%
166	59 (1–70)	78%	20%	48%	97%
160	133 (1–340)	58%	18%	27%	93%
154	309 (1–950)	40%	17%	18%	83%
148	688 (430–2,275)	29%	16%	16%	66%
142	1,471 (650–4,025)	25%	13%	15%	45%
136	2,946 (700–7,525)	23%	9%	15%	28%
130	5,078 (725–11,775)	20%	5%	15%	18%
124	7,556 (725–19,525)	17%	2%	14%	14%
118	10,183 (725–27,775)	12%	1%	13%	12%
112	13,053 (725–63,025)	6%	0%	9%	11%
106	16,283 (1,025–64,525)	3%	0%	5%	11%
100	20,174 (1,025–70,525)	1%	0%	2%	8%

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. dB re 1 μPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source.

Table 22 illustrates the potentially significant behavioral response for HFAS.

Table 22. Ranges to a Potentially Significant Behavioral Response for Sonar Bin HF4 over a Representative Range of Environments within the HSTT Study Area.

Received Level (dB re 1 μPa-s)	*Average Range (m) (Minimum – Maximum)*	*Probability of Behavioral Response for Sonar Bin HF4*			
		Odontocetes	*Mysticetes*	*Pinnipeds*	*Beaked Whales*
196	3 (1–6)	100%	100%	100%	100%
190	8 (1–16)	100%	98%	99%	100%
184	17 (1–35)	99%	88%	98%	100%
178	34 (1–90)	97%	59%	92%	100%
172	68 (1–180)	91%	30%	76%	99%
166	133 (12–430)	78%	20%	48%	97%
160	255 (30–750)	58%	18%	27%	93%
154	439 (50–1,525)	40%	17%	18%	83%
148	694 (85–2,275)	29%	16%	16%	66%
142	989 (110–3,525)	25%	13%	15%	45%
136	1,378 (170–4,775)	23%	9%	15%	28%
130	1,792 (270–6,025)	20%	5%	15%	18%
124	2,259 (320–7,525)	17%	2%	14%	14%
118	2,832 (320–8,525)	12%	1%	13%	12%
112	3,365 (320–10,525)	6%	0%	9%	11%
106	3,935 (320–12,275)	3%	0%	5%	11%
100	4,546 (320–16,775)	1%	0%	2%	8%

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. dB re 1 μPa2 - s: decibels referenced to 1 micropascal squared second; m: meters

* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source.

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Explosives

Phase III explosive criteria for behavioral thresholds for marine mammals is the hearing groups' TTS threshold minus 5 dB (see Table 23 below and Table 15 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. See the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived.

TABLE 23—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
Underwater	OW	183

Note: Weighted SEL thresholds in dB re 1 $\mu Pa^2 s$ 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 HSTT 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 received by 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. For more information on this process, see the discussion in the ''Take Requests'' subsection below. Many explosions from ordnance such as bombs and missiles actually occur upon impact with above-water targets. However, for this analysis, sources such as these were modeled as exploding underwater. This overestimates the amount of explosive and acoustic energy entering the water.

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 *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b).

Air Guns 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 air guns. The analysis for air guns was similar to explosives as an impulsive source, except explosive impulsive sources were placed into bins based on net explosive weights, while each non-explosive impulsive source (air guns) was assigned its own unique bin. The impulsive model used in the Navy's analysis used metrics to describe the sound received by the animats and the SPL_{rms} criteria was only applied to air guns. See the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b) 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/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 acoustic thresholds 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 not only for 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 5 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 are shown in Table 18 through Table 22 above, respectively. See Section 6.4.2.1.1 (Impact Ranges for Sonar and Other Transducers) of the Navy's rulemaking/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 24 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 m 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 24—RANGE TO PERMANENT THRESHOLD SHIFT (METERS) FOR FIVE REPRESENTATIVE SONAR SYSTEMS

Functional hearing group	Approximate range in meters for PTS from 30 seconds exposure				
	Sonar bin LF	Sonar bin MF1	Sonar bin MF4	Sonar bin MF5	Sonar bin HF4
Low-frequency Cetacean	0 (0–0)	65 (65–65)	14 (0–15)	0 (0–0)	0 (0–0)
Mid-frequency Cetacean	0 (0–0)	16 (16–16)	3 (3–3)	0 (0–0)	1 (0–2)
High-frequency Cetacean	0 (0–0)	181 (180–190)	30 (30–30)	9 (8–10)	30 (8–80)
Otariidae	0 (0–0)	6 (6–6)	0 (0–0)	0 (0–0)	0 (0–0)
Phocinae	0 (0–0)	45 (45–45)	11 (11–11)	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.

The tables below illustrate the range to TTS for 1, 30, 60, and 120 seconds from 5 representative sonar systems (see Table 25 through Table 29).

TABLE 25—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN LF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar bin LF5M (low frequency sources <180 dB source level)			
	1 second	30 seconds	60 seconds	120 seconds
Low-frequency Cetacean	3 (0–4)	3 (0–4)	3 (0–4)	3 (0–4)
Mid-frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
High-frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
Otariidae	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
Phocinae	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 parentheses.

TABLE 26—RANGES TO TEMPORARY THRESHOLD SHIFT FOR SONAR BIN MF1 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA

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 Cetacean	903 (850–1,025)	903 (850–1,025)	1,264 (1,025–2,275)	1,839 (1,275–3,025)
Mid-frequency Cetacean	210 (210–210)	210 (210–210)	302 (300–310)	379 (370–390)
High-frequency Cetacean	3,043 (1,525–4,775)	3,043 (1,525–4,775)	4,739 (2,025–6,275)	5,614 (2,025–7,525)
Otariidae	65 (65–65)	65 (65–65)	106 (100–110)	137 (130–140)
Phocinae	669 (650–725)	669 (650–725)	970 (900–1,025)	1,075 (1,025–1,525)

[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 parentheses.

TABLE 27—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA

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 Cetacean	77 (0–85)	162 (150–180)	235 (220–290)	370 (310–600)
Mid-frequency Cetacean	22 (22–22)	35 (35–35)	49 (45–50)	70 (70–70)
High-frequency Cetacean	240 (220–300)	492 (440–775)	668 (550–1,025)	983 (825–2,025)
Otariidae	8 (8–8)	15 (15–15)	19 (19–19)	25 (25–25)
Phocinae	65 (65–65)	110 (110–110)	156 (150–170)	269 (240–460)

[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 parentheses.

TABLE 28—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA

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 Cetacean	10 (0–12)	10 (0–12)	14 (0–18)	21 (0–25)
Mid-frequency Cetacean	6 (0–9)	6 (0–9)	12 (0–13)	17 (0–21)
High-frequency Cetacean	118 (100–170)	118 (100–170)	179 (150–480)	273 (210–700)
Otariidae	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
Phocinae	9 (8–10)	9 (8–10)	14 (14–16)	21 (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 parentheses.

TABLE 29—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN HF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA

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 Cetacean	1 (0–3)	2 (0–5)	4 (0–7)	6 (0–11)
Mid-frequency Cetacean	10 (4–17)	17 (6–35)	24 (7–60)	34 (9–90)
High-frequency Cetacean	168 (25–550)	280 (55–775)	371 (80–1,275)	470 (100–1,525)
Otariidae	0 (0–0)	0 (0–0)	0 (0–0)	1 (0–1)
Phocinae	2 (0–5)	5 (2–8)	8 (3–13)	11 (4–22)

[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 parentheses.

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/LOA application and the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c) 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/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 E12 (up to 1,000 lb net explosive weight) (Tables 30 through 35). 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 (to the degree of a take), 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. 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 30 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for high-frequency cetaceans based on the developed thresholds.

TABLE 30—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR HIGH-FREQUENCY CETACEANS

Range to effects for explosives: high frequency cetacean [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	353 (130–825)	1,234 (290–3,025)	2,141 (340–4,775)
		25	1,188 (280–3,025)	3,752 (490–8,525)	5,196 (675–12,275)
E2	0.1	1	425 (140–1,275)	1,456 (300–3,525)	2,563 (390–5,275)
		10	988 (280–2,275)	3,335 (480–7,025)	4,693 (650–10,275)
E3	0.1	1	654 (220–1,525)	2,294 (350–4,775)	3,483 (490–7,775)
		12	1,581 (300–3,525)	4,573 (650–10,275)	6,188 (725–14,775)
	18.25	1	747 (550–1,525)	3,103 (950–6,025)	5,641 (1,000–9,275)
		12	1,809 (875–4,025)	7,807 (1,025–12,775)	10,798 (1,025–17,775)
E4	3	2	2,020 (1,025–3,275)	3,075 (1,025–6,775)	3,339 (1,025–9,775)
	15.25	2	970 (600–1,525)	4,457 (1,025–8,525)	6,087 (1,275–12,025)
	19.8	2	1,023 (1,000–1,025)	4,649 (2,275–8,525)	6,546 (3,025–11,025)
	198	2	959 (875–1,525)	4,386 (3,025–7,525)	5,522 (3,025–9,275)
E5	0.1	25	2,892 (440–6,275)	6,633 (725–16,025)	8,925 (800–22,775)
	15.25	25	4,448 (1,025–7,775)	10,504 (1,525–18,275)	13,605 (1,775–24,775)
E6	0.1	1	1,017 (280–2,525)	3,550 (490–7,775)	4,908 (675–12,275)
	3	1	2,275 (2,025–2,525)	6,025 (4,525–7,275)	7,838 (6,275–9,775)
	15.25	1	1,238 (625–2,775)	5,613 (1,025–10,525)	7,954 (1,275–14,275)
E7	3	1	3,150 (2,525–3,525)	7,171 (5,525–8,775)	8,734 (7,275–10,525)
	18.25	1	2,082 (925–3,525)	6,170 (1,275–10,525)	8,464 (1,525–16,525)
E8	0.1	1	1,646 (775–2,525)	4,322 (1,525–9,775)	5,710 (1,525–14,275)
	45.75	1	1,908 (1,025–4,775)	5,564 (1,525–12,525)	7,197 (1,525–18,775)
E9	0.1	1	2,105 (850–4,025)	4,901 (1,525–12,525)	6,700 (1,525–16,775)
E10	0.1	1	2,629 (875–5,275)	5,905 (1,525–13,775)	7,996 (1,525–20,025)
E11	18.5	1	3,034 (1,025–6,025)	7,636 (1,525–16,525)	9,772 (1,775–21,525)
	45.75	1	2,925 (1,525–6,025)	7,152 (2,275–18,525)	9,011 (2,525–24,525)
E12	0.1	1	2,868 (975–5,525)	6,097 (2,275–14,775)	8,355 (4,275–21,275)
		3	3,762 (1,525–8,275)	7,873 (3,775–20,525)	10,838 (4,275–26,525)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.

E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.

Table 31 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for mid-frequency cetaceans based on the developed thresholds.

TABLE 31—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR MID-FREQUENCY CETACEANS

Range to effects for explosives: mid-frequency cetacean [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	25 (25–25)	118 (80–210)	178 (100–320)
		25	107 (75–170)	476 (150–1,275)	676 (240–1,525)
E2	0.1	1	30 (30–35)	145 (95–240)	218 (110–400)
		10	88 (65–130)	392 (140–825)	567 (190–1,275)
E3	0.1	1	50 (45–65)	233 (110–430)	345 (130–600)
		12	153 (90–250)	642 (220–1,525)	897 (270–2,025)
	18.25	1	38 (35–40)	217 (190–900)	331 (290–850)
		12	131 (120–250)	754 (550–1,525)	1,055 (600–2,525)
E4	3	2	139 (110–160)	1,069 (525–1,525)	1,450 (875–1,775)
	15.25	2	71 (70–75)	461 (400–725)	613 (470–750)
	19.8	2	69 (65–70)	353 (350–360)	621 (600–650)
	198	2	49 (0–55)	275 (270–280)	434 (430–440)
E5	0.1	25	318 (130–625)	1,138 (280–3,025)	1,556 (310–3,775)
	15.25	25	312 (290–725)	1,321 (675–2,525)	1,980 (850–4,275)

TABLE 31—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR MID-FREQUENCY CETACEANS—Continued

Range to effects for explosives: mid-frequency cetacean [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E6	0.1	1	98 (70–170)	428 (150–800)	615 (210–1,525)
	3	1	159 (150–160)	754 (650–850)	1,025 (1,025–1,025)
	15.25	1	88 (75–180)	526 (450–875)	719 (500–1,025)
E7	3	1	240 (230–260)	1,025 (1,025–1,025)	1,900 (1,775–2,275)
	18.25	1	166 (120–310)	853 (500–1,525)	1,154 (550–1,775)
E8	0.1	1	160 (150–170)	676 (500–725)	942 (600–1,025)
	45.75	1	128 (120–170)	704 (575–2,025)	1,040 (750–2,525)
E9	0.1	1	215 (200–220)	861 (575–950)	1,147 (650–1,525)
E10	0.1	1	275 (250–480)	1,015 (525–2,275)	1,424 (675–3,275)
E11	18.5	1	335 (260–500)	1,153 (650–1,775)	1,692 (775–3,275)
	45.75	1	272 (230–825)	1,179 (825–3,025)	1,784 (1,000–4,275)
E12	0.1	1	334 (310–350)	1,151 (700–1,275)	1,541 (800–3,525)
	0.1	3	520 (450–550)	1,664 (800–3,525)	2,195 (925–4,775)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.

Table 32 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for low-frequency cetaceans based on the developed thresholds.

TABLE 32—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR LOW-FREQUENCY CETACEANS

Range to effects for explosives: low frequency cetacean [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	51 (40–70)	227 (100–320)	124 (70–160)
		25	205 (95–270)	772 (270–1,275)	476 (190–725)
E2	0.1	1	65 (45–95)	287 (120–400)	159 (80–210)
		10	176 (85–240)	696 (240–1,275)	419 (160–625)
E3	0.1	1	109 (65–150)	503 (190–1,000)	284 (120–430)
		12	338 (130–525)	1,122 (320–7,775)	761 (240–6,025)
	18.25	1	205 (170–340)	996 (410–2,275)	539 (330–1,275)
		12	651 (340–1,275)	3,503 (600–8,275)	1,529 (470–3,275)
E4	3	2	493 (440–1,000)	2,611 (1,025–4,025)	1,865 (950–2,775)
	15.25	2	583 (350–850)	3,115 (1,275–5,775)	1,554 (1,000–2,775)
	19.8	2	378 (370–380)	1,568 (1,275–1,775)	926 (825–950)
	198	2	299 (290–300)	2,661 (1,275–3,775)	934 (900–950)
E5	0.1	25	740 (220–6,025)	2,731 (460–22,275)	1,414 (350–14,275)
	15.25	25	1,978 (1,025–5,275)	8,188 (3,025–19,775)	4,727 (1,775–11,525)
E6	0.1	1	250 (100–420)	963 (260–7,275)	617 (200–1,275)
	3	1	711 (525–825)	3,698 (1,525–4,275)	2,049 (1,025–2,525)
	15.25	1	718 (390–2,025)	3,248 (1,275–8,525)	1,806 (950–4,525)
E7	3	1	1,121 (850–1,275)	5,293 (2,025–6,025)	3,305 (1,275–4,025)
	18.25	1	1,889 (1,025–2,775)	6,157 (2,775–11,275)	4,103 (2,275–7,275)
E8	0.1	1	460 (170–950)	1,146 (380–7,025)	873 (280–3,025)
	45.75	1	1,049 (550–2,775)	4,100 (1,025–14,275)	2,333 (800–7,025)
E9	0.1	1	616 (200–1,275)	1,560 (450–12,025)	1,014 (330–5,025)
E10	0.1	1	787 (210–2,525)	2,608 (440–18,275)	1,330 (330–9,025)
E11	18.5	1	4,315 (2,025–8,025)	10,667 (4,775–26,775)	7,926 (3,275–21,025)
	45.75	1	1,969 (775–5,025)	9,221 (2,525–29,025)	4,594 (1,275–16,025)
E12	0.1	1	815 (250–3,025)	2,676 (775–18,025)	1,383 (410–8,525)
	0.1	3	1,040 (330–6,025)	4,657 (1,275–31,275)	2,377 (700–16,275)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.

Table 33 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for phocids based on the developed thresholds.

TABLE 33—SEL-BASED RANGES (METERS) 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	45 (40–65)	210 (100–290)	312 (130–430)
		25	190 (95–260)	798 (280–1,275)	1,050 (360–2,275)
E2	0.1	1	58 (45–75)	258 (110–360)	383 (150–550)
		10	157 (85–240)	672 (240–1,275)	934 (310–1,525)
E3	0.1	1	96 (60–120)	419 (160–625)	607 (220–900)
		12	277 (120–390)	1,040 (370–2,025)	1,509 (525–6,275)
	18.25	1	118 (110–130)	621 (500–1,275)	948 (700–2,025)
		12	406 (330–875)	1,756 (1,025–4,775)	3,302 (1,025–6,275)
E4	3	2	405 (300–430)	1,761 (1,025–2,775)	2,179 (1,025–3,275)
	15.25	2	265 (220–430)	1,225 (975–1,775)	1,870 (1,025–3,275)
	19.8	2	220 (220–220)	991 (950–1,025)	1,417 (1,275–1,525)
	198	2	150 (150–150)	973 (925–1,025)	2,636 (2,025–3,525)
E5	0.1	25	569 (200–850)	2,104 (725–9,275)	2,895 (825–11,025)
	15.25	25	920 (825–1,525)	5,250 (2,025–10,275)	7,336 (2,275–16,025)
E6	0.1	1	182 (90–250)	767 (270–1,275)	1,011 (370–1,775)
	3	1	392 (340–440)	1,567 (1,275–1,775)	2,192 (2,025–2,275)
	15.25	1	288 (250–600)	1,302 (1,025–3,275)	2,169 (1,275–5,775)
E7	3	1	538 (450–625)	2,109 (1,775–2,275)	2,859 (2,775–3,275)
	18.25	1	530 (460–750)	2,617 (1,025–4,525)	3,692 (1,525–5,275)
E8	0.1	1	311 (290–330)	1,154 (625–1,275)	1,548 (725–2,275)
	45.75	1	488 (380–975)	2,273 (1,275–5,275)	3,181 (1,525–8,025)
E9	0.1	1	416 (350–470)	1,443 (675–2,025)	1,911 (800–3,525)
E10	0.1	1	507 (340–675)	1,734 (725–3,525)	2,412 (800–5,025)
E11	18.5	1	1,029 (775–1,275)	5,044 (2,025–8,775)	6,603 (2,525–14,525)
	45.75	1	881 (700–2,275)	3,726 (2,025–8,775)	5,082 (2,025–13,775)
E12	0.1	1	631 (450–750)	1,927 (800–4,025)	2,514 (925–5,525)
	0.1	3	971 (550–1,025)	2,668 (1,025–6,275)	3,541 (1,775–9,775)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.

Table 34 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects for ottariids based on the developed thresholds.

TABLE 34—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR OTARIIDS

Range to effects for explosives: otariids [1]range to effects for explosives: mid-frequency cetacean					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	7 (7–7)	34 (30–40)	56 (45–70)
		25	30 (25–35)	136 (80–180)	225 (100–320)
E2	0.1	1	9 (9–9)	41 (35–55)	70 (50–95)
		10	25 (25–30)	115 (70–150)	189 (95–250)
E3	0.1	1	16 (15–19)	70 (50–95)	115 (70–150)
		12	45 (35–65)	206 (100–290)	333 (130–450)
	18.25	1	15 (15–15)	95 (90–100)	168 (150–310)
		12	55 (50–60)	333 (280–750)	544 (440–1,025)
E4	3	2	64 (40–85)	325 (240–340)	466 (370–490)
	15.25	2	30 (30–35)	205 (170–300)	376 (310–575)
	19.8	2	25 (25–25)	170 (170–170)	290 (290–290)
	198	2	17 (0–25)	117 (110–120)	210 (210–210)
E5	0.1	25	98 (60–120)	418 (160–575)	626 (240–1,000)
	15.25	25	151 (140–260)	750 (650–1,025)	1,156 (975–2,025)
E6	0.1	1	30 (25–35)	134 (75–180)	220 (100–320)
	3	1	53 (50–55)	314 (280–390)	459 (420–525)
	15.25	1	36 (35–40)	219 (200–380)	387 (340–625)
E7	3	1	93 (90–100)	433 (380–500)	642 (550–800)
	18.25	1	73 (70–75)	437 (360–525)	697 (600–850)
E8	0.1	1	50 (50–50)	235 (220–250)	385 (330–450)
	45.75	1	55 (55–60)	412 (310–775)	701 (500–1,525)
E9	0.1	1	68 (65–70)	316 (280–360)	494 (390–625)
E10	0.1	1	86 (80–95)	385 (240–460)	582 (390–800)
E11	18.5	1	158 (150–200)	862 (750–975)	1,431 (1,025–2,025)
	45.75	1	117 (110–130)	756 (575–1,525)	1,287 (950–2,775)
E12	0.1	1	104 (100–110)	473 (370–575)	709 (480–1,025)

TABLE 34—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND BEHAVIORAL REACTION FOR OTARIIDS—Continued

Range to effects for explosives: otariids [1] range to effects for explosives: mid-frequency cetacean					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
	0.1	3	172 (170–180)	694 (480–1,025)	924 (575–1,275)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.

Table 35 which show the minimum, average, and maximum ranges due to varying propagation conditions to non-auditory injury as a function of animal mass and explosive bin (*i.e.,* net explosive weight). These ranges represent the larger of the range to slight lung injury or gastrointestinal tract injury for representative animal masses ranging from 10 to 72,000 kg and different explosive bins ranging from 0.25 to 1,000 lb net explosive weight. 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 35—RANGES [1] TO 50 PERCENT NON-AUDITORY INJURY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

[10–72,000 kg]

Bin	Range (m) (min-max)
E1	12 (11–13)
E2	15 (15–20)
E3	25 (25–30)
E4	32 (0–75)
E5	40 (35–140)
E6	52 (40–120)
E7	145 (100–500)
E8	117 (75–400)
E9	120 (90–290)
E10	174 (100–480)
E11	443 (350–1,775)
E12	232 (110–775)

Note:
[1] Average distance (m) to mortality is depicted above the minimum and maximum distances which are in parentheses.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location. Differences between bins E11 and E12 due to different ordnance types and differences in model parameters.

Ranges to mortality, based on animal mass, are show in Table 36 below.

TABLE 36—RANGES [1] TO 50 PERCENT MORTALITY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

Bin	Animal mass intervals (kg) [1]					
	10	250	1,000	5,000	25,000	72,000
E1	3 (2–3)	0 (0–3)	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
E2	4 (3–5)	1 (0–4)	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
E3	8 (6–10)	4 (2–8)	1 (0–2)	0 (0–0)	0 (0–0)	0 (0–0)
E4	15 (0–35)	9 (0–30)	4 (0–8)	2 (0–6)	0 (0–3)	0 (0–2)
E5	13 (11–45)	7 (4–35)	3 (3–12)	2 (0–8)	0 (0–2)	0 (0–2)
E6	18 (14–55)	10 (5–45)	5 (3–15)	3 (2–10)	0 (0–3)	0 (0–2)
E7	67 (55–180)	35 (18–140)	16 (12–30)	10 (8–20)	5 (4–9)	4 (3–7)
E8	50 (24–110)	27 (9–55)	13 (0–20)	9 (4–13)	4 (0–6)	3 (0–5)
E9	32 (30–35)	20 (13–30)	10 (8–12)	7 (6–9)	4 (3–4)	3 (2–3)
E10	56 (40–190)	25 (16–130)	13 (11–16)	9 (7–11)	5 (4–5)	4 (3–4)
E11	211 (180–500)	109 (60–330)	47 (40–100)	30 (25–65)	15 (0–25)	13 (11–22)
E12	94 (50–300)	35 (20–230)	16 (13–19)	11 (9–13)	6 (5–8)	5 (4–8)

Note:
[1] Average distance (m) to mortality is depicted above the minimum and maximum distances which are in parentheses.
E13 not modeled due to surf zone use and lack of marine mammal receptors at site-specific location.
Differences between bins E11 and E12 due to different ordnance types and differences in model parameters (see Table 6–42 for details).

Air Guns

Table 37 and Table 38 present the approximate ranges in meters to PTS, TTS, and potential behavioral reactions for air guns for 1 and 10 pulses, respectively. Ranges are specific to the HSTT 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 air gun activities could overlap. Small air guns (12–60 in^3) would be used during testing activities in the offshore areas of the Southern California Range Complex and in the Hawaii Range Complex. Generated impulses would have short durations, typically a few hundred milliseconds, with dominant frequencies below 1 kHz. The SPL and SPL peak (at a distance 1 m from the air gun) would be approximately 215 dB re 1 μPa and 227 dB re 1 μPa, respectively, if operated at the full capacity of 60 in^3. The size of the air gun chamber can be adjusted, which would result in lower SPLs and SEL per shot. Single, small air guns lack the peak pressures that could cause non-auditory injury (see Finneran

et al., (2015)); therefore, potential impacts could include PTS, TTS, and behavioral reactions.

TABLE 37—RANGE TO EFFECTS (METERS) FROM AIR GUNS FOR 1 PULSE

Range to effects for air guns [1] for 1 pulse (m)					
Hearing group	PTS (SEL)	PTS (peak SPL)	TTS (SEL)	TTS (peak SPL)	Behavioral [2]
High-Frequency Cetacean	0 (0–0)	18 (15–25)	1 (0–2)	33 (25–80)	702 (290–1,525)
Low-Frequency Cetacean	3 (3–4)	2 (2–3)	27 (23–35)	5 (4–7)	651 (200–1,525)
Mid-Frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	689 (290–1,525)
Otariidae	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	590 (290–1,525)
Phocids	0 (0–0)	2 (2–3)	0 (0–0)	5 (4–8)	668 (290–1,525)

[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.

TABLE 38—RANGE TO EFFECTS (METERS) FROM AIR GUNS FOR 10 PULSES

Range to effects for air guns [1] for 10 pulses (m)					
Hearing group	PTS (SEL)	PTS (Peak SPL)	TTS (SEL)	TTS (Peak SPL)	Behavioral [2]
High-Frequency Cetacean	0 (0–0)	18 (15–25)	3 (0–9)	33 (25–80)	702 (290–1,525)
Low-Frequency Cetacean	15 (12–20)	2 (2–3)	86 (70–140)	5 (4–7)	651 (200–1,525)
Mid-Frequency Cetacean	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	689 (290–1,525)
Otariidae	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)	590 (290–1,525)
Phocids	0 (0–0)	2 (2–3)	4 (3–5)	5 (4–8)	668 (290–1,525)

[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 39 and Table 40 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 39—AVERAGE RANGES TO EFFECTS (METERS) 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
Otariids	2	12	870

Note: PTS: Permanent threshold shift; TTS: Temporary threshold shift.

TABLE 40—AVERAGE RANGES TO EFFECT (METERS) 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
Otariids	0	0	376

Note: PTS: Permanent threshold shift; TTS: Temporary threshold shift.

Serious Injury or Mortality From Ship Strikes

There have been two recorded Navy vessel strikes of marine mammals (two fin whales off San Diego, CA in 2009) in the HSTT Study Area from 2009 through 2017 (nine years), the period in which Navy began implementing effective mitigation measures to reduce the likelihood of vessel strikes. From unpublished NMFS data, the most commonly struck whales in Hawaii are humpback whales, and the most commonly struck whales in California are gray whales, fin whales, and humpback whales. The majority of these strikes are from non-Navy commercial shipping. For both areas (Hawaii and California), the higher strike rates to these species is largely attributed to

higher species abundance in these areas. Prior to 2009, the Navy had struck multiple species of whales off California or Hawaii, but also individuals that were not identified to species. Further, because the overall number of Navy strikes is small, it is appropriate to consider the larger record of known ship strikes (by other types of vessels) in predicting what species may potentially be involved in a Navy ship strike. Based on this information, and as described in more detail in Navy's rulemaking/LOA application and below, the Navy proposes, and NMFS preliminary agrees, to three ship strike takes to select large whale species and stocks over the five years of the authorization, with no more than two takes to several specific stocks with a higher likelihood of being struck and no more than one take of other specific stocks with a lesser likelihood of being struck (described in detail below in the Vessel Strike section).

Marine Mammal Density

A quantitative analysis of impacts on a species requires data on their abundance and distribution that may be affected by anthropogenic activities 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 within U.S. waters 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 a broad geographic area. 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, areas, or seasons that were not surveyed. More recently, habitat modeling has been used to estimate cetacean densities (*e.g.,* Barlow *et al.,* 2009; Becker *et al.,* 2010; 2012a; 2014; Becker *et al.,* 2016; Ferguson *et al.,* 2006; Forney *et al.,* 2012; 2015; Redfern *et al.,* 2006). 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 and for areas that have not been surveyed. 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 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 HSTT Study Area. This database is described in the technical report titled *U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area* (U.S. Department of the Navy, 2017e), 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 HSTT 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 models in order of preference.

1. Spatial density models are preferred and used when available because they provide an estimate with the least amount of uncertainty by deriving estimates for divided segments of the sampling area. These models (see Becker *et al.,* 2016; Forney *et al.,* 2015) predict spatial variability of animal presence as a function of 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.

2. Stratified designed-based density estimates use line-transect survey data with the sampling area divided (stratified) into sub-regions, and a density is predicted for each sub-region (see Barlow, 2016; Becker *et al.,* 2016; Bradford *et al.,* 2017; Campbell *et al.,* 2014; Jefferson *et al.,* 2014). While geographically stratified density estimates provide a better indication of a species' distribution within the study area, the uncertainty is typically high because each sub-region estimate is based on a smaller stratified segment of the overall survey effort.

3. Design-based density estimations use line-transect survey data from land and aerial surveys designed to cover a specific geographic area (see Carretta *et al.,* 2015). These estimates use the same survey data as stratified design-based estimates, but are not segmented into sub-regions and instead provide one estimate for a large surveyed area.

Although relative environmental suitability (RES) models provide estimates for areas of the oceans that have not been surveyed using information on species occurrence and inferred habitat associations and have been used in past density databases, these models were not used in the current quantitative analysis. In the HSTT analysis, due to the availability of other density methods along the hierarchy the use of RES model was not necessary.

When interpreting the results of the quantitative analysis, as described in the Density Technical Report, ''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 mammal 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 (U.S. Department of the Navy, 2017a).''

The Navy's estimate of abundance (based on the density estimates used) in the HSTT Study Area may differ from population abundances estimated in the NMFS's SARS for a variety of reasons.

Mainly because the Pacific SAR overlaps only 35 percent of the Hawaii part of HSTT and only about 14 percent of SOCAL. The Alaska SAR covering humpbacks present in Hawaii is another complicating factor. For some species, the stock assessment for a given species may exceed the Navy's density prediction because those species' home range extends beyond the Study Area boundaries. For other species, the stock assessment abundance may be much less than the number of animals in the Navy's modeling given the HSTT Study Area extends well beyond the U.S waters covered by the SAR abundance estimate. The primary source of density estimates are geographically specific survey data and either peer-reviewed line-transect estimates or habitat-based density models that have been extensively validated to provide the most accurate estimates possible.

These factors and others described in the Density Technical Report should be considered when examining the estimated impact numbers in comparison to current population abundance information for any given species or stock. For a detailed description of the density and assumptions made for each species, see the Density Technical Report.

NMFS coordinated with the Navy in the development of its take estimates and concurs that the Navy's proposed approach for density appropriately utilizes the best available science. Later, in the Negligible Impact Determination Section, we assess how the estimated take numbers compare to stock abundance in order to better understand the potential number of individuals impacted—and the rationale for which abundance estimate is used is included there.

Take Requests

The HSTT DEIS/OEIS considered all training and testing activities proposed to occur in the HSTT Study Area that have the potential to result in the MMPA defined take of marine mammals. The Navy determined that the following three stressors 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 Specified Activities.

- Acoustics (sonar and other transducers; air guns; pile driving/extraction).
- Explosives (explosive shock wave and sound (assumed to encompass the risk due to fragmentation).
- Physical Disturbance and Strike (vessel strike).

Acoustic and explosive sources have the potential to result in incidental takes of marine mammals by harassment, injury, or mortality. Vessel strikes have the potential to result in incidental take from injury, serious injury and/or mortality.

The quantitative analysis process used for the HSTT DEIS/OEIS and the Navy's request in the rulemaking/LOA application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b). 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 quantitative assessment of mitigation. The Navy conservatively quantifies 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 assessed the effectiveness of its mitigation measures on a per-scenario basis for four factors: (1) Species sightability, (2) a Lookout's ability to observe the range to PTS (for sonar and other transducers) and range to mortality (for explosives), (3) the portion of time when mitigation could potentially be conducted during periods of reduced daytime visibility (to include inclement weather and high sea-state) and the portion of time when mitigation could potentially be conducted at night, and (4) the ability for sound sources to be positively controlled (*e.g.,* powered down).

During the conduct of training and testing activities, there is typically at least one, if not numerous, support personnel involved in the activity (*e.g.,* range support personnel aboard a torpedo retrieval boat or support aircraft). In addition to the Lookout posted for the purpose of mitigation, these additional personnel observe for and disseminate marine species sighting information amongst the units participating in the activity whenever possible as they conduct their primary mission responsibilities. However, as a conservative approach to assigning mitigation effectiveness factors, the Navy elected to only account for the minimum number of required Lookouts used for each activity; therefore, the mitigation effectiveness factors may underestimate the likelihood that some marine mammals may be detected during activities that are supported by additional personnel who may also be observing the mitigation zone.

The Navy used the equations in the below sections to calculate the reduction in model-estimated mortality impacts due to implementing mitigation.

Equation 1:

Mitigation Effectiveness = Species Sightability × Visibility × Observation Area × Positive Control

Whereas, Species Sightability is the ability to detect marine mammals is dependent on the animal's presence at the surface and the characteristics of the animal that influence its sightability. The Navy considered applicable data from the best available science to numerically approximate the sightability of marine mammals and determined that the standard ''detection probability'' referred to as g(0). Also, Visibility = 1 − sum of individual visibility reduction factors; Observation Area = portion of impact range that can be continuously observed during an event; and Positive Control = positive control factor of all sound sources involving mitigation. For further details on these mitigation effectiveness factors please refer to the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b).

To quantify the number of marine mammals predicted to be sighted by Lookouts during implementation of mitigation in the range to injury (PTS) for sonar and other transducers, the species sightability is multiplied by the mitigation effectiveness scores and number of model-estimated PTS impacts, as shown in the equation below:

Equation 2:

Number of Animals Sighted by Lookouts = Mitigation Effectiveness × Model-Estimated Impacts

The marine mammals sighted by Lookouts during implementation of mitigation in the range to PTS, as calculated by the equation above, would avoid being exposed to these higher level impacts. The Navy corrects the category of predicted impact for the number of animals sighted within the mitigation zone (*e.g.,* shifts PTS to TTS), but does not modify the total number of

animals predicted to experience impacts from the scenario.

To quantify the number of marine mammals predicted to be sighted by Lookouts during implementation of mitigation in the range to mortality during events using explosives, the species sightability is multiplied by the mitigation effectiveness scores and number of model-estimated mortality impacts, as shown in equation 1 above. The marine mammals and sea turtles predicted to be sighted by Lookouts during implementation of mitigation in the range to mortality, as calculated by the above equation 2, are predicted to avoid exposure in these ranges. The Navy corrects the category of predicted impact for the number of animals sighted within the mitigation zone, but does not modify the total number of animals predicted to experience impacts from the scenario. For example, the number of animals sighted (*i.e.,* number of animals that will avoid mortality) is first subtracted from the model-predicted mortality impacts, and then added to the model-predicted injurious impacts.

NMFS coordinated with the Navy in the development of this quantitative method to address the effects of mitigation on acoustic exposures and explosive takes, and NMFS 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 the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b) and Section 6 (Take Estimates for Marine Mammals) and Section 11 (Mitigation Measures) of the Navy's rulemaking/LOA application.

Summary of Proposed Authorized Take From Training and Testing Activities

Based on the methods outlined in the previous sections and the Navy's model and the quantitative assessment of mitigation, the Navy summarizes the take request for acoustic and explosive sources for training and testing activities both annually (based on the maximum number of activities per 12-month period) and over a 5-year period. 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. Five-year total impacts may be less than the sum total of each year because although the annual estimates are based on the maximum estimated takes, five-year estimates are based on the sum of two maximum years and three nominal years.

Nonlethal Take Reasonably Expected To Occur From Training Activities

Table 41 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 harassment take includes both behavioral disruption and TTS. Figures 6–12 through 6–50 in Section 6 of the Navy's rulemaking/LOA application illustrate the comparative amounts of TTS and behavioral disruption (at the level of a take) for each species, noting that if a ''taken'' animat was exposed to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 41—SPECIES-SPECIFIC PROPOSED TAKE AUTHORIZATION FOR ACOUSTIC AND EXPLOSIVE EFFECTS FOR ALL TRAINING ACTIVITIES IN THE HSTT STUDY AREA

Species	Stock	Annual		5-Year total **	
		Level B	Level A	Level B	Level A
Suborder Mysticeti (baleen whales)					
Family Balaenopteridae (rorquals)					
Blue whale *	Central North Pacific	34	0	139	0
	Eastern North Pacific	1,155	1	5,036	3
Bryde's whale †	Eastern Tropical Pacific	27	0	118	0
	Hawaiian †	105	0	429	0
Fin whale *	California, Oregon, and Washington	1,245	0	5,482	0
	Hawaiian	33	0	133	0
Humpback whale †	California, Oregon, and Washington †.	1,254	1	5,645	3
	Central North Pacific	5,604	1	23,654	5
Minke whale	California, Oregon, and Washington	649	1	2,920	4
	Hawaiian	3,463	1	13,664	2
Sei whale *	Eastern North Pacific	53	0	236	0
	Hawaiian	118	0	453	0
Family Eschrichtiidae					
Gray whale †	Eastern North Pacific	2,751	5	11,860	19
	Western North Pacific †	4	0	14	0
Suborder Odontoceti (toothed whales)					
Family Physeteridae (sperm whale)					
Sperm whale *	California, Oregon, and Washington	1,397	0	6,257	0
	Hawaiian	1,714	0	7,078	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Hawaiian	13,961	35	57,571	148

TABLE 41—SPECIES-SPECIFIC PROPOSED TAKE AUTHORIZATION FOR ACOUSTIC AND EXPLOSIVE EFFECTS FOR ALL TRAINING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Species	Stock	Annual		5-Year total **	
		Level B	Level A	Level B	Level A
Pygmy sperm whale	Hawaiian	5,556	16	22,833	64
Kogia whales	California, Oregon, and Washington	6,012	23	27,366	105
Family Ziphiidae (beaked whales)					
Baird's beaked whale	California, Oregon, and Washington	1,317	0	6,044	0
Blainville's beaked whale	Hawaiian	3,687	0	16,364	0
Cuvier's beaked whale	California, Oregon, and Washington	6,965	0	32,185	0
	Hawaiian	1,235	0	5,497	0
Longman's beaked whale	Hawaiian	13,010	0	57,172	0
Mesoplodon spp	California, Oregon, and Washington	3,750	0	17,329	0
Family Delphinidae (dolphins)					
Bottlenose dolphin	California Coastal	214	0	876	0
	California, Oregon, and Washington Offshore.	31,986	2	142,966	9
	Hawaiian Pelagic	2,086	0	9,055	0
	Kauai & Niihau	74	0	356	0
	Oahu	8,186	1	40,918	5
	4-Island	152	0	750	0
	Hawaii	42	0	207	0
False killer whale †	Hawaii Pelagic	701	0	3,005	0
	Main Hawaiian Islands Insular†	405	0	1,915	0
	Northwestern Hawaiian Islands	256	0	1,094	0
Fraser's dolphin	Hawaiian	28,409	1	122,784	3
Killer whale	Eastern North Pacific Offshore	73	0	326	0
	Eastern North Pacific Transient/ West Coast Transient.	135	0	606	0
	Hawaiian	84	0	352	0
Long-beaked common dolphin	California	128,994	14	559,540	69
Melon-headed whale	Hawaiian Islands	2,335	0	9,705	0
	Kohala Resident	182	0	913	0
Northern right whale dolphin	California, Oregon, and Washington	56,820	8	253,068	40
Pacific white-sided dolphin	California, Oregon, and Washington	43,914	3	194,882	12
Pantropical spotted dolphin	Hawaii Island	2,585	0	12,603	0
	Hawaii Pelagic	6,809	0	29,207	0
	Oahu	4,127	0	20,610	0
	4-Island	260	0	1,295	0
Pygmy killer whale	Hawaiian	5,816	0	24,428	0
	Tropical	471	0	2,105	0
Risso's dolphin	California, Oregon, and Washington	76,276	6	338,560	30
	Hawaiian	6,590	0	28,143	0
Rough-toothed dolphin	Hawaiian	4,292	0	18,506	0
	NSD [1]	0	0	0	0
Short-beaked common dolphin	California, Oregon, and Washington	932,453	46	4,161,283	222
Short-finned pilot whale	California, Oregon, and Washington	990	1	4,492	5
	Hawaiian	8,594	0	37,077	0
Spinner dolphin	Hawaii Island	89	0	433	0
	Hawaii Pelagic	3,138	0	12,826	0
	Kauai & Niihau	310	0	1,387	0
	Oahu & 4-Island	1,493	1	7,445	5
Striped dolphin	California, Oregon, and Washington	119,219	1	550,936	3
	Hawaiian	5,388	0	22,526	0
Family Phocoenidae (porpoises)					
Dall's porpoise	California, Oregon, and Washington	27,282	137	121,236	634
Suborder Pinnipedia					
Family Otariidae (eared seals)					
California sea lion	U.S	69,543	91	327,136	455
Guadalupe fur seal *	Mexico	518	0	2,386	0
Northern fur seal	California	9,786	0	44,017	0
Family Phocidae (true seals)					
Harbor seal	California	3,119	7	13,636	34

TABLE 41—SPECIES-SPECIFIC PROPOSED TAKE AUTHORIZATION FOR ACOUSTIC AND EXPLOSIVE EFFECTS FOR ALL TRAINING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Species	Stock	Annual		5-Year total **	
		Level B	Level A	Level B	Level A
Hawaiian monk seal *	Hawaiian	139	1	662	3
Northern elephant seal	California	38,169	72	170,926	349

* ESA-listed species (all stocks) within the HSTT Study Area.
** 5-year total impacts may be less than sum total of each year. Not all activities occur every year; some activities occur multiple times within a year; and some activities only occur a few times over course of a 5-year period.
† Only designated stocks are ESA-listed.
[1] NSD: No stock designation.

Nonlethal Take Reasonably Expected To Occur From Testing Activities

Table 42 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. Note that Level B harassment take includes both behavioral disruption and TTS. Figures 6–12 through 6–50 in Section 6 of the Navy's rulemaking/LOA application illustrate the comparative amounts of TTS and behavioral disruption (at the level of a take) for each species, noting that if a ''taken'' animat was exposed to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 42—SPECIES-SPECIFIC PROPOSED TAKE AUTHORIZATION FOR ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES IN THE HSTT STUDY AREA

Species	Stock	Annual		5-Year total **	
		Level B	Level A	Level B	Level A
Suborder Mysticeti (baleen whales)					
Family Balaenopteridae (rorquals)					
Blue whale *	Central North Pacific	14	0	65	0
	Eastern North Pacific	833	0	4,005	0
Bryde's whale †	Eastern Tropical Pacific	14	0	69	0
	Hawaiian †	41	0	194	0
Fin whale *	California, Oregon, and Washington	980	1	4,695	3
	Hawaiian	15	0	74	0
Humpback whale †	California, Oregon, and Washington †.	740	0	3,508	0
	Central North Pacific	3,522	2	16,777	10
Minke whale	California, Oregon, and Washington	276	0	1,309	0
	Hawaiian	1,467	1	6,918	4
Sei whale *	Eastern North Pacific	26	0	124	0
	Hawaiian	49	0	229	0
Family Eschrichtiidae					
Gray whale †	Eastern North Pacific	1,920	2	9,277	7
	Western North Pacific †	2	0	11	0
Suborder Odontoceti (toothed whales)					
Family Physeteridae (sperm whale)					
Sperm whale *	California, Oregon, and Washington	1,096	0	5,259	0
	Hawaiian	782	0	3,731	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Hawaiian	6,459	29	30,607	140
Pygmy sperm whale	Hawaiian	2,595	13	12,270	60
Kogia whales	California, Oregon, and Washington	3,120	15	14,643	67
Family Ziphiidae (beaked whales)					
Baird's beaked whale	California, Oregon, and Washington	727	0	3,418	0
Blainville's beaked whale	Hawaiian	1,698	0	8,117	0
Cuvier's beaked whale	California, Oregon, and Washington	4,461	0	20,919	0
	Hawaiian	561	0	2,675	0
Longman's beaked whale	Hawaiian	6,223	0	29,746	0
Mesoplodon spp	California, Oregon, and Washington	2,402	0	11,262	0

TABLE 42—SPECIES-SPECIFIC PROPOSED TAKE AUTHORIZATION FOR ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Species	Stock	Annual		5-Year total **	
		Level B	Level A	Level B	Level A
Family Delphinidae (dolphins)					
Bottlenose dolphin	California Coastal	1,595	0	7,968	0
	California, Oregon, and Washington Offshore.	23,436	1	112,410	4
	Hawaiian Pelagic	1,242	0	6,013	0
	Kauai & Niihau	491	0	2,161	0
	Oahu	475	0	2,294	0
	4-Island	207	0	778	0
	Hawaii	38	0	186	0
False killer whale †	Hawaii Pelagic	340	0	1,622	0
	Main Hawaiian Islands Insular †	184	0	892	0
	Northwestern Hawaiian Islands	125	0	594	0
Fraser's dolphin	Hawaiian	12,664	1	60,345	5
Killer whale	Eastern North Pacific Offshore	34	0	166	0
	Eastern North Pacific Transient/ West Coast Transient.	64	0	309	0
	Hawaiian	40	0	198	0
Long-beaked common dolphin	California	118,278	6	568,020	24
Melon-headed whale	Hawaiian Islands	1,157	0	5,423	0
	Kohala Resident	168	0	795	0
Northern right whale dolphin	California, Oregon, and Washington	41,279	3	198,917	15
Pacific white-sided dolphin	California, Oregon, and Washington	31,424	2	151,000	8
Pantropical spotted dolphin	Hawaii Island	1,409	0	6,791	0
	Hawaii Pelagic	3,640	0	17,615	0
	Oahu	202	0	957	0
	4-Island	458	0	1,734	0
Pygmy killer whale	Hawaiian	2,708	0	13,008	0
	Tropical	289	0	1,351	0
Risso's dolphin	California, Oregon, and Washington	49,985	3	240,646	15
	Hawaiian	2,808	0	13,495	0
Rough-toothed dolphin	Hawaiian	2,193	0	10,532	0
	NSD [1]	0	0	0	0
Short-beaked common dolphin	California, Oregon, and Washington	560,120	45	2,673,431	222
Short-finned pilot whale	California, Oregon, and Washington	923	0	4,440	0
	Hawaiian	4,338	0	20,757	0
Spinner dolphin	Hawaii Island	202	0	993	0
	Hawaii Pelagic	1,396	0	6,770	0
	Kauai & Niihau	1,436	0	6,530	0
	Oahu & 4-Island	331	0	1,389	0
Striped dolphin	California, Oregon, and Washington	56,035	2	262,973	10
	Hawaiian	2,396	0	11,546	0
Family Phocoenidae (porpoises)					
Dall's porpoise	California, Oregon, and Washington	17,091	72	81,611	338
Suborder Pinnipedia					
Family Otariidae (eared seals)					
California sea lion	U.S.	48,665	6	237,870	23
Guadalupe fur seal *	Mexico	939	0	4,357	0
Northern fur seal	California	5,505	1	26,168	4
Family Phocidae (true seals)					
Harbor seal	California	2,325	1	11,258	5
Hawaiian monk seal *	Hawaiian	66	0	254	0
Northern elephant seal	California	22,702	27	107,343	131

* ESA-listed species (all stocks) within the HSTT Study Area.

** 5-year total impacts may be less than sum total of each year. Not all activities occur every year; some activities occur multiple times within a year; and some activities only occur a few times over course of a 5-year period.

† Only designated stocks are ESA-listed.

[1] NSD: No stock designation.

Take From Vessel Strikes and Explosives by Serious Injury or Mortality

Vessel Strike

A detailed analysis for vessel strike is contained in Chapters 5 and 6 the Navy's rulemaking/LOA application. Vessel strike to marine mammals is not associated with any specific training or testing activity but rather is a limited, sporadic, and incidental result of Navy vessel movement within the HSTT Study Area. To support the prediction of strikes that could occur in the five years covered by the rule, the Navy calculated probabilities derived from a Poisson distribution using ship strike data between 2009–2016 in the HSTT Study Area, as well as historical at-sea days in HSTT from 2009–2016 and estimated potential at-sea days for the period from 2019 to 2023 to determine the probabilities of a specific number of strikes (n=0, 1, 2, etc.) over the period from 2019 to 2023. The Navy struck two whales in 2009 (both fin whales) in the HSTT Study Area, and there have been no strikes since that time from activities in the HSTT study area that would be covered by these regulations. The Navy used those two fin whale strikes in their calculations and evaluated data beginning in 2009 as that was the start of the Navy's Marine Species Awareness Training and adoption of additional mitigation measures to address ship strike. However, there have been no incidents of vessel strikes between June 2009 and April 2018 from HSTT Study Area activities. Based on the resulting probabilities presented in the Navy's analysis, there is a 10 percent chance of three strikes over the period from 2019 to 2023. Therefore, the Navy estimates, and NMFS agrees, that there is some probability that it could strike, and take by serious injury or mortality, up to three large whales incidental to training and testing activities within the HSTT Study Area over the course of the five years.

The Navy then refined its take request based on the species/stocks most likely to be present in the HSTT Study Area based on documented abundance and where overlap is between a species' common occurrence and core Navy training and testing areas within the HSTT Study Area. To determine which species may be struck, a weight of evidence approach was used to qualitatively rank range complex specific species using historic and current stranding data from NMFS, relative abundance as derived by NMFS for the HSTT Phase II Biological Opinion, and the Navy funded monitoring within each range complex. Results of this approach are presented in Table 5–4 of the Navy's rulemaking/LOA application.

The Navy anticipates, and NMFS preliminarily concurs, based on the Navy's ship strike analysis presented in the Navy's rulemaking/LOA application, that three vessel strikes could occur over the course of five years, and that no more than two would involve (and therefore the Navy is requesting no more than two lethal takes from) the following species and stocks:

- Gray whale (Eastern North Pacific stock);
- Fin whale (California, Oregon, Washington stock);
- Humpback whale (California, Oregon, California stock or Mexico DPS);
- Humpback whale (Central Pacific stock or Hawaii DPS); and
- Sperm whale (Hawaiian stock).

Of the possibility for three vessel strikes over the five years, no more than one would involve the species below; therefore, the Navy is requesting no more than one lethal take from) the following species and stocks:

- Blue whale (Eastern North Pacific stock);
- Bryde's whale (Eastern Tropical Pacific stock);
- Bryde's whale (Hawaiian stock);
- Humpback whale (California, Oregon, California stock or Central America DPS);
- Minke whale (California, Oregon, Washington stock);
- Minke whale (Hawaiian stock);
- Sperm whale (California, Oregon, Washington stock);
- Sei whale (Hawaiian stock); and
- Sei whale (Eastern North Pacific stock).

Vessel strikes to the stocks below are very unlikely to occur due to their relatively low occurrence in the Study Area, particularly in core HSTT training and testing subareas, and therefore the Navy is not requesting lethal take authorization for the following species and stocks:

- Blue whale (Central North Pacific stock);
- Fin whale (Hawaiian stock); and
- Gray whale (Western North Pacific stock).

Explosives

The Navy's model and quantitative analysis process used for the HSTT DEIS/OEIS and in the Navy's rulemaking/LOA application to estimate potential exposures of marine mammals to explosive stressors is detailed in the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b). Specifically, over the course of a year, the Navy's model and quantitative analysis process estimates mortality of two short-beaked common dolphin and one California sea lion as a result of exposure to explosive training and testing activities (please refer to section 6 of the Navy's rule making/LOA application). Over the 5-year period of the regulations being requested, mortality of 10 marine mammals in total (6 short-beaked common dolphins and 4 California sea lions) is estimated as a result of exposure to explosive training and testing activities. NMFS coordinated with the Navy in the development of their take estimates and concurs with the Navy's proposed approach for estimating the number of animals from each species that could be affected by mortality takes from explosives.

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. 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 a 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's 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; April 27, 2017)).

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's and U.S. Fish and Wildlife Service's implementing regulations for section 101(a)(5) 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 [2] 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.'' (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'' 50 CFR 216.102(b), which are typically identified as mitigation measures.[3]

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 Dictionary 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 the mitigation measures to reach a negligible impact finding (see 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 affect 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 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.[4]

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

[2] A growth rate can be positive, negative, or flat.

[3] 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 rule.

[4] 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).

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 Specified Activities, 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 the *NRDC* v. *Pritzker* decision, we discuss here how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our separate analysis of whether the take anticipated to result from Navy's activities meets the ''negligible impact'' standard appears in the section ''Preliminary Negligible Impact Analysis and Determination'' below.

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; and

(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's 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 complete information on impacts to species or stocks from a specified activity is not available for every activity type, and additional information would help NMFS and the Navy better understand 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 reductions 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 are 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 restrictions in an area or time that impede the Navy's ability to certify a strike group (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 or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, 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.*[5] 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 effects have greater value in reducing 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 are 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 gives NMFS discretion to weigh a variety of factors when determining what should be included as appropriate mitigation measures and because the focus is on reducing impacts at the species or stock level, 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 potential 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 a 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 nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be 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 Specified Activities and the proposed mitigation measures as described in the Navy's rulemaking/LOA application and the HSTT 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 implementation and monitoring. A complete discussion of the evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in Chapter 5 (Mitigation) and Appendix K (Geographic Mitigation Assessment) of the HSTT DEIS/OEIS and is summarized below. We agree that the process described in Chapter 5 and Appendix K of the HSTT DEIS/OEIS is an accurate and appropriate process for evaluating whether the mitigation measures proposed in this rule meet the least practicable adverse impact standard for the testing and training activities in this proposed rule. The Navy proposes to implement these mitigation measures to avoid potential impacts from acoustic, explosive, and physical disturbance and strike stressors.

In summary (and described in more detail below), the Navy proposes procedural mitigation measures that we find will reduce 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 would use a combination of delayed starts, powerdowns, and shutdowns to minimize or 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 caused by acoustic sources or explosives. The Navy also proposes to implement multiple time/area restrictions (several of which have been added since the Phase II rule) that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as feeding or calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts. The Navy assessed the practicability of the measures it proposed in the context of personnel safety, practicality of implementation, and their impacts on the Navy's ability to meet their Title 10 requirements and found that the measures were supportable. As summarized in this paragraph and described in more detail below, NMFS has evaluated the measures the Navy has proposed in the manner described earlier in this section (*i.e.,* in consideration of their ability to reduce adverse impacts on marine mammal species or stocks and their habitat and their practicability for implementation) and has determined that the measures will both significantly and adequately reduce impacts on the affected marine

[5] 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 or stocks and their habitat 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 numerous measures in the Navy's HSTT DEIS/OEIS that are not included in the Navy's rulemaking/LOA application for the Specified Activities, and NMFS preliminarily concurs with Navy's analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Navy considers these additional potential mitigation measures in two groups. Chapter 5 of the HSTT DEIS/OEIS, in the ''Measures Considered but Eliminated'' section, includes an analysis of an array of different types of mitigation that have been recommended over the years by NGOs or the public, through scoping or public comment on environmental compliance documents. Appendix K of the HSTT DEIS/OEIS includes an in-depth analysis of time/area restrictions that have been recommended over time or previously implemented as a result of litigation. As described in Chapter 5 of the DEIS/OEIS, 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 HSTT 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. NMFS finds the Navy's explanation for why adoption of these recommendations would unacceptably undermine the purpose of the testing and training persuasive. In addition, NMFS must rely on Navy's judgment to a great extent on issues such as its personnel's safety, practicability of Navy's implementation, and extent to which a potential measure would undermine the effectiveness of Navy's testing and training. For these reasons, NMFS finds that these measures do not meet the least practicable adverse impact standard because they are not practicable.

Second in Chapter 5 of the DEIS/OEIS, the Navy evaluated additional potential procedural mitigation measures, including increased mitigation zones, ramp-up measures, 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 HSTT DEIS/OEIS). NMFS reviewed the Navy's evaluation and concurred with this assessment that this additional mitigation was not warranted.

Appendix K describes a comprehensive method for analyzing potential geographic mitigation that includes consideration of both a biological assessment of how the potential time/area limitation would benefit the species or stock and its habitat (*e.g.,* is a key area of biological importance or would result in avoidance or reduction of impacts) in the context of the stressors of concern in the specific area and an operational assessment of the practicability of implementation (*e.g.,* including an assessment of the specific importance of that area for training—considering proximity to training ranges and emergency landing fields and other issues). The analysis analyzes an extensive list of areas including Biologically Important Areas, areas agreed to under the HSTT settlement agreement, areas identified by the California Coastal Commission, and areas suggested during scoping. For the areas that were agreed to under the settlement agreement, the Navy notes two important facts that NMFS generally concurs with: (1) The measures were derived pursuant to negotiations with plaintiffs and were specifically not evaluated or selected based on the examination of the best available science that NMFS typically applies to a mitigation assessment and; (2) the Navy's adoption of restrictions on its activities as part of a relatively short-term settlement does not mean that those restrictions are practicable to implement over the longer term.

Navy has proposed several time/area mitigations that were not included in the Phase II HSTT regulations. For the areas that are not included in the proposed regulations, though, the Navy found that on balance, the mitigation was not warranted because the anticipated reduction of adverse impacts on marine mammal species or stock and their habitat was not sufficient to offset the impracticability of implementation (in some cases potential benefits to marine mammals were limited to non-existent, in others the consequences on mission effectiveness were too great). NMFS has reviewed the Navy's analysis (Chapter 5 and Appendix K referenced above), which considers the same factors that NMFS would consider to satisfy the least practical adverse impact standard, and has preliminarily concurred with the conclusions, and is not proposing to include any of the measures that the Navy ruled out in the proposed regulations. 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 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 HSTT 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, 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, underwater demolition multiple charge mat weave and obstacles loading, anti-swimmer grenades), 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 43—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 Specified Activities 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 relevant to Navy training and testing. 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 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. • 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. Also related are annual marine mammal awareness messages promulgated annually to Fleet units: *For Hawaii:* • Humpback Whale Awareness Notification Message Area (November 15–April 15): —The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including humpback whales. —To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including humpback whales), that when concentrated seasonally, may become vulnerable to vessel strikes. —Lookouts will use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation. *For Southern California:* • Blue Whale Awareness Notification Message Area (June 1–October 31): —The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales. —To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including blue whales), that when concentrated seasonally, may become vulnerable to vessel strikes. —Lookouts will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation. • Gray Whale Awareness Notification Message Area (November 1–March 31): —The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including gray whales. —To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including gray whales), that when concentrated seasonally, may become vulnerable to vessel strikes. —Lookouts will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation. • Fin Whale Awareness Notification Message Area (November 1–May 31): —The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including fin whales. —To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including fin whales), that when concentrated seasonally, may become vulnerable to vessel strikes. —Lookouts will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in implementation of procedural mitigation.

Procedural Mitigation for Acoustic Stressors

Mitigation measures for acoustic stressors are provided in Tables 44 through 47.

Procedural Mitigation for Active Sonar

Procedural mitigation for active sonar is described in Table 44 below.

TABLE 44—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 only 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
• 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 200 dB or more, 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 an observed 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 Lookout 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).

Procedural Mitigation for Air Guns

Procedural mitigation for air guns is described in Table 45 below.

TABLE 45—PROCEDURAL MITIGATION FOR AIR GUNS

Procedural mitigation description

Stressor or Activity:
• Air guns.
Number of Lookouts and Observation Platform:
• 1 Lookout positioned on a ship or pierside.
Mitigation Zone Size and Mitigation Requirements:
• 150 yd around the air gun:
  • 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 air guns.
  • During the activity, observe for marine mammals; if resource is observed, cease use of air guns.
  • To allow an observed marine mammal to leave the mitigation zone, the Navy will not recommence the use of air guns 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 air gun; (3) the mitigation zone has been clear from any additional sightings for 30 min; or (4) for mobile activities, the air gun 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 46 below.

TABLE 46—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 an observed 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 47 below.

TABLE 47—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 50 (Procedural Mitigation for Explosive Medium-Caliber and Large-Caliber Projectiles) or Table 60 (Procedural Mitigation for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions)
Mitigation Zone Size and Mitigation Requirements:
• 30 degrees 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 an observed 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 48 through 52.

Procedural Mitigation for Explosive Sonobuoys

Procedural mitigation for explosive sonobuoys is described in Table 48 below.

TABLE 48—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.

TABLE 48—PROCEDURAL MITIGATION FOR EXPLOSIVE SONOBUOYS—Continued

Procedural mitigation description
• To allow an observed 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 49 below.

TABLE 49—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), conduct passive acoustic monitoring for marine mammals, and observe for floating vegetation, jellyfish aggregations and marine mammals; if resource is visually observed, do not commence firing.
  • During the activity, observe for marine mammals and jellyfish aggregations; if resource is observed, cease firing.
  • To allow an observed 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, observe for marine mammals; if any injured or dead resources are observed, 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 50 below.

TABLE 50—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:
• 1 Lookout on the vessel or aircraft conducting the activity.
Mitigation Zone Size and Mitigation Requirements:
• 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles, or
• 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence firing.
  • During the activity, observe for marine mammals; if resource is observed, cease firing.
  • To allow an observed 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 51 below.

TABLE 51—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 during activities 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence firing.
  • During the activity, observe for marine mammals; if resource is observed, cease firing.
  • To allow an observed 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 52 below.

TABLE 52—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), observe for floating vegetation and marine mammals; if resource is observed, do not commence bomb deployment.
  • During target approach, observe for marine mammals; if resource is observed, cease bomb deployment.
  • To allow an observed 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 53 below.

TABLE 53—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, conduct aerial observations for floating vegetation, jellyfish aggregations and marine mammals; if resource is observed, do not commence firing.

TABLE 53—PROCEDURAL MITIGATION FOR SINKING EXERCISES—Continued

Procedural mitigation description
• During the activity, conduct passive acoustic monitoring and visually observe for marine mammals from the vessel; if resource is visually observed, 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, do not commence firing. • To allow an observed 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), observe for marine mammals; if any injured or dead resources are observed, follow 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 54 below.

TABLE 54—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 implementing the smaller mitigation zone.
• 2 Lookouts (one positioned in an aircraft and one on a small boat) when implementing the larger mitigation zone.
Mitigaton 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 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence detonations.
  • During the activity, observe for marine mammals; if resource is observed, cease detonations.
  • To allow an observed 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 with fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.
  • After completion of the activity, observe for marine mammals (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, 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 55 below.

TABLE 55—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS

Procedural mitigation description
Stressor or Activity: • Explosive 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 (0.1–29 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 (0.1–29 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight:

TABLE 55—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS—Continued

Procedural mitigation description
• 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence detonations or fuse initiation. • During the activity, observe for marine mammals; if resource is observed, 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 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 an observed 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; (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, observe for marine mammals for 30 min; if any injured or dead resources are observed, follow established incident reporting procedures.

Procedural Mitigation for Underwater Demolition Multiple Charge—Mat Weave and Obstacle Loading

Procedural mitigation for underwater demolition multiple charge—mat weave and obstacle Loading is described in Table 56 below.

TABLE 56—PROCEDURAL MITIGATION FOR UNDERWATER DEMOLITION MULTIPLE CHARGE—MAT WEAVE AND OBSTACLE LOADING

Procedural mitigation description

Stressor or Activity:
• Underwater Demolition Multiple Charge—Mat Weave and Obstacle Loading exercises.
Number of Lookouts and Observation Platform:
• 2 Lookouts (one on a small boat and one on shore from an elevated platform).
Mitigation Zone Size and Mitigation Requirements:
• 700 yd around the detonation site:
  • For 30 min prior to the first detonation, the Lookout positioned on a small boat will observe for floating vegetation and marine mammals; if resource is observed, do not commence the initial detonation.
  • For 10 min prior to the first detonation, the Lookout positioned on shore will use binoculars to observe for marine mammals; if resource is observed, do not commence the initial detonation until the mitigation zone has been clear of any additional sightings for a minimum of 10 min.
  • During the activity, observe for marine mammals; if resource is observed, cease detonations.
  • To allow an observed 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 detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min (as determined by the shore observer).
  • After completion of the activity, the Lookout positioned on a small boat will observe for marine mammals for 30 min; if any injured or dead resources are observed, 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 57 below.

TABLE 57—PROCEDURAL MITIGATION FOR MARITIME SECURITY OPERATIONS—ANTI-SWIMMER GRENADES

Procedural mitigation description
Stressor or Activity: • Maritime Security Operations—Anti-Swimmer Grenades.

TABLE 57—PROCEDURAL MITIGATION FOR MARITIME SECURITY OPERATIONS—ANTI-SWIMMER GRENADES—Continued

Procedural mitigation description

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), observe for floating vegetation and marine mammals; if resource is observed, do not commence detonations.
  • During the activity, observe for marine mammals; if resource is observed, cease detonations.
  • To allow an observed marine mammal to leave the mitigation zone, the Navy will not recommence detonations until one of the re-commencement 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 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 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.), (3) the vessel is operated autonomously, or (4) when impracticable based on mission requirements (*e.g.,* during Amphibious Assault—Battalion Landing exercises).
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, observe for marine mammals; if a whale is observed, 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, observe for marine mammals; if a marine mammal other than a whale, bow-riding dolphin, or hauled-out pinniped is observed, 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 or in-water device is threatened. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the manned towing platform. *Mitigation Zone Size and Mitigation Requirements:* • 250 yd around marine mammals: • During the activity, 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 47 (Procedural Mitigation 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence firing.
  • During the activity, observe for marine mammals; if resource is observed, cease firing.
  • To allow an observed 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence firing.
  • During the activity, observe for marine mammals; if resource is observed, cease firing.
  • To allow an observed 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), observe for floating vegetation and marine mammals; if resource is observed, do not commence bomb deployment or mine laying.
  • During approach of the target or intended minefield location, observe for marine mammals; if resource is observed, cease bomb deployment or mine laying.

TABLE 62—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE BOMBS AND MINE SHAPES—Continued

Procedural mitigation description
• To allow an observed 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 mitigation areas to avoid or minimize potential impacts on marine mammals (see the revised Figures provided in the Navy's addendum to the application). A full technical analysis (for which the methods were summarized above) of the mitigation areas that the Navy considered for marine mammals is provided in Appendix K (Geographic Mitigation Assessment) of the HSTT DEIS/OEIS. The Navy has taken into account public comments received from the HSTT DEIS/OEIS, best available science, and the practicability of implementing additional mitigations and has enhanced their mitigation areas and mitigation measures to further reduce impacts to marine mammals, and therefore, the Navy revised their mitigation areas since their application. These revisions are discussed below and can be found as an addendum to the Navy's application at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*. The Navy will continue to work with NMFS to finalize its mitigation areas through the development of the rule.

Information on the mitigation measures that the Navy will implement within mitigation areas is provided in Tables 63 and 64. The mitigation applies year-round unless specified otherwise in the tables.

Mitigation Areas for the HRC

Mitigation areas for the HRC are described in Table 63 below. The location of each mitigation area is in the Navy's addendum to the application on Mitigation Areas.

TABLE 63—MITIGATION AREAS FOR MARINE MAMMALS IN THE HAWAII RANGE COMPLEX

Mitigation area description
Stressor or Activity:
Sonar.
Explosives.[1]
Vessel strikes.
Resource Protection Focus:
Marine mammals
Mitigation Area Requirements:
Hawaii Island Mitigation Area (year-round):
• The Navy will minimize the use of mid-frequency active anti-submarine warfare sensor bins MF1 and MF4 to the maximum extent practicable.
• The Navy will not conduct more than 300 hrs of MF1 and 20 hrs of MF4 per year.
• Should national security present a requirement to conduct more than 300 hrs of MF1 or 20 hrs of MF4 per year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.
• The Navy will not use explosives[1] during training and testing.
• Should national security present a requirement for the use of explosives in the area, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports.
4-Islands Region Mitigation Area (November 15–April 15):
• The Navy will not use mid-frequency active anti-submarine warfare sensor MF1 from November 15–April 15.
• Should national security present a requirement for the use of MF1 in the area from November 15–April 15, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.
Humpback Whale Special Reporting Areas (December 15–April 15):
• The Navy will report the hours of MF1 used in the special reporting areas in its annual activity reports.
Humpback Whale Awareness Notification Message Area (November 1–April 30):
• The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including humpback whales.
• To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including humpback whales), that when concentrated seasonally, may become vulnerable to vessel strikes.
• Lookouts will use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

Notes:

[1] Explosive restrictions for the Hawaii Island Mitigation Area apply only to those activities for which the Navy seeks MMPA authorization (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

Mitigation Areas for the SOCAL Portion of the Study Area

Mitigation areas for the SOCAL portion of the Study Area are described in Table 64 below. The location of each mitigation area is shown in the Navy's addendum to the application on Mitigation Areas.

TABLE 64—MITIGATION AREAS FOR MARINE MAMMALS IN THE SOUTHERN CALIFORNIA PORTION OF THE STUDY AREA

Mitigation area description
Stressor or Activity:
Sonar.
Explosives.
Vessel strikes.
Resource Protection Focus:
Marine mammals.
Mitigation Area Requirements:
San Diego Arc Mitigation Area (June 1–October 31):
• The Navy will minimize the use of mid-frequency active anti-submarine warfare sensor bin MF1 to the maximum extent practicable.
• The Navy will not conduct more than 200 hrs of MF1 (with the exception of active sonar maintenance and systems checks) per year from June 1–October 31.
• Should national security present a requirement to conduct more than 200 hrs of MF1 (with the exception of active sonar maintenance and systems checks) per year from June 1–October 31, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.
• The Navy will not use explosives during large-caliber gunnery, torpedo, bombing, and missile (including 2.75 in rockets) activities during training and testing.
• Should national security present a requirement to conduct large-caliber gunnery, torpedo, bombing, and missile (including 2.75 in rockets) activities using explosives, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports.
Santa Barbara Island Mitigation Area (year-round):
• The Navy will not use mid-frequency active anti-submarine warfare sensor MF1 and explosives in small-, medium-, and large-caliber gunnery; torpedo; bombing; and missile (including 2.75 in rockets) activities during unit-level training and major training exercises.
• Should national security present a requirement for the use of mid-frequency active anti-submarine warfare sensor MF1 or explosives in small-, medium-, and large-caliber gunnery; torpedo; bombing; and missile (including 2.75 in rockets) activities during unit-level training or major training exercises for national security, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in its annual activity reports.
Blue Whale (June 1–October 31), Gray Whale (November 1–March 31), and Fin Whale (November 1–May 31) Awareness Notification Message Areas:
• The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue, gray, or fin whales.
• To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species, that when concentrated seasonally, may become vulnerable to vessel strikes.
• Lookouts will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

NMFS conducted an independent analysis of the mitigation areas that the Navy proposed, which are described below. NMFS concurs with the Navy's analysis, which indicates that the measures in these mitigation areas are both practicable (which is the Navy's purview to determine) and will reduce the likelihood or severity of adverse impacts to marine mammal species or stocks or their habitat in the manner described in the Navy's analysis. Specifically, the mitigation areas will provide the following benefits to the affected stocks:

4-Islands Region Mitigation Area (Seasonal Nov 15–Apr 15): The Maui/Molokai area (4-Islands Region) is an important reproductive and calving area for humpback whales. Recent scientific research indicates peak humpback whale season has expanded, with higher densities of whales occurring earlier than prior studies had indicated. In addition, a portion of this area has also been identified as biologically important for the ESA-listed small and resident population, main Hawaiian Island insular false killer whales. While the season for this area used to be from December 15 to April 15, the Navy has proposed to extend it from November 15 to April 15. Extending the season and size of the 4-Islands Region Mitigation Area will provide some added protection for that species during half of the year. Minimizing impacts in this area and time is expected to reduce the likelihood of more serious impacts from sonar that could interfere with important cow/calf communication or have unforeseen impacts on more sensitive calves. This area also overlaps with identified biologically important areas for other marine mammal species such as dolphin species including Common bottlenose dolphin, pantropical spotted dolphin, and spinner dolphin (small and resident populations).

Hawaii Island Mitigation Area (Year-round): The endangered main Hawaiian Island insular false killer whale, which is a small and resident populations, and two species of beaked whales (Cuvier and Blainville's) have been documented using this area year-round to support multiple biological functions. Main Hawaiian Island insular false killer whales are an endangered species and beaked whales are scientifically shown to be highly sensitive to exposure to sonar. This area also overlaps with other identified biologically important areas for other marine mammal species such as humpback whale (important reproductive/calving area), dwarf sperm whale (small and resident populations), pygmy killer whale (small and resident

population), melon-headed whale (small and resident population), short-finned pilot whale (small and resident population) and dolphin species including Common bottlenose dolphin, pantropical spotted dolphin, spinner dolphin, and rough-toothed dolphin (small and resident populations) for which the Hawaii Island Mitigation Area would provide additional protection.

Potential benefits to humpback whales are noted in the section above. For beaked whales, which have been shown to be more sensitive to loud sounds, a reduction of impacts in general where the stock is known to live or concentrate is expected to reduce the likelihood that more severe responses that could affect individual fitness would occur. For small resident populations, one goal is to ensure that the entirety of any small population is not being extensively impacted, in order to reduce the probability that repeated behavioral exposures to small numbers of individuals will result in energetic impacts, or other impacts with the potential to reduce survival or reproductive success on individuals that will more readily accrue to population level impacts in smaller stocks.

Santa Barbara Island Mitigation Area (Year-round): Numerous marine mammal species use the Channel Islands NMS and it provides valuable, and protected, marine mammal habitat. Particularly, this mitigation area will overlap with identified biologically important feeding area for blue whales and migration areas for gray whales. Generally, a reduction of impacts in the Santa Barbara Island Mitigation Area (inclusive of a portion of the Channel Islands NMS) is expected to reduce stressors in an area that likely contains high value habitat that is more typically free of other anthropogenic stressors.

San Diego Arc Mitigation Area (Seasonal Jun 1–Oct 31): Endangered blue whales have been documented foraging in this area seasonally. Reducing harassing exposures of marine mammals to sonar and explosives in feeding areas, even when the animals have demonstrated some tolerance for disturbance when in a feeding state, is expected to reduce the likelihood that feeding would be interrupted to a degree that energetic reserves might be affected in a manner that could reduce survivorship or reproductive success. This mitigation area will also partially overlap with an important migration area for gray whales.

Summary of Mitigation

The Navy's proposed mitigation measures are summarized in Tables 65 and 66.

Summary of Procedural Mitigation

A summary of procedural mitigation is described in Table 65 below.

TABLE 65—SUMMARY OF PROCEDURAL MITIGATION

Stressor or activity	Summary of mitigation requirements
Environmental Awareness and Education	Afloat Environmental Compliance Training program for applicable personnel.
Active Sonar (depending on system)	Depending on sonar source: 1,000 yd power down, 500 yd power down, and 200 yd shut down or 200 yd shut down.
Air Guns	150 yd.
Pile Driving	100 yd.
Weapons Firing Noise	30 degrees 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).
Explosive 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).
Underwater Demolition Multiple Charge—Mat Weave and Obstacle Loading.	700 yd.
Maritime Security Operations—Anti-Swimmer Grenades	200 yd.
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.

Summary of Mitigation Areas

A summary of mitigation areas for marine mammals is described in Table 66 below.

TABLE 66—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Mitigation area	Summary of mitigation requirements
Mitigation Areas for Marine Mammals	
Hawaii Island Mitigation Area (Year-round).	• The Navy would not exceed 300 hrs of mid-frequency active anti-submarine warfare sensor MF1 and 20 hrs of mid-frequency active anti-submarine warfare sensor MF4 per season annually. • Should national security present a requirement to conduct additional training and testing using MF1 or MF4 in the mitigation area for national security, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated reports. • The Navy will not use explosives [1] during training or testing activities. • Should national security present a requirement to use explosives, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated annual reports.
4-Islands Region Mitigation Area (November 15–April 15).	• The Navy will not use mid-frequency active anti-submarine warfare sensor MF1 during training or testing activities. • Should national security present a requirement to use MF1 during training or testing, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated annual reports.
San Diego Arc Mitigation Area (June 1–October 31).	• The Navy would not exceed 200 hrs of mid-frequency active anti-submarine warfare sensor MF1 (with the exception of active sonar maintenance and systems checks) annually within the area. • Should national security present a requirement to conduct additional training and testing using MF1, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated annual reports. • The Navy will not use explosives during large-caliber gunnery, torpedo, bombing, and missile (including 2.75 in rockets) activities during training or testing activities. • Should national security present a requirement to use these explosives during training or testing activities, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated annual reports.
Santa Barbara Island Mitigation Area (Year-round).	• The Navy will not use mid-frequency active anti-submarine warfare sensor MF1 and explosives in small-, medium-, and large-caliber gunnery; torpedo; bombing; and missile (including 2.75 in rockets) activities during unit-level training or major training exercises. • Should national security present a requirement to use MF1 or these explosives during training or testing activities, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in associated annual reports.

Notes:
[1] Explosive restrictions within the Hawaii Island Mitigation Area apply only to those activities for which the Navy seeks MMPA authorization (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS's 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 DEIS/OEIS, 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 the Navy and NMFS, NMFS has preliminarily determined that the Navy's proposed mitigation measures are adequate 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. Additionally, the adaptive management component helps further ensure that mitigation is regularly assessed and opportunities are available to improve the mitigation, based on the factors above, through modification as appropriate. The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding 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 any 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 issue an ITA 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 LOAs 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.

Although the Navy has been conducting research and monitoring in the HSTT Study Area for over 20 years, they developed a formal marine species monitoring program in support of the MMPA and ESA authorizations for the Hawaii and Southern California range complexes in 2009. This robust program has resulted in hundreds of technical reports and publications on marine mammals that have informed Navy and NMFS analysis in environmental planning documents, Rules and Biological Opinions. The reports are made available to the public on the Navy's marine species monitoring website (*www.navymarinespecies monitoring.us*) and the data on the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) (*www.seamap.env.duke.edu*).

The Navy would continue collecting monitoring data to inform our understanding of: The occurrence of marine mammals in the action area; the likely exposure of marine mammals to stressors of concern in the area; the response of marine mammals to exposures to stressors; the consequences of a particular marine mammal response to their individual fitness and, ultimately, populations; and, the effectiveness of implemented mitigation measures. Taken together, mitigation and monitoring comprise the Navy's integrated approach for reducing environmental impacts from the specified activities. The Navy's overall monitoring approach will seek to leverage and build on existing research efforts whenever possible.

Consistent with the cooperating agency agreement between the Navy and NMFS, monitoring measures presented here, as well as the mitigation measures described above, focus on the protection and management of potentially affected marine mammals. A well-designed monitoring program can provide important feedback for validating assumptions made in analyses and allow for adaptive management of marine resources. Monitoring is required under the MMPA, and details of the monitoring program for the specified activities have been developed through coordination between NMFS and the Navy through the regulatory process for previous Navy at-sea training and testing actions. Input received during the public comment period and discussions with other agencies or NMFS offices during the rulemaking process could result in changes to the monitoring as described in this document.

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 and NMFS 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 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 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 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 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 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 ITA and 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
- A reduction in the adverse impact of activities to the least practicable level, as defined in the MMPA.

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 the ICMP's top-level goals, and a conceptual framework incorporating a progression of knowledge, spanning occurrence, exposure, response, and consequences. 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 leverages 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/*).

Monitoring Progress in the Study Area

The monitoring program has undergone significant changes that highlight its evolution through the process of adaptive management. The monitoring program developed for the first cycle of environmental compliance documents (*e.g.,* (U.S. Department of the Navy, 2008)) utilized effort-based compliance metrics that were somewhat limiting. Through adaptive management discussions, the Navy designed and conducted monitoring studies according to scientific objectives, thereby eliminating basing requirements upon metrics of level-of-effort. Furthermore, refinements of scientific objective have continued through the latest permit cycle through 2018.

Progress has also been made on the monitoring program's conceptual framework categories from the Scientific Advisory Group for Navy Marine Species Monitoring (U.S. Department of the Navy, 2011e), ranging from occurrence of animals, to their exposure, response, and population consequences. Lessons-learned with Phase I and II monitoring in HRC and SOCAL suggested that ''layering'' multiple components of monitoring simultaneously provides a way to leverage an increase in return of the progress toward answering scientific monitoring questions.

Specific Phase II monitoring has included:

- HRC
  - Long-term Trends in Abundance of Marine Mammals at PMRF;
  - Estimation of Received Levels of Mid-Frequency Active Sonar on Marine Mammals at PMRF;
  - Behavioral Response of Marine Mammals to Navy Training and Testing at PMRF; and
  - Navy Civilian Marine Mammal Observers on MFAS Ships in Offshore Waters of HRC.
- SOCAL
  - Blue and Fin Whale Satellite Tagging;
  - Cuvier's Beaked Whale Impact Assessment at the Southern California Offshore Antisubmarine Warfare Range (SOAR);
  - Cuvier's Beaked Whale, Blue Whale, and Fin Whale Impact Assessments at Non-Instrumented Range Locations in SOCAL; and
  - Marine Mammal Sightings during California Cooperative Oceanic Fisheries Investigation (CalCOFI) Cruises.

Numerous publications, dissertations and conference presentations have resulted from research conducted under the Navy's marine species monitoring program (*https://www.navymarine speciesmonitoring.us/reading-room/ publications/*), resulting in a significant contribution to the body of marine mammal science. Publications on occurrence, distribution and density have fed the modeling input, and publications on exposure and response have informed Navy and NMFS analyses of behavioral response and consideration of mitigation measures.

Furthermore, collaboration between the monitoring program and the Navy's research and development (*e.g.,* the Office of Naval Research) and demonstration-validation (*e.g.,* Living Marine Resources) programs has been strengthened, leading to research tools and products that have already transitioned to the monitoring program. These include Marine Mammal Monitoring on Ranges (M3R), controlled exposure experiment behavioral response studies (CEE BRS), acoustic sea glider surveys, and global positioning system-enabled satellite tags. Recent progress has been made with better integration of monitoring across all Navy at-sea study areas, including study areas in the Pacific and the Atlantic Oceans, and various testing ranges. Publications from the Living Marine Resources and Office of Naval Research programs have also resulted in significant contributions to hearing, acoustic criteria used in effects modeling, exposure, and response, as well as developing tools to assess biological significance (*e.g.,* population-level consequences).

NMFS and Navy also consider data collected during procedural mitigations as monitoring. Data are collected by shipboard personnel on hours spent training, hours of observation, hours of sonar, marine mammals observed within the mitigation zone during Major Training Exercises when mitigations are implemented. These data are provided to NMFS in both classified and unclassified annual exercise reports.

Past and Current Monitoring in the Study Area

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the HSTT 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 HSTT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/ incidental/military.htm* and *http:// www.navymarinespeciesmonitoring.us*.

The Navy has been funding various marine mammal studies and research within the HSTT Study Area for the past 20 years. Under permitting from NMFS starting in 2009, this effort has transitioned from a specific metric based approach, to a broader new research only approach (*e.g.,* set number of visual surveys, specific number of passive acoustic recording devices, etc.), and more recently since 2014 a more regional (Hawaii or Southern California) species-specific study question design (*e.g.,* what is distribution of species A within the HSTT Study Area, what is response of species B to Navy activities, etc.).

In adaptive management consultation with NMFS, some variation of these ongoing studies or proposed new studies will continue within the HSTT Study Area for either the duration of any new regulations, or for a set period as specified in a given project's scope. Some projects may only require one or two years of field effort. Other projects could entail multi-year field efforts (two to five years). For instance, in the SOCAL portion of the HSTT Study Area, the Navy has funded development and application of new passive acoustic technology since the early 2000's for detecting Cuvier's beaked whales. This also includes ongoing effort to further identify and update population demographics for Cuvier's beaked whales (re-sighting rates, population growth, calving rates, movements, etc.) specific to Navy training and testing areas, as well as responses to Navy activity. Variations of these Cuvier's beaked whale monitoring studies will likely continue under future authorizations. 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/pacific/current-projects/*.

The Navy's marine species monitoring program typically supports 6–10 monitoring projects in the HSTT Study Area at any given time. Projects can be either major multi-year major efforts, or one to two year special studies. Navy monitoring projects in HSTT through 2018 currently include:

- Long-term Trends In Abundance Of Marine Mammals At The Pacific Missile Range Facility (Hawaii—began in 2015);
- Estimation Of Received Levels Of Mid-frequency Active Sonar On Marine Mammals At The Pacific Missile Range Facility (Hawaii—began in 2009);
- Behavioral Response Of Marine Mammals To Training And Testing At The Pacific Missile Range Facility (Hawaii—began in 2009);
- Humpback Whale Satellite Tracking And Genetics (Hawaii, Southern California—began in 2017);
- Navy Civilian Marine Mammal Observers On Navy Destroyers (Hawaii, Southern California began in 2010);
- Blue and Fin Whale Satellite Tracking And Genetics (Southern California—field work 2014–2017 with ongoing analysis);
- Cuvier's Beaked Whale Population Assessment And Impact Assessment At Southern California Anti-Submarine Range (Southern California—began in 2015);
- Cuvier's Beaked Whale Occurrence In Southern California From Passive Acoustic Monitoring (Southern California—began in 2012); and
- Guadalupe Fur Seal Satellite Tracking and Census (Southern California—one-year effort beginning in 2018).

Additional scientific projects may have field efforts within Hawaii and Southern California under separate Navy funding from the Navy's two marine species research programs, the Office of Naval Research Marine Mammals and Biology Program and the Living Marine Resources Program. The periodicity of these research projects are more variable than the Navy's compliance monitoring described above.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training and testing activities in the 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.

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 LOAs.

Proposed Reporting

In order to issue an 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.navymarine speciesmonitoring.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 will be available for review at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*.

Annual HSTT Monitoring Report

The Navy shall submit an annual report to NMFS of the HSTT monitoring describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and HSTT Study Area to allow for comparison in different geographic locations. The draft of the annual monitoring report shall be submitted either three months after the calendar year, or three months 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 HSTT 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. NMFS will submit comments on the draft monitoring report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS's comments, or three months after the submittal of the draft if NMFS does not have comments.

As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across multiple Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative

progress on the monitoring study question. This will continue to allow Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the HSTT, Gulf of Alaska, Mariana Islands, and the Northwest Study Areas, etc.

Annual HSTT Training Exercise Report and Testing Activity Report

Each year, the Navy will submit two preliminary reports 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 detailed reports to NMFS within 3 months after the anniversary of the date of issuance of the LOA. The annual reports shall contain information on MTEs, 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 reports will be based on the accumulation of data from the current year's report and data collected from previous reports. The Annual HSTT Training Exercise Report and Testing Activity Navy reports can be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. Specific sub-reporting in these annual reports include:

- Humpback Whale Special Reporting Area (December 15–April 15): The Navy will report the total hours of operation of surface ship hull-mounted mid-frequency active sonar used in the special reporting area;
- HSTT Mitigation Areas (see section 11 of the Navy's application): The Navy will report any use that occurred as specifically described in these areas; and
- Information included in the classified annual reports may be used to inform future adaptive management of activities within the HSTT Study Area.

Other Reporting and Coordination

The Navy will continue to report and coordinate with NMFS for the following:

- Annual marine species monitoring technical review meetings with researchers, regulators and Marine Mammal Commission (currently, every two years a joint Pacific-Atlantic meeting is held); and
- Annual Adaptive Management meetings with NMFS, regulators and Marine Mammal Commission (recently modified to occur in conjunction with the annual monitoring technical review meeting).

Preliminary Negligible Impact Analysis and 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 41 and 42), 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. 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 and anticipated to occur in this rule, in the context of the specific circumstances surrounding these predicted takes. 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 and the mitigation measure effectiveness, together into group-specific discussions that support our negligible impact conclusions for each stock.

Harassment

The Navy's Specified Activities 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 Specified Activities section contains a more realistic annual representation of activities, but includes years of a higher maximum amount of training and testing to account for these fluctuations. There may be some flexibility in 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 41 and 42. 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 41 and 42, 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 of a specific stock 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 quantitative assessment of mitigation, 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 quantitative assessment of mitigation. 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/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 brief exposures (seconds or minutes) or, in some cases, longer durations of exposure within a day. Some individuals may experience multiple instances of take (meaning over multiple days) over the course of the year, while some members of a species or stock may not experience take at all which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed the number of individuals in the population, repeated takes (on more than one day) 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.

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 (typically 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's 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.

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), scale (*i.e.,* multiple sonar platforms), and use of highpower hull-mounted sonar in 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. To help assess this, for sonar (LFAS/MFAS/HFAS) used in the HSTT 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, all else being equal, 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, which could more likely accumulate to impacts on reproductive success or survivorship of the animal, but as mentioned previously other contextual factors (such as distance) are important also. 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 or at closer proximity to the source. 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). Henderson *et al.,* 2016 found that ongoing smaller scale events had little to no impact on foraging dives for Blainville's beaked whale, while multi-day training events may decrease foraging behavior for Blainville's beaked whale (Manzano-Roth *et al.,* 2016). 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 kn, or higher, and likely cover large areas that are relatively far from shore (typically more than 3 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 HSTT 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/LOA application and included hull-mounted, towed, sonobuoy, helicopter dipping, and torpedo sonars. Most ASW sonars are MFAS (1–10 kHz); however, some sources may use higher or lower frequencies. ASW training activities using hull mounted sonar proposed for the HSTT Study Area generally last for only a few hours. Some ASW training

and testing 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 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 hrs, possibly 1–2 days), they are almost always completed in a single day and only one event is planned annually for the HSTT 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 multiple days within a year. Where the instances of take exceed 100 percent of the population, multiple takes of some individuals are predicted to occur within a year. Generally speaking, the higher the number of takes as compared to the population abundance, the more multiple 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. At a minimum, it provides a relative picture of the scale of impacts to each stock.

In the ocean, unlike a modeling simulation with static animals, 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 would likely occur over the year, especially where numerous activities occur in generally the same area (for example on instrumented ranges) 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 the majority of marine mammal stocks are not predicted to be taken for more than a few days in a row.

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. The SARs provide the official population estimate for a given species or stock in U.S. waters in a given year (and are typically based solely on the most recent survey data). However, the Study Area encompasses large areas of ocean space outside U.S. waters; therefore, the SARs do not account for the total abundance in the Study Area. Additionally, the SARs are not to the only information used to estimate takes, instead modeled density layers are used, which incorporate the SAR surveys and other survey data. 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. In some cases, NMFS's abundance estimates show substantial year-to-year variability. However, for highly migratory species (*e.g.,* large whales) or those whose geographic distribution extends well beyond the boundaries of the Navy's study area (*e.g.,* population with distribution along the entire California Current versus just SOCAL), comparisons to the SAR may be more appropriate. This is because the Navy's acoustic modeling process does not horizontally move animats, and therefore does not account for immigration and emigration within the study area. For instance, while it may be accurate that the abundance of animals in Southern California at any one time for a particular species is 200 individuals, if the species is highly migratory or has large daily home ranges, it is not likely that the same 200 individuals would be present every day. A good descriptive example is blue whales, which tagging data have shown traverse the SOCAL area in a few days to weeks on their migrations. Therefore, at any one time there may be a stable number of animals, but over the course of the entire year the entire population may cycle through SOCAL. Therefore, when comparing the estimated takes to an abundance, in this case the SAR, which represents the total population, may be more appropriate than the Navy's modeled abundance for SOCAL. In each of the species write-ups for the negligible impact assessment we explain which abundance was used for making the comparison of takes to the impacts to the population.

NMFS's Southwest Fisheries Science Center derived densities for the Navy, 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 Hawaii-Southern California 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 off of Hawaii and Southern California, 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. Because of the differences in the availability of data in the U.S. EEZ versus outside (which results in more accurate density and abundance estimates inside the U.S. EEZ) and the fact that activities and takes are more concentrated in the U.S. EEZ, NMFS chose to look at how estimated instances of take compare to predicted abundance both within the U.S. EEZ and across the entire study area to help better understand, at least in a relative sense, what the estimated instances of take tell us about either the likely number of individuals taken, and/or over how many days they might be taken. These comparisons are undertaken below in the taxa-specific sections.

Temporary Threshold Shift

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 69–81 indicate the amounts of TTS that may be incurred by different stocks from exposure to acoustic sources (sonar, air guns, pile driving) and explosives. 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 kn). 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 sec, 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 HSTT 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 would sometimes able to implement behaviors to compensate (see Acoustic Masking or Communication Impairment section), though these compensations may incur energetic costs.

Therefore, even though the models show that the affected species and stocks will experience Level B

harassment at the levels shown in Tables 69–81 and that much of that harassment will occur in the form of TTS, the actual TTS that will result from Navy's activities is expected to be both mild and short-term for the majority of exposed animals. While the TTS experienced by some animals would overlap with the frequency ranges of their vocalizations, it is unlikely that it would affect all vocalizations and other critical auditory clues, and impaired animals may be able to compensate until they have recovered. For these reasons, the majority of the Level B harassment in the form of TTS shown in Tables 69–81 is expected to be short-term and not to have significant impacts on affected animals in a manner that would affect reproduction or survival.

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 frequencies and a few use LF and HF frequencies. 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. Very few 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 air gun pulses. However, masking in odontocetes or pinnipeds is less likely unless the air gun 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. For the reasons described here, any limited masking that could potentially occur would be minor and short-term and not expected to have adverse impacts on reproductive success or survivorship.

PTS From Sonar Acoustic Sources and Explosives and Tissue Damage From Explosives

Tables 69–81 indicate the number of individuals of each species and stock for which Level A harassment in the form of PTS resulting from exposure to active sonar and/or explosives is estimated to occur. Tables 69–81 also indicate the number of individuals of each 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 209 (209 for Dall's porpoise), but is more typically zero or a few up to 18 (with the exception of a few species *i.e.,* short-beaked common dolphin, Kogia whales, Dall's porpoise, California sea lion, and Northern elephant seal). The number of individuals to potentially incur tissue damage from explosives for the predicted species ranges from 0 to 10 (10 for short-beaked common dolphin and 9 for California sea lion), but is typically zero in most cases. Overall the Navy's model estimated that a total 24 marine mammals annually would be exposed to explosives during training and testing at levels that could result in 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. Some, but likely not all, of the anticipated avoidance and mitigation has been accounted for in the Navy's quantitative assessment of mitigation—regardless 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 kn) 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 48–55).

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. Some, though likely not all, of that reduction was quantified in the Navy's quantitative assessment of mitigation; however, we analyze the type and amount of Level A take indicated in Tables 41 and 42. Generally speaking, the number and degree of potential injury are low.

Therefore, given that the numbers of anticipated injury in the form of PTS or tissue damage are very low (<18 or single digits, respectively), for any given stock, with the exception of a few species, and the severity of these impacts are expected to be on the less severe end of what could potentially occur because of the factors described above, as well as the fact that any PTS incurred may overlap with the frequency ranges of their vocalizations, but is unlikely to affect all vocalizations and other critical auditory clues, the Level A harassment shown in Tables 69–81 is not expected to have significant or long-term impacts on affected animals in a manner that would affect reproduction or survival.

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. 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 HSTT 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'' (OSP) and is a measure to be considered when evaluating 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 without consideration of how it applies in section 118 and how other statutory management frameworks in the MMPA 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 metric, 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, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI caused by activities authorized under 101(a)(5)(A) on marine mammal stocks. As noted by NMFS and the USFWS in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown, the size and distribution of the population, and existing impacts and environmental conditions. To specifically use PBR, along with other factors, to evaluate the effects of M/SI, we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI 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 how the anticipated potential incidental M/SI from the activities being evaluated compares to residual PBR. Anticipated or potential M/SI that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated M/SI that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also obviously factor into a negligible impact determination). In such cases where the anticipated M/SI is near, at, or above PBR, consideration of other factors, including those outlined above as well as mitigation and other factors (positive or negative), is especially important to assessing whether the M/SI will have a negligible impact on the stock. As described above, PBR is a conservative metric and is not intended to be used as a solid cap on mortality—accordingly, impacts from M/SI that exceed PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

Alternately, 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. This 10% was identified as a workload simplification consideration to avoid the need to provide unnecessary additional information when the conclusion is relatively obvious, but as described above, values above 10 percent have no particular significance associated with them until and unless they approach residual PBR.

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. 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 Southwest and Pacific Islands Fisheries Science Centers 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 67) and from the Navy's explosive detonations for California sea lions and short-beaked common dolphin (see Table 68) 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 stocks' 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, with no more than two from any of the following species/stocks over the five-year period: Gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), humpback whale (CA/OR/WA stock or Mexico DPS), humpback whale (Central Pacific stock or Hawaii DPS) and sperm whale (Hawaiian stock). Of the mortal takes of three large whales that could occur, no more than one mortality would occur from any of the following species/stocks over the five-year period: Blue whale (Eastern North Pacific stock), Bryde's whale (Eastern Tropical Pacific stock), Bryde's whale (Hawaiian stock), humpback whale (CA/OR/WA stock or Central America DPS), minke whale (CA/OR/WA stock), minke whale (Hawaiian stock), sperm whale (CA/OR/WA stock), sei whale (Hawaiian stock), and sei whale (Eastern North Pacific

stock). The Navy is not requesting, and we do not anticipate, ship strike takes to blue whale (Central North Pacific stock), fin whale (Hawaiian stock), and gray whale (Western North Pacific stock) due to their relatively low occurrence in the Study Area, in particular core HSTT training and testing subareas. This means an annual average of 0.2 whales from each species or stock where one mortality may occur or an annual average of 0.4 whales from each species or stock where two mortalities may occur as described in Table 67 (*i.e.,* 1 or 2 takes 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 68 we used the same method as described for vessel strikes. The annual average is the number of takes divided by five years to get the annual number.

TABLE 67—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR 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 *	Residual PBR–PBR minus annual M/SI and SWFSC authorized take (%) [3]	Stock trend * [4]	Recent UME (Y/N); number and year (since 2007)
Fin whale (CA/OR/WA)	9,029	0.4	≥2.0	Y; ≥2.0	1.8	81	78	↑	N
Gray whale (Eastern N Pacific).	20,990	0.4	132	4.25	2.0	624	492	Stable since 2003	N
Humpback whale (CA/OR,WA stock or Mexico DPS).	1,918	0.4	≥6.5	Y; ≥5.3	1.0	11.0	4.5	↑	N
Humpback whale (Central North Pacific stock or Hawaii DPS).	10,103	0.4	24	Y; 7.4	4.7	83	59	↑	N
Sperm whale (Hawaiian stock)	3,354	0.4	0.7	0.7	0	10.2	9.5	?	N
Blue whale (Eastern North Pacific stock).	1,647	0.2	0.9	0	0.9	2.3	1.4	stable	Y; 3, 2007.
Bryde's whale (Eastern Tropical Pacific stock).	unknown	0.2	0.2	unknown	0.2	undet	NA	?	N
Bryde's whale (Hawaiian stock).	798	0.2	0	0	0	6.3	6.3	?	N
Humpback whale (CA/OR/WA stock or Central America DPS).	1,918	0.4	≥6.5	Y; ≥5.3	1.0	11.0	4.5	↑	N
Minke whale (CA/OR/WA stock).	636	0.2	≥1.3	≥1.3	0	3.5	2.2	?	N
Minke whale (Hawaiian stock)	unknown	0.2	0	0	0	undet	NA	?	N
Sperm whale (CA/OR/WA stock).	2,106	0.2	1.7	1.7	0	2.7	1.0	?	N
Sei whale (Hawaiian stock)	178	0.2	0.2	0.2	0	0.2	0	?	N
Sei whale (Eastern N Pacific stock).	519	0.2	0	0	0	0.75	0.75	?	N

* 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 SWFSC takes to ensure not double-counted against PBR. However, for these species, there were no takes from either Navy or SWFSC 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.

The following species are being requested for mortality takes from explosions. A total of 10 mortalities: 4 California sea lions and 6 short-beaked common dolphins over the 5-year period (therefore 0.8 mortalities annually for California sea lions and 1.2 mortalities annually for short-beaked common dolphin) are described in Table 68.

TABLE 68—SUMMARY INFORMATION RELATED TO MORTALITIES FROM EXPLOSIVES, 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 *	SWFSC authorized take (annually) [3]	Residual PBR–PBR minus annual M/SI and SWFSC [4]	Stock trend * [5]	Recent UME (Y/N); number and year
California sea lion (U.S.)	296,750	0.8	385	Y; 331	9,200	6.6	8,808.4	↑	Y
Short-beaked common dolphin (CA/OR/WA).	969,861	1.2	≥40	Y; ≥40	8,393	2.8	8,350.2	?	N

* Presented in the SARS.

[1] This column represents the annual take by serious injury or mortality during explosive detonations 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 NMFS's Southwest Fisheries Science Center (SWFSC) rulemaking/LOAs takes to ensure not double-counted against PBR.

[3] This column represents annual take authorized for NMFS's SWFSC rulemaking/LOAs (80 FR 58982).

[4] 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).

[5] See relevant SARs for more information regarding stock status and trends.

Species With M/SI Below the Insignificance Threshold

As noted above, 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. There are no known factors that could affect a species or stock to the point where anticipated M/SI below the insignificance threshold could have effects on annual rates of recruitment or survival. In this case, as shown in Table 67, the following species or stocks have anticipated, and proposed authorized, M/SI below their insignificance threshold and, therefore, additional factors are not discussed: Fin whale (CA/OR/WA), gray whale (Eastern North Pacific), Humpback whale (CA/OR/WA stock or Mexico DPS), humpback whale (Central Pacific stock or Hawaii DPS), sperm whale (Hawaiian stock), Bryde's whale (Hawaiian stock), humpback whale (CA/OR/WA stock or Central America DPS), minke whale (CA/OR/WA stock), California sea lion (U.S.), and short-beaked common dolphin (CA/OR/WA stock). For the remaining six stocks with anticipated potential M/SI, how that M/SI compares to residual PBR, as well as additional factors, as appropriate, are discussed below.

Sperm Whale (California, Oregon, Washington Stock)

For sperm whales (CA/OR/WA stock), PBR is currently 2.7 and the total annual M/SI is 1.7 and yields a residual PBR of 1.0. The M/SI value includes incidental fishery interaction records of 1.7, and records of vessel collisions of 0. The proposed authorization of 0.2 mortalities represents 20 percent of residual PBR. Because this value is not close to, at, or exceeding residual PBR, it means that the proposed M/SI is not expected to result in more than a negligible impact on this stock, however, we still address other factors, where available. In regard to mitigation measures that may lessen other human-caused mortality in the future, NOAA is currently implementing marine mammal take reduction measures as identified in the Pacific Offshore Cetacean Take Reduction Plan (including acoustic pingers) to reduce bycatch and incidental serious injury and mortality of sperm whales, and other whales in the CA/OR swordfish drift gillnet fishery. There have been few observed interactions with sperm whales since the fishery was observed, both pre and post-take reduction plan, however, pingers are within the hearing range of sperm whales, and we can infer that they may play a part in reducing sperm whale interactions in this fishery. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Blue Whale (Eastern North Pacific Stock)

For blue whales (Eastern North Pacific stock), PBR is currently set at 2.3 and the total annual M/SI of 0.9 yielding a residual PBR of 1.4. The M/SI value includes incidental fishery interaction records of 0, and records of vessel collisions of 0.9. The proposed authorization of 0.2 represents 14 percent of residual PBR. Because this value is not close to, at, or exceeding residual PBR, it means that the proposed M/SI is not expected to result in more than a negligible impact on this stock, however, we still address other factors, where available. We note that the Eastern North Pacific blue whale stock is considered stable.

In regard to mitigation that may lessen other human-caused mortality in the future, NOAA is currently implementing marine mammal take reduction measures as identified in the Pacific Offshore Cetacean Take Reduction Plan (including the use of acoustic pingers) to reduce the bycatch of blue whales and other marine mammals. In addition, the Channel Islands NMS staff coordinates, collects and monitors whale sightings in and around the Whale Advisory Zone and the Channel Islands NMS region. The seasonally established Whale Advisory Zone spans from Point Arguello to Dana Point, including the Traffic Separation Schemes in the Santa Barbara Channel and San Pedro Channel. Vessels transiting the area from June through November are recommended to exercise caution and voluntarily reduce speed to 10 kn or less for blue, humpback and fin whales. Channel Island NMS observers collect information from aerial surveys conducted by NOAA, the U.S. Coast Guard, California Department of Fish and Game, and U.S. Navy chartered aircraft. Information on seasonal presence, movement and general distribution patterns of large whales is shared with mariners, NMFS Office of Protected Resources, U.S. Coast Guard, California Department of Fish and Game, the Santa Barbara Museum of Natural History, the Marine Exchange of Southern California, and whale scientists. Real time and historical whale observation data collected from multiple sources can be viewed on the Point Blue Whale Database. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Sei Whale (Eastern North Pacific Stock)

For sei whales (*Eastern North Pacific stock*) PBR is currently set at 0.75 and the total annual M/SI is 0 yielding a residual PBR of 0.75. 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 annually represents 26 percent of residual PBR. Because this value is not close to, at, or exceeding residual PBR, it means that the proposed M/SI is not expected to result in more than a negligible impact on this stock. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Sei Whale (Hawaiian Stock)

For sei whales (*Hawaiian stock*) PBR is currently set at 0.2 and the total annual M/SI is 0.2 yielding a residual PBR of 0. The M/SI value includes incidental fishery interaction records of 0.2, and records of vessel collisions of 0. The proposed authorization of 0.2 mortalities is above residual PBR (by 0.2). We note, however, that this stock occurs within the Hawaiian Islands EEZ and in adjacent high seas waters; however, because data on abundance, distribution, and human-caused impacts are largely lacking for high seas waters, the status of this stock is evaluated based on data from U.S. EEZ waters (NMFS 2005). If the higher number of whales in the high seas (which are uncounted) are considered in combination with the lower likely numbers of mortality in the high seas (since the only known mortality is from

fishery interaction, which occurs predominantly in the U.S. EEZ), then the current PBR is likely overly conservative in the context of M/SI takes that could occur in or outside of the U.S. EEZ. Additionally, as noted in the discussion above, PBR is a conservative metric that is not intended to serve as an absolute cap on authorized mortality, one mortality is the smallest amount that could possibly occur in a five-year period, and when this fractional addition is considered in the context of barely exceeding residual PBR, any impacts on the stock are not expected to be more than negligible. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Bryde's Whale (Eastern Tropical Pacific Stock)

For Bryde's whales (Eastern Tropical Pacific stock) PBR is currently undetermined and the total annual M/SI is 0.2. Therefore, residual PBR is unknown. The M/SI value includes incidental fishery interaction records which are unknown, and records of vessel collisions are 0.2. The total human-caused mortality is very low and the Navy's activities would add a fractional amount. Given the fact that this stock contains animals that reside both within and outside the U.S. EEZ (a very large range) and there known M/SI of only 0.2, it is unlikely that the addition of 0.2 annual mortality would result in more than a negligible impact on this stock. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Minke Whale (Hawaiian Stock)

For minke whales (Hawaiian stock) PBR is currently undetermined and the total annual M/SI is unknown; therefore, residual PBR is unknown. The M/SI value includes incidental fishery interaction records of 0, and records of vessel collisions of 0. Given the fact that this stock contains animals that reside both within and outside the U.S. EEZ (a very large range) and there is no known M/SI, it is unlikely that the addition of 0.2 annual mortality would result in more than a negligible impact on this stock. This information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

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 HSTT DEIS/OEIS and the Navy's rulemaking/LOA application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2017b). 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 41 and 42. 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 69 and Table 70 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.

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Table 69. Annual takes of Level B and Level A harassment, mortality for mysticetes in the HRC of the HSTT study area and number indicating the instances of total take as a percentage of stock abundance.

	Level B Harassment		Level A Harassment		Mortality	Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage		TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Blue whale Central North Pacific (HRC)	15	33	0	0	0	48	40	43	33	112	121
Bryde's whale Hawaiian (HRC)	40	107	0	0	0	147	123	108	89	136	138
Fin whale Hawaiian (HRC)	21	28	0	0	0	49	41	52	40	94	103
Humpback whale Central North Pacific (HRC)	2838	6290	5	0	0	9133	7389	5078	4595	180	161
Minke whale Hawaiian (HRC)	1233	3697	2	0	0	4932	4030	3652	2835	135	142
Sei whale Hawaiian (HRC)	47	121	0	0	0	168	135	138	107	122	126

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 70. Annual takes of Level B and Level A harassment, mortality for mysticetes in the SOCAL of the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
Blue whale	Eastern North Pacific	792	1196	1	0	0	1989	785	1647	253	121
Bryde's whale	Eastern Tropical Pacific	14	27	0	0	0	41	1.3	unknown	3154	unknown
Fin whale	CA/OR/WA	835	1390	1	0	0	2226	363	9029	613	25
Humpback whale	CA/OR/WA	480	1514	1	0	0	1995	247	1918	808	104
Minke whale	CA/OR/WA	259	666	1	0	0	926	163	636	568	146
Sei whale	Eastern North Pacific	27	52	0	0	0	79	3	519	2633	15
Gray whale	Eastern North Pacific	1316	3355	7	0	0	4678	193	20990	2424	22
Gray whale	Western North Pacific	2	4	0	0	0	6	0	140	0	4

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Of these species, blue whale, fin whale, sei whale, humpback whale (CA/OR/WA stock) and gray whale (Western North Pacific stock) 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.

Of the total instances of all of the different types of takes, the numbers indicating the instances of total take as a percentage of abundance for mysticetes ranges from 94 to 180 percent for HRC stocks (blue, Bryde's, fin, humpback minke and sei whales), suggesting that most individuals are taken in an average of 1 to 2 days per year (Table 69). For SOCAL stocks (blue, Bryde's, fin, humpback, minke, sei, and gray whales), the percentages as compared to the abundances across the U.S. EEZ stock range (Predicted in the SAR) are between 4 and 146, suggesting that across these wide-ranging stocks individuals are taken on average on between 0 and 2 days per year (Table 70). Alternately when compared to the abundance estimates within the Navy's SOCAL action area, based on static density estimates, the percentages range from 0 to 3,154, suggesting that if any of these exposed individuals remained in the action area the whole year, they might be taken on average on 32 days in a year. Although we generally do not expect individuals to remain in the action area for the whole year (or to accrue take over this many days), these numbers do suggest that individuals residing in the action area for some amount of time could accrue take on more than the average one or two days per year. Effects are such that 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 expected to be of a milder to potentially moderate intensity and are not likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low and unlikely to result in fitness effects that would impact reproductive success or survival.

Most Level B harassments to mysticetes from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 172 dB SPL (62 percent). As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Comparatively minor to potentially moderate 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. Also, as noted in the Potential Effects section, while 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.

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 takes of 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 hundreds of square miles of ocean space during the course of the event. 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 multiple times per year when transiting through the area. In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to expose individuals repeatedly over a short period except around homeports and fixed instrumented ranges. However, the more impactful training exercises that result in higher numbers or more severe forms of take do not occur around homeports. While training exercises may be concentrated in instrumented ranges, they are large areas, and in most cases the animals are not limited to those areas and the numbers in the analysis above do not suggest that any individual mysticetes are being exposed to levels above the Level B harassment threshold within more than than maybe 20–30 days at most over the course of a year.

The implementation of mitigation and the sightability of mysticetes (due to their large size) and therefore higher likelihood that shutdown and other mitigation measures will be effective for these species and reduces the potential for a more significant behavioral reaction or a threshold shift to occur (which would be more likely within the shutdown zone, were the mitigation not implemented). 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 occur in frequencies below 1 kHz, 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 where BIAs for large whales have been identified in the SOCAL portion of the HSTT Study Area. The Navy will implement the San Diego Arc Mitigation Area from June 1 through October 31 to protect blue whales. The San Diego Arc overlaps the San Diego Blue Whale Feeding Area (BIA) (see also the HSTT DEIS/OEIS Section K.4 (BIAs within the SOCAL Portion of the HSTT Study Area for blue whale feeding areas)). In the San Diego Arc Mitigation Area the Navy will not exceed 200 hrs of MFAS sensor MF1 use ((with the exception of active sonar maintenance and systems checks) between June 1 and October 31 annually. Additionally, in the San Diego Arc Mitigation Area, the Navy will not use explosives during large-caliber gunnery, torpedo, bombing, and missile (including 2.75 in rockets) activities during training or testing.

In addition, the Navy will implement the Santa Barbara Island Mitigation Area year-round for the protection of blue, fin, and gray whales (and other marine mammals) within that portion of the Channel Islands NMS. The Santa Barbara Island Mitigation Area will partially protect the identified important feeding area, San Nicolas Island for blue whales. The Navy will restrict the use of MFAS sensor MF1 and explosives used in gunnery (all calibers), torpedo, bombing, and missile exercises (including 2.75 in rockets) during unit-level training and MTEs.

The Navy will implement mitigation areas that will avoid or reduce impacts to mysticetes and where BIAs for large whales have been identified in the HRC portion of the HSTT Study Area as described below.

In the 4-Islands Region Mitigation Area, the Navy will not use MFAS sensor MF1 during training or testing activities from November 15 through April 15. Since 2009, the Navy has adhered to a Humpback Whale Cautionary Area as a mitigation area within the Hawaiian Islands Humpback Whale NMS an area identified as having one of the highest concentrations of humpback whales, with calves, during the critical winter months. As added protection, the Navy proposes to expand the size and extend the season of the current Humpback Whale Cautionary Area, renaming this area the 4-Islands Region Mitigation Area to reflect the benefits afforded to multiple species. The season is currently between December 15 and April 15; the Navy proposes to extend it from November 15 through April 15 because the peak humpback whale season has expanded. The size of the 4-Islands Region Mitigation Area would expand to include an area north of Maui and Molokai and overlaps an area identified as a BIA for the critically endangered Main Hawaiian Islands insular false

killer whales (Baird *et al.,* 2015; Van Parijs, 2015) (see Figure 5.4–3, in Chapter 5 Mitigation Areas for Marine Mammals in the Hawaii Range Complex of the HSTT DEIS/OEIS). This proposed measure to include the additional area north of Maui and Molokai for this 4-Islands Region Mitigation Area further reduces impacts to humpback whales (and false killer whales).

Within the 4-Islands Region Mitigation Area is the Hawaiian Island Humpback Whale Reproduction Area BIA (4-Islands Region and Penguin Bank). The use of sonar and other transducers primarily occur farther offshore than the designated boundaries of the Hawaiian Islands Humpback Whale Reproduction Area BIA. Explosive events are typically conducted in areas that are designated for explosive use, which are areas outside of the Hawaiian Islands Humpback Whale Reproduction Area BIA.

The restrictions on MFAS sensor MF1 in this area and the fact that the Navy does not plan to use any explosives in this area means that the number of takes of humpback whales will be lessened, as will their potential severity, in that the Navy is avoiding exposures in an area and time where they would be more likely to interfere with cow/calf communication or potentially heightened impacts on sensitive or naïve individuals (calves).

The Navy is also proposing an additional mitigation area, the Hawaii Island Mitigation Area. The Hawaii Island Mitigation Area would be established where year-round, where the Navy will not use more than 300 hrs of MFAS sensory MF1 and will not exceed 20 hrs of MFAS senory MF4 year-round. Also within the Hawaii Island Mitigation Area, the Navy will not use any explosives (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization) during testing and training year-round. Of note here, this measure would provide additional protection in this important reproductive area for humpback whales, reducing impacts in an area and time where they would likely be more severe if incurred. Separately (and addressed more later), these protected areas also reduce impacts for identified biologically important areas for endangered Main Hawaiian Islands insular false killer whales, two species of beaked whales (Cuvier and Blainville's), dwarf sperm whale, pygmy killer whale, melon-headed whale, short-finned pilot whale, and dolphin species (Baird *et al.,* 2015; Van Parijs, 2015).

The 4-Islands Region Mitigation Area and the Hawaii Island Mitigation Area both also overlap with portions of the Hawaiian Islands Humpback Whale NMS. It is also of note that Navy training and testing in the Hawaiian Islands Humpback Whale NMS will follow the procedural mitigation measure that humpbacks are not approached within 100 yds and aircraft operate above 1,000 ft, which further lessens the likelihood of ship strike and behavioral disturbance resulting from aircraft, respectively.

The Navy will continue to issue an annual humpback whale awareness notification message to remind ships and aircraft to be extra vigilant during times of high densities of humpback whales while in transit and to maintain certain distances from animals during the operation of ships and aircraft.

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 the mysticetes stocks through effects on annual rates of recruitment or survival.

- As described in the ''Serious Injury or Mortality'' section above, between zero and two serious injuries or mortalities over the five-year period could occur for large whales (see Tables 67) depending on the species.
  - Using PBR as a consideration in assessing these possible mortalities, the possible mortality for fin whale (CA/OR/WA), gray whale (Eastern North Pacific stock), humpback whales (CA/OR/WA and Central Pacific stocks), Bryde's whale (Hawaiian stock), and Minke whale (CA/OR/WA stock) is below the insignificance threshold of 10 percent of residual PBR.
  - The possible total mortality for sperm whale (CA/OR/WA stock), blue whale (Eastern North Pacific Stock) and sei whales (Eastern North Pacific stock) is below residual PBR.
  - The possible total mortality for sei whale (Hawaiian stock) is equal to PBR, which places it slightly above residual PBR because of the other known human mortality. PBR is a conservative metric that is not intended to serve as an absolute cap on authorized mortality. One mortality is the smallest amount that could possibly occur in a five-year period, and when this fractional addition is considered in the context of barely exceeding residual PBR, any impacts on the stock are not expected to be more than negligible.
  - While residual PBR is not known for minke whales (Hawaiian stock) and Bryde's whales (Eastern Tropical Pacific stock), very little other human-caused mortality is known for either stock, and the Navy's activities would add a fractional amount to these wide-ranging stocks.
- 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 (from sonar) and the anticipated effectiveness of mitigation in preventing very close exposures for explosives, as discussed above. Further, as noted above, any threshold shift incurred from sonar would be in the frequency range of 2–20 kHz, which is above the frequency of the majority of mysticete vocalizations, and therefore would not be expected to interfere with conspecific communication.
- While the majority of harassment takes are caused by exposure during ASW activities, the impacts from these exposures are not expected to be significant and are generally expected to be short-term 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.
  - 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 154 dB. However, the majority (*e.g.,* 62 percent) of the takes results from exposures below 172 dB. The majority of the takes are not from higher level exposures from which more severe responses would be expected.
  - As described in more detail above, the scale of effects are such that most individuals of the HRC stocks are taken in an average of 1 or 2 days per year and individuals of the SOCAL stocks are taken an average of a few days per year, with the likelihood that some smaller subset might be taken in notably more than a few days per year, but likely something less than 6–32 days per year, but, given this number of takes spread across a year and the nature of the Navy's activities, these takes are not expected to typically occur over sequential days.
- The Navy is implementing mitigation areas that specifically reduce or avoid impacts to humpback whales in their important Hawaii calving area and blue whales in their California feeding areas, and further reduce impacts over all to mysticetes in several other areas, all of which is expected to reduce the

extent, and severity in certain circumstances, of impacts to mysticetes.

Consequently, the HSTT activities are not expected to adversely impact rates of recruitment or survival of any of the stocks of mysticete whales (Table 69 and 70 above in this section).

Sperm Whales

In Table 71 and Table 72 below, for 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. No PTS or tissue damage is anticipated.

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Table 71. Annual takes of Level B and Level A harassment, mortality for sperm whales in the HRC of the HSTT 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)										
	Level B Harassment		Level A Harassment			Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC (gray)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Sperm whale Hawaiian (HRC)	2466	30	0	0	0	1930	1317	1656	1317	151	147

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 72. Annual takes of Level B and Level A harassment, mortality for sperm whales in SOCAL of the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
Sperm whale	CA/OR/WA	2437	56	0	0	0	2493	273	1997	913	125

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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All takes annually for sperm whales are from Level B harassment either behavioral or TTS (Tables 71 and 72 above). Sperm whales are listed as endangered under the ESA (both CA/OR/WA and Hawaii stocks) 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.

Most Level B harassments to sperm whales and from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 166 dB SPL (85 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). As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional mild to moderate 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.

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 for sperm whales are generally between 125 and 151, with 913 for the CA/OR/WA stock of sperm whales specifically when compared against the Navy's action area abundance. Based on the percentages above, most individuals are taken in an average of 1–2 days per year based on the overall abundance of these far-ranging stocks, while some sperm whale individuals that might remain in the Navy's SOCAL action area for extended periods may be taken on more like an average of nine days in a year. 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. The majority of these behavioral takes are expected to be of a milder intensity (compared to those that occur at higher levels) and are not likely to occur over sequential days, which suggests that the overall scale of impacts for any individual would be relatively low and unlikely to result in fitness effects that would impact reproductive success or survival.

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).

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 through effects on annual rates of recruitment or survival:

- As described in the ''Serious Injury or Mortality'' section (Table 67), one or two mortalities over five years is proposed for authorization for sperm whales (for CA/OR/WA and Hawaiian stocks, respectively).
  - The proposed serious injury or mortality for the sperm whale (Hawaiian stock) does fall below the insignificance threshold and, therefore, we consider the addition an insignificant incremental increase to human-caused mortality.
  - The possible total serious injury or total mortality for sperm whale (CA/OR/WA stock) falls below residual PBR. NOAA is currently implementing marine mammal take reduction measures as identified in the Pacific Offshore Cetacean Take Reduction Plan that addresses incidental serious injury and mortality of sperm whales, and other whales in the CA/OR swordfish drift gillnet fishery. The total anticipated human-caused mortality is not expected to exceed PBR for both stocks.
- No PTS or injury from acoustic or explosive stressors is proposed for authorization or anticipated to occur for sperm whales.
- 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 cutoffs are applied for odontocetes, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 85 percent) of the takes results from exposures below 166 dB. The majority of the takes are not from higher level exposures from which more severe responses would be expected.
- As described in more detail above (Table 71 and 72), the scale of the effects are such that for sperm whales, most individuals are take in an average of 1–2 days per year, while some subset of individuals that might remain in the Navy's SOCAL action area for extended periods could be taken on an average of 9 days per year. As described above, given this number of takes spread across a year and the nature of the Navy's activities, these takes are not expected to typically occur over sequential days.
- The HSTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for sperm whales and there is no designated critical habitat in the HSTT Study Area.

Consequently, the HSTT activities are not expected to adversely impact rates of recruitment or survival of any of the analyzed stocks of sperm whales (Table 73 above in this section).

Kogia spp.

In Table 73 and 74 below, for *Kogia spp.* 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.

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Table 73. Annual takes of Level B and Level A harassment, mortality for Kogia species in the HRC of the HSTT 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)										
	Level B Harassment		Level A Harassment			Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Dwarf sperm whale Hawaiian (HRC)	5870	14550	64	0	0	20484	15310	8218	6379	249	240
Pygmy sperm whale Hawaiian (HRC)	2329	5822	27	0	0	8178	6098	3349	2600	244	235

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 74. Annual takes of Level B and Level A harassment, mortality for Kogia species in SOCAL of the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include Disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
Kogia whales	CA/OR/WA	2779	6353	38	0	0	9170	757	4111	1211	223

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Nearly all takes annually for Kogia species are from Level B harassment either behavioral or TTS (less than 1 percent PTS) (Tables 73 and 74 above). No serious injury, or mortalities are anticipated. These species are not ESA-listed.

Most Level B harassments to *Kogia spp.* from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 166 dB SPL (85 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses (as compared to higher level exposures). As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels.

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 for *Kogia* whales are generally between 223 and 249, with 1,211 for the CA/OR/WA

stock of *Kogia,* specifically when compared against the Navy's action area abundance. Based on the percentages above, most individuals are taken in an average of 3 days in a year, while some Kogia individuals that might remain in the SOCAL action area may be taken an average of 12 days in a year. 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. The majority of these behavioral takes are expected to be of a milder intensity (compared to those that occur at higher levels) 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 and unlikely to result in fitness effects that would impact reproductive success or survival.

The quantitative analysis predicts small numbers of 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).

Impacts to dwarf and pygmy sperm whale stocks (small and resident populations BIAs) will be reduced through the Hawaii Island Mitigation Area that limits the use of mid-frequency active anti-submarine warfare sensor bins MF1 and MF4 and where the Navy will not use explosives during testing and training (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

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 *Kogia spp.* through effects on annual rates of recruitment or survival.

- No serious injuries or mortalities are proposed for authorization or anticipated to occur for *Kogia spp.*
- 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 cutoffs are applied for odontocetes, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 85 percent) of the takes results from exposures below 166 dB. The majority of the takes have a relatively lower likelihood in have severe impacts.
- As described in more detail above (Tables 73 and 74), the scale of the effects are such that pygmy and dwarf sperm whale are taken an average of 2–3 days per year, while some subset of individuals that might remain in the SOCAL action area for extended periods could be taken on an average of 12 days per year (based on the percentages above, respectively, but with some taken more or less). As described above, given this number of takes spread across a year and the nature of the Navy's activities, these takes are not expected to typically occur over sequential days.
- Impacts to these small and resident populations of dwarf and pygmy sperm whale stocks will be reduced through the implementation of the requirements in the Hawaii Island Mitigation Area.
- *Kogia spp.* are not depleted under the MMPA, nor are they listed under the ESA.
- The HSTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for *Kogia spp.* and there is no designated critical habitat in the HSTT Study Area.

Consequently, the HSTT activities are not expected to adversely impact rates of recruitment or survival of any of the analyzed stocks of *Kogia* whales (Table 73 above in this section).

Beaked Whales

In Tables 75 and 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. No Level A harassment (PTS and Tissue Damage) takes are anticipated.

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Table 75. Annual takes of Level B and Level A harassment, mortality for beaked whales in the HSTT 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)										
	Level B Harassment		Level A Harassment			Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Blainville's beaked whale Hawaiian (HRC)	5369	17	0	0	0	5386	4140	989	768	545	539
Cuvier's beaked whale Hawaiian (HRC)	1792	4	0	0	0	1796	1377	345	268	521	514
Longman's beaked whale Hawaiian (HRC)	19152	81	0	0	0	19233	14585	3568	2770	539	527

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 76. Annual takes of Level B and Level A harassment, mortality for beaked whales in SOCAL in the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance	Total take as percentage of total SAR abundance
Baird's beaked whale	CA/OR/WA	2030	14	0	0	0	2044	74	2697	2762	76
Cuvier's beaked whale	CA/OR/WA	11347	79	0	0	0	11426	520	3274	2197	349
Mesoplodon spp.	CA/OR/WA	6109	43	0	0	0	6152	89	3044	6912	202

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Nearly all takes annually for beaked whales from Level B harassment are behavioral, less than 1 percent are TTS (Tables 75 and 76 above). No PTS, injury, serious injury, or mortalities are anticipated. No beaked whales are listed under the ESA.

Most Level B harassments to beaked whales from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 160 dB SPL (94 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). As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels.

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 range from 514 to 545 for Blainville's beaked whale, Cuvier's beaked whale, and Longman's beaked whale (all Hawaiian stocks), with no notable difference in and outside of the U.S. EEZ (Table 75). For beaked whales off of SOCAL, the instances of total take as a percentage of abundance are between 76 and 349 as compared to the total abundance of these far-ranging stocks. However, the percentages are 2762, 2197, and 6912 for Baird's beaked whale, Cuvier's beaked whale, and Mesoplodon *spp.,* respectively, when compared to the abundance within the Navy's action area, which is based on static density estimates (Table 76). This means that generally, beaked whales might be expected to be taken on an average of 1–6 days per year, while some individuals that might remain in the Navy SOCAL action area for extended periods of time could be taken on more, but not likely as high as 22–28 days per year, or potentially more, though not likely as high as 69 days per year, for Mesoplodon *spp.* While the likelihood and extent of repeated takes for some subset of Mesoplodon individuals is comparatively high when using the Navy's abundance, this is likely a result of the fact that the acoustic modeling process does not account for horizontal animal movement and thus and migration of beaked whales in and out the Study Area. The Navy's abundance indicates a population of approximately 89 Mesoplodon individuals in Southern California. However, it is unlikely that it is the same 89 individuals that are present all year long. Even for those beaked whales which show high site fidelity, tagging data indicates that they can travel tens of km to up to 100 km from an initial tagging or sighting location (*e.g.,* Schorr *et al.,* 2009, Sweeney *et al.,* 2007, etc.). Therefore, additional individuals up to a 100 km or more from the study area may also at some time move into the study area and be available to be exposed to Navy activities. As a result, the potential for repeated exposures of Mesoplodon likely falls somewhere in between the numbers estimated using the SAR abundance and the Navy's abundance. Also, we'd note that NMFS's 2017 draft SAR (Caretta *et al.,* 2017) indicates a slight increasing population trend for this stock when 2014 survey data are considered, lessening the likelihood of adverse impacts on rates of recruitment or survival, if some small number of individuals incur fitness impacts. Given the numbers of days within the year that they are expected to be taken, some subset of SOCAL Mesoplodon beaked whale individuals will likely occasionally be taken across sequential days. However, given the milder comparative nature of the majority of the anticipated exposures (*i.e.,* the received level and the fact that most individual exposures would be expected not to be of a long duration due to the nature of the operations and the moving animals), combined with the fact that there are ample alternative nearby feeding opportunities available for odontocetes should disturbances interrupt feeding bouts, and the evidence that beaked whales often leave and area during training exercises but return a few days later (Claridge and Durban, 2009; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 2011; McCarthy *et al.,* 2011), impacts to individual fitness that could affect survivorship or reproductive success are not anticipated.

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 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 seven 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 the proposed 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.

Biologically important areas for small and resident populations of Cuvier's and Blainville's beaked whales will be protected by the Hawaii Island Mitigation Area that limits the use of mid-frequency active anti-submarine warfare sensor bins MF1 and MF4 and where the Navy will not use explosives during testing and training (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

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.
- No PTS or injury of beaked whales from acoustic or explosives stressors are proposed for authorization or anticipated to occur.
- 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 cutoffs are applied for beaked whales, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 94 percent) of the takes results from exposures below 160 dB. The majority of the takes have a relatively lower likelihood to have severe impacts.
- As described in more detail above (Tables 75 and 76), the scale of the effects are such that individuals in these stocks are likely taken in an average of 1–6 days per year, while a subset of beaked whale individuals that remain in the SOCAL action area for a substantial portion of the year could be taken in more, though not likely above 22–28 days per year, with Mesolplodon individuals potentially taken more, though not likely above 69 days per year. While the likelihood and extent of repeated takes for some subset of Mesoplodon individuals is comparatively high, we note that the population trend for this stock is increasing slightly, lessening the likelihood of adverse impacts on rates of recruitment or survival. While some of the individuals in SOCAL may occasionally be taken in sequential days, because of the nature of the exposures and the other factors discussed above, any impacts to individual fitness would be limited and with the potential to accrue to no more than a limited number of individuals and would not be expected to affect rates of recruitment or survival.
- Impacts to BIAs for small and resident populations of Cuvier's and Blainville's beaked whales will be reduced through implementation of requirements in the Hawaii Island Mitigation Area.

Consequently, the activities are not expected to adversely impact rates of recruitment or survival of any of the beaked whale stocks analyzed (Tables 75 and 76 above in this section).

Odontocetes (Small Whales and Dolphins)

In Tables 77 and 78 below, for odontocetes (in this section odontocetes refers specifically to the small whales and dolphins indicated in Tables 77 and 78), 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.

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Table 77. Annual takes of Level B and Level A harassment, mortality for odontocetes in the HSTT 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)										
	Level B Harassment		Level A Harassment		Mortality	Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage		TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Bottlenose dolphin Hawaiian Pelagic (HRC)	3196	133	0	0	0	3329	2481	1528	1442	218	172
Bottlenose dolphin Kauai & Niihau (HRC)	534	31	0	0	0	565	264	184	184	307	143
Bottlenose dolphin Oahu (HRC)	8600	62	1	0	0	8663	8376	741	741	1169	1130
Bottlenose dolphin 4-Island (HRC)	349	10	0	0	0	359	316	189	189	190	167
Bottlenose dolphin Hawaii (HRC)	74	5	0	0	0	79	42	131	131	60	32
False killer whale Hawaii Pelagic (HRC)	999	42	0	0	0	1041	766	645	507	161	151
False killer whale Main Hawaiian Islands Insular (HRC)	572	16	0	0	0	588	476	147	147	400	324

False killer whale Northwestern Hawaiian Islands (HRC)	365	16	0	0	0	381	280	215	169	177	166
Fraser's dolphin Hawaiian (HRC)	39784	1289	2	0	0	41075	31120	5408	18763	760	166
Killer whale Hawaiian (HRC)	118	6	0	0	0	124	93	69	54	180	172
Melon-headed whale Hawaiian Islands (HRC)	3260	231	0	0	0	3491	2557	1782	1782	196	143
Melon-headed whale Kohala Resident (HRC)	341	10	0	0	0	351	182	447	447	79	41
Pantropical spotted dolphin Hawaii Island (HRC)	3767	227	0	0	0	3994	2576	2405	2405	166	107
Pantropical spotted dolphin Hawaii Pelagic (HRC)	9973	476	0	0	0	10449	7600	5462	4637	191	164
Pantropical spotted dolphin Oahu (HRC)	4284	45	0	0	0	4329	4194	372	372	1164	1127
Pantropical spotted dolphin 4-Island (HRC)	702	17	0	0	0	719	634	657	657	109	96
Pygmy killer whale Hawaiian	8122	401	0	0	0	8523	6538	4928	3931	173	166

(HRC)											
Pygmy killer whale Tropical (HRC)	710	50	0	0	0	760	490	159	23	478	2130
Risso's dolphin Hawaiian (HRC)	8950	448	0	0	0	9398	7318	1210	4199	777	174
Rough-toothed dolphin Hawaiian (HRC)	6112	373	0	0	0	6485	4859	3054	2808	212	173
Short-finned pilot whale Hawaiian (HRC)	12499	433	1	0	0	12933	9946	6433	5784	201	172
Spinner dolphin Hawaii Island (HRC)	279	12	0	0	0	291	89	629	629	46	14
Spinner dolphin Hawaii Pelagic (HRC)	4331	202	0	0	0	4533	3491	2885	2229	157	157
Spinner dolphin Kauai & Niihau (HRC)	1683	63	0	0	0	1746	812	604	604	289	134
Spinner dolphin Oahu & 4-Island (HRC)	1790	34	1	0	0	1825	1708	354	354	516	482
Striped dolphin Hawaiian (HRC)	7379	405	0	0	0	7784	6034	4779	3646	163	165

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 78. Annual takes of Level B and Level A harassment, mortality for odontocetes in SOCAL of the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY Abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
Bottlenose dolphin	California Coastal	1771	38	0	0	0	1809	238	515	760	351
Bottlenose dolphin	CA/OR/WA Offshore	51727	3695	3	0	0	55425	5946	1924	932	2881
Killer whale	Eastern North Pacific (ENP) Offshore	96	11	0	0	0	107	4	240	2675	45
Killer whale	ENP Transient/ West Coast Transient	179	20	0	0	0	199	30	243	663	82
Long-beaked common dolphin	California	233485	13787	18	2	0	247292	10258	101305	2411	244
Northern right whale dolphin	CA/OR/WA	90052	8047	10	1	0	98110	7705	26556	1273	369

Pacific white-sided dolphin	CA/OR/WA	69245	6093	5	0	0	75343	6626	26814	1137	281
Risso's dolphin	CA/OR/WA	116143	10118	9	0	0	126270	7784	6336	1622	1993
Short-beaked common dolphin	CA/OR/WA	1374048	118525	79	10	2	1492664	261438	969861	571	154
Short-finned pilot whale	CA/OR/WA	1789	124	1	0	0	1914	208	836	920	229
Striped dolphin	CA/OR/WA	163640	11614	3	0	0	175257	39862	29211	440	600

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Nearly all takes annually for odonotocetes are from Level B harassment either behavioral or TTS (less than 1 percent PTS) (Tables 77 and 78 above). No serious injuries or mortalities are anticipated. False killer whales (Main Hawaiian Islands Insular) 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.

Most Level B harassments to odontocetes from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 166 dB SPL (85 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses compared to higher level exposures). As mentioned earlier in this section, we anticipate more severe

effects from takes when animals are exposed to higher received levels.

For the total instances of all of the different types of takes, the numbers indicating the instances of total take for odontocetes addressed in this section as a percentage of abundance range from 14 to 1,169 for Hawaiian stocks (Table 77). For most odontocetes off SOCAL, the instances of total take as a percentage of abundance are between 45 and 1,273 (Table 78). However, the percentages are 2,675 and 2,411 for Killer whale and Long-beaked common dolphin, respectively, when compared to the abundance within the Navy action area, which is based on static density estimates (Table 78). The percentages are 1,993 and 1,622 for Risso's dolphin when compared to the total U.S. EEZ abundance (from the SARs) and to the abundance within the Navy action area, respectively, and 2,811 for Bottlenose dolphin (CA/OR/WA offshore stock) when compared to the total abundance. This means that generally, Hawaiian and SOCAL odontocetes stocks might be expected to be taken an average of 2–13 days per year, while some of a subset of individuals of four stocks (Offshore bottlenose dolphins, killer whales, long-beaked common dolphin, and Risso's dolphin) that might remain in the Navy SOCAL action area for extended periods of time could be taken on more, 17 to 27 days per year. It is notable that for the offshore stock of bottlenose dolphins and for Risso's dolphins, the SAR abundances are actually less than the Navy action area abundances, likely because these are more offshore species and the navy abundance captures the abundance generated outside the U.S. EEZ from the Navy action are density estimates, and therefore the percentages are higher—but either way these stock comparisons fall within the general bounds discussed above. We further note that long-beaked common dolphin, which have a high percentage generated from a high number of takes and a high abundance, have an increasing population trend (Caretta *et al.,* 2017), further lessening the likelihood of adverse impacts to rates of recruitment or survival. The majority of the takes are not from higher level exposures from which more severe responses would be expected. Given the numbers of days within the year that they are expected to be taken, some subset of individuals will likely occasionally be taken across sequential days, however, given the milder to moderate nature of the majority of the anticipated exposures (*i.e.,* the received level and the fact that most individual exposures would be expected not to be of a long duration due to the nature of the operations and the moving animals), combined with the fact that there are ample alternative nearby feeding opportunities available for odontocetes should disturbances interrupt feeding bouts, impacts to individual fitness that could affect survivorship or reproductive success 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.

Identified important areas for odontocetes will be protected by the Navy's mitigation areas. The size of the 4-Islands Region Mitigation Area would expand to include an area north of Maui and Molokai and overlaps an area identified as a BIA for the endangered Main Hawaiian Islands insular false killer whales (Baird *et al.,* 2015; Van Parijs, 2015) (see Figure 5.4–3, in Chapter 5 Mitigation Areas for Marine Mammals in the Hawaii Range Complex of the HSTT DEIS/OEIS). The 4-Islands Region Mitigation Area provides partial protection for identified biologically important area for dolphin species (small and resident populations) including common bottlenose dolphin, pantropical spotted dolphin, and spinner dolphin by not using mid-frequency active anti-submarine warfare sensor MF1. The Navy's Hawaii Island Mitigation Area also provides additional protection for identified biologically important areas (small and resident populations) for Main Hawaiian Islands insular false killer whales, pygmy killer whale, melon-headed whale, short-finned pilot whale, and dolphin species (common bottlenose dolphin, pantropical spotted dolphin, spinner dolphin, rough-toothed dolphins) by limiting the use of mid-frequency active anti-submarine warfare sensor bins MF1 and MF4 and not using explosives during testing and training (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

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 68), 1.2 mortalities annually over five years is proposed for authorization for short-beaked common dolphin (CA/OR/WA stock). The proposed mortality for short-beaked common dolphin (CA/OR/WA stock) falls below the insignificance threshold and, therefore, we consider the addition an insignificant incremental increase to human-caused mortality.
- There are no PTS or injury from acoustic or explosive sources proposed for authorization or anticipated to occur for most odontocetes. 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 cutoffs are applied for odontocetes, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 85 percent) of the takes results from exposures below 166 dB. The majority of the takes are not from higher level exposures from which more severe responses would be expected.

• As described in more detail above (Tables 77 and 78) for the stocks addressed in this section, the scale of the effects are such that individuals of most Hawaiian and SOCAL odontocete stocks are likely taken an average of 2–13 days per year, while killer whale, long-beaked common dolphin, and Risso's dolphin individuals that remain in the SOCAL action area could be taken an average of 17–27 days per year. Bottlenose dolphin (CA/OR/WA offshore stock) could be taken an average of 10–29 days per year. While some of the individuals in SOCAL may occasionally be taken in sequential days, because of the nature of the exposures and the other factors discussed above, any impacts to individual fitness would be limited and with the potential to accrue to no more than a limited number of individuals and would not be expected to affect rates of recruitment or survival. We further note that long-beaked common dolphin have an increasing population trend.

• The 4-Islands Region Mitigation Area provides partial protection for identified biologically important area for dolphin species (small and resident populations) by not using mid-frequency active anti-submarine warfare sensor MF1.

• The Navy's Hawaii Island Mitigation Area also provides additional protection for identified biologically important areas (small and resident populations) for endangered Main Hawaiian Islands insular false killer whales, pygmy killer whale, melon-headed whale, short-finned pilot whale, and dolphin species by limiting the use of mid-frequency MF1 and MF4 and not using explosives during testing and training.

• All odontocetes in the HSTT Study Area with the exception of endangered Main Hawaiian Islands Insular false killer whale 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 odontocete species (Table 74, above in this section).

Porpoise

In Table 79 below, for Dall's porpoise, 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.

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Table 79: Annual takes of Level B and Level A harassment, mortality for porpoises in SOCAL in the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
Dall's porpoise	CA/OR/WA	14482	29891	209	0	0	44582	2054	25750	2170	173

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (i.e., a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Nearly all takes annually for Dall's porpoises are from Level B harassment either behavioral or TTS. Less than 1 percent of all takes are Level A harassment (PTS) (Table 79 above). No injury (tissue damage) serious injury or mortalities are anticipated. Dall's porpoise are not listed under the ESA.

Most Level B harassments to Dall's porpoise from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 166 dB SPL (85 percent). Therefore, the majority of Level B takes are expected to be in the form of milder responses compared to higher level exposures. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels.

The majority of Level B takes are expected to be in the form of milder to moderate responses. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels.

For the total instances of all of the different types of takes, the numbers indicating the instances of total take for Dall's porpoise as a percentage of abundance is 173 when compared to the total abundance and 2,170 when compared to the abundance within the Navy action area, which is based on static density estimates (Table 79). This means that generally, Dall's porpoise might be expected to be taken on an average of 2 days per year, while some subset of individuals that might remain in the Navy SOCAL action area for extended periods of time could be taken on more like an average of 22 days per year. Occasional mild to moderate behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and because of the overall number of likely days taken and the nature of the operations, exposures are generally not expected to occur on many sequential days. Impacts to individual fitness that could affect survivorship or reproductive success 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. TTS and PTS thresholds for high-frequency cetaceans, including Dall's porpoises, 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). Dall's porpoises that do experience hearing loss (*i.e.,* TTS or PTS) from sonar sounds may have a reduced ability to detect biologically important sounds until their hearing recovers, but recovery time is not expected to be long for any small amount of TTS incurred from these activities, as described above. TTS would be recoverable and PTS would leave some residual hearing loss. During the period that a Dall's porpoise had hearing loss, biologically important sounds could be more difficult to detect or interpret. Odontocetes, including Dall's porpoises, use echolocation clicks to find and capture prey. These echolocation clicks are at frequencies above 100 kilohertz in Dall's porpoises. Therefore, echolocation is unlikely to be affected by a threshold shift at lower frequencies and should not affect a Dall's porpoise ability to locate prey or rate of feeding. The information available on harbor porpoise behavioral reactions to human disturbance (a closely related species) suggests that these species may be more sensitive and avoid human activity, and sound sources, to a longer range than most other odontocetes. This would make Dall's porpoises less susceptible to hearing loss; therefore, it is likely that the quantitative analysis over-predicted hearing loss impacts (*i.e.,* TTS and PTS) in Dall's porpoises.

Harbor porpoises (similar to Dall's porpoise) 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 HSTT 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. In addition, the Navy does not generally 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 HSTT 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 Dall's porpoise taken through effects 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 cutoffs are applied for odontocetes, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 154 dB. However, the majority (*e.g.,* 85 percent) of the takes results from exposures below 166 dB. The majority of the takes are not from higher level exposures from which more severe responses would be expected.
- As described in detail above (Table 79), the scale of the effects are such that individuals of Dall's porpoise might be expected to be taken on an average of 2 days per year, while some subset of

individuals that might remain in the Navy SOCAL action area for extended periods of time could be taken on more like an average of 22 days per year. Because of the nature of the exposures and the other factors discussed above, any impacts to individual fitness would be limited and with the potential to accrue to no more than a limited number of individuals and would not be expected to affect rates of recruitment or survival.

- Dall's porpoise in the HSTT 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 Dall's porpoise stock (CA/OR/WA).

Pinnipeds

In Tables 80 and 81 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.

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Table 80. Annual takes of Level B and Level A harassment, mortality for pinnipeds in the HRC in the HSTT 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)										
	Level B Harassment		Level A Harassment		Mortality	Total Takes		Abundance		Instance of total take as percent of abundance	
Species Stock Navy EEZ location (HRC)	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage		TOTAL TAKES (entire Study Area)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance HRC	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Hawaiian monk seal Hawaiian (HRC)	143	62	1	0	0	206	195	169	169	122	115

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates, both in and outside of the U.S. EEZ. Because the portion of the Navy's action area inside the U.S. EEZ is generally concomitant with the study area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Table 81. Annual takes of Level B and Level A harassment, mortality for pinnipeds for SOCAL in the HSTT 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)									
		Level B Harassment		Level A Harassment			Total Takes	Abundance		Instance of total take as percent of abundance	
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	TOTAL TAKES (entire Study Area)	NAVY abundance in Action Area SOCAL [1]	NMFS SARS Abundance [2]	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
California sea lion	U.S.	113419	4789	87	9	1	118305	4085	296750	2896	40
Guadalupe fur seal	Mexico	1442	15	0	0	0	1457	1171	20000	124	7
Northern fur seal	California	15167	124	1	0	0	15292	886	14050	1726	109
Harbor seal	California	2450	2994	8	0	0	5452	321	30968	1698	18
Northern elephant seal	California	42916	17955	97	2	0	60970	4108	179000	1484	34

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.*, a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

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Nearly all takes annually for pinnipeds are from Level B harassment either behavioral or TTS (less than 1 percent PTS) (Tables 80 and 81 above). No, injury, serious injury, or mortalities are anticipated. Hawaiian monk seal and Guadalupe fur seal 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. The UME for Guadalupe fur seal is ongoing. Separately, the UME for California sea lions, not an ESA-listed species, will be closed soon.

Most Level B harassments to pinnipeds from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 160 and 172 dB SPL (83 percent). Therefore, the majority of Level B takes are expected to be in the form of milder to moderate responses. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels.

For the total instances of all of the different types of takes, the numbers indicating the instances of total take for pinnipeds as a percentage of abundance ranges from 7 to 124 when compared to the total abundance (Tables 80 and 81). However, for most pinnipeds off SOCAL, the instance of total take as a percentage of abundance are between 1,484 and 2,896 when compared to the abundance within the Navy action area, which is based on static density estimates (Table 81). This means that generally, pinnipeds might be expected to be taken on an average of less than 2 days per year. However, some subset of individuals of the California sea lion, Northern fur seal, and harbor seal stocks that might remain in the Navy SOCAL action area for extended periods of time could be taken on more like an average of 29, 18, and 17 days per year, respectively. The majority of the takes are not from higher level exposures from which more severe responses would be expected. Given the numbers of days within the year that they are expected to be taken, some subset of individuals, particularly California sea lions will likely occasionally be taken across sequential days, however, given the milder to moderate nature of the majority of the anticipated exposures (*i.e.,* the received level and the fact that most individual exposures would be expected not to be of a long duration due to the nature of the operations and the moving animals), impacts to individual fitness that could affect survivorship or reproductive success are not anticipated. We note that for California sea lions there is an increasing population trend.

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 non-pulse 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 HSTT 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.

The Navy's testing and training activities do occur in areas of specific importance, critical habitat for Hawaiian monk seals. However, monk seals in the main Hawaiian islands have increased while the Navy has continued its activities. The Hawaiian monk seal overall population trend has been on a decline from 2004 through 2013, with the total number of Hawaiian monk seals decreasing by 3.4 percent per year (Carretta *et al.,* 2017). While the decline has been driven by the population segment in the northwestern Hawaiian Islands, the number of documented sightings and annual births in the main Hawaiian Islands has increased since the mid-1990s (Baker, 2004; Baker *et al.,* 2016). In the main Hawaiian Islands, the estimated population growth rate is 6.5 percent per year (Baker *et al.,* 2011; Carretta *et al.,* 2017). Of note, in the 2013 HRC Monitoring Report, tagged monk seals did not show any behavioral changes during periods of MFAS.

Generally speaking, most pinniped stocks in the HSTT 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.

- As described in the ''Serious Injury or Mortality'' section (Table 68), 0.8 mortalities annually over five years is proposed for authorization for California sea lions. The proposed mortality for California falls below the insignificance threshold and, therefore, we consider the addition an insignificant incremental increase to human-caused mortality. No mortalities of other 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 cutoffs are applied for pinnipeds, this means that all of the takes from hull-mounted sonar (MF1) result from above exposure 160 dB. However, the majority (*e.g.,* 83 percent) of the takes results from exposures below 172 dB. The majority of the takes have a relatively lower likelihood in have severe impacts.

• As described in detail above (Tables 80 and 81), the scale of the effects are such that pinnipeds are taken an average of less than 2 days per year. While some individuals of California sea lions, Northern fur seal, and harbor seals that might remain in the Navy SOCAL action area for extended periods of time could be taken on more, 17 to 29 days per year. 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. Some California sea lion individuals in SOCAL may occasionally be taken in sequential days, because of the nature of the exposures and the other factors discussed above, any impacts to individual fitness would be limited and with the potential to accrue to no more than a limited number of individuals and would not be expected to affect rates of recruitment or survival. We further note that California sea lions have an increasing population trend.

• The HSTT activities are expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for pinnipeds, particularly in critical habitat for ESA-listed Hawaiian monk seal; however, Navy's activities are not anticipated to affect critical habitat. Populations are increasing for monk seals on the main Hawaiian islands.

• Pinnipeds found in the HSTT Study Area are not depleted under the MMPA, nor are they listed under the ESA with the exception of the Hawaiian monk seal and Guadalupe fur seal which are listed as endangered under the ESA and depleted under the MMPA.

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 Specified Activities 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.

Endangered Species Act

There are nine marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the Study Area: Blue whale (Eastern and Central North Pacific stocks), fin whale (CA/OR/WA and Hawaiian stocks), gray whale (Western North Pacific stock), humpback whale (Mexico and Central America DPSs), sei whale (Eastern North Pacific and Hawaiian stocks), sperm whale (CA/OR/WA and Hawaiian stocks), false killer whale (Main Hawaiian Islands Insular), Hawaiian monk seal (Hawaiian stock), and Guadalupe fur seal (Mexico to California). There is also critical habitat designated for Hawaiian monk seal and proposed critical habitat for Main Hawaiian Island insular false killer whales. The Navy will consult with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of LOAs under section 101(a)(5)(A) of the MMPA for HSTT activities. Consultation will be concluded prior to a determination on the issuance of the final rule and LOAs.

National Marine Sanctuaries Act

NMFS will work with NOAA's Office of National Marine Sanctuaries to fulfill our responsibilities under the NMSA as warranted and will complete any NMSA requirements prior to a determination on the issuance of the final rule and LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review its Specified Activities (*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 the HSTT 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 HSTT DEIS/OEIS and has worked extensively with the Navy in developing the document.

The Navy's HSTT DEIS/OEIS was made available for public comment at *https://hsttteis.com/* on October 13, 2017.

We will review all comments submitted in response to this notice 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: June 14, 2018.

Samuel D. Rauch III,

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

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.*

■ 2. Revise subpart H to part 218 to read as follows:

Sec.
218.70 Specified activity and specified geographical region.
218.71 Effective dates.
218.72 Permissible methods of taking.
218.73 Prohibitions.
218.74 Mitigation requirements.
218.75 Requirements for monitoring and reporting.
218.76 Letters of Authorization.
218.77 Renewals and modifications of Letters of Authorization
218.78 [Reserved]
218.79 [Reserved]

Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

§ 218.70 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 Hawaii-Southern California Training and Testing (HSTT) Study Area, which includes established operating and warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes (the Hawaii Range Complex (HRC), the Southern California Range Complex (SOCAL), and the Silver Strand Training Complex, and overlaps a portion of the Point Mugu Sea Range (PMSR)). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor on the high seas where sonar training and testing may occur.

(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, pile driving and removal activities, air guns, vessel strike).

§ 218.71 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***].

§ 218.72 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 218.77, the Holder of the LOAs (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.70(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 vessel strikes provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

§ 218.73 Prohibitions.

Notwithstanding takings contemplated in § 218.72 and authorized by LOAs issued under § 216.106 of this chapter and § 218.76, no person in connection with the activities described in § 218.72 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 § 218.76;

(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 or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 218.74 Mitigation requirements.

When conducting the activities identified in § 218.70(c), the mitigation measures contained in any LOAs issued under § 216.106 of this chapter and § 218.76 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 HSTT 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, and mat weave and obstacle loading), 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 Specified Activities 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. Additionally, to increase the environmental awareness of naval assets operating in designated areas to the potential seasonal presence of concentrations of large whales, including humpback whales, gray whales, blue whales, and fin whales, the Navy will issue seasonal awareness notification messages. These messages include:

(i) Humpback Whale Awareness Notification Message Area (November 15–April 15). The Navy shall issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales,

including humpback whales. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy shall instruct vessels to remain vigilant to the presence of large whale species (including humpback whales), that when concentrated seasonally, may become vulnerable to vessel strikes. Lookouts shall use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) Blue Whale Awareness Notification Message Area (June 1–October 31). The Navy shall issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy shall instruct vessels to remain vigilant to the presence of large whale species (including blue whales), that when concentrated seasonally, may become vulnerable to vessel strikes. Lookouts shall use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(iii) Gray Whale Awareness Notification Message Area (November 1–March 31). The Navy shall issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including gray whales. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy shall instruct vessels to remain vigilant to the presence of large whale species (including gray whales), that when concentrated seasonally, may become vulnerable to vessel strikes. Lookouts shall use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(iv) Fin Whale Awareness Notification Message Area (November 1–May 31). The Navy shall issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including fin whales. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy shall instruct vessels to remain vigilant to the presence of large whale species (including fin whales), that when concentrated seasonally, may become vulnerable to vessel strikes. Lookouts shall use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in implementation of procedural mitigation.

(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; and One lookout for platforms using active sonar while moored or at anchor (including pierside).

(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 an observed 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 lookout 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).

(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 an observed 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 mobile 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 an observed 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.

(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 an observed 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 an observed 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 an observed 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 an observed 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 an observed 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 an observed 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.

(C) 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.

(D) To allow an observed 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.

(E) For 2 hrs after sinking the vessel (or until sunset, whichever comes first), the Navy shall 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 an observed 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.

(F) 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 (0.1–29 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 (0.1–29 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 an observed 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.

(G) 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 an observed 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) *Under Demolition Multiple Charge—Mat Weave and Obstacle Loading.* (i) Number of Lookouts and Observation Platform—Two Lookouts (one positioned on a small boat and one positioned on shore from an elevated platform).

(ii) Mitigation Zone and Requirements—700 yd around the intended detonation site.

(A) For 30 min prior to the first detonation, the Lookout positioned on a small boat shall observe for floating vegetation and marine mammals; if resource is observed, the Navy shall not commence the initial detonation.

(B) For 10 min prior to the first detonation, the Lookout positioned on shore shall use binoculars to observe for marine mammals; if resource is observed, the Navy shall not commence the initial detonation until the mitigation zone has been clear of any additional sightings for a minimum of 10 min.

(C) During the activity, the Navy shall observe for marine mammals; if resource is observed, the Navy shall cease detonations.

(D) To allow an observed 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 detonation site; or the mitigation zone has been clear from any additional sightings for 10 min (as determined by the shore observer).

(E) After completion of the activity, the Lookout positioned on a small boat shall observe for marine mammals for 30 min; if any injured or dead resources are observed, the Navy shall follow established incident reporting procedures.

(16) *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.); the vessel is operated autonomously; or when impracticable based on mission requirements (*e.g.,* during Amphibious Assault—Battalion Landing exercise).

(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.

(17) *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 or in-water device 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.

(18) *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 an observed 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.

(19) *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 an observed 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.

(20) *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.

(B) 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.

(C) To allow an observed 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) *Mitigation Areas.* In addition to procedural mitigation, the Navy shall implement mitigation measures within mitigation areas to avoid or reduce potential impacts on marine mammals.

(1) *Mitigation Areas Marine Mammals in the Hawaii Range Complex f*or sonar, explosives, and strikes.

(i) Mitigation Area Requirements—(A) Hawaii Island Mitigation Area (year-round):

(*1*) The Navy shall not exceed 300 hours of MFAS sensor MF1 (MF1) and 20 hours of MFAS sensor MF4 (MF4) annually.

(*2*) Should national security present a requirement to conduct more than 300 hrs of MF1 or 20 hrs of MF4 per year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.

(*3*) The Navy shall not use explosives during training or testing activities. Explosive restrictions within the Hawaii Island Mitigation Area apply only to those activities for which the Navy seeks MMPA authorization (*e.g.,* surface-to-surface or air-to-surface missile and gunnery events, BOMBEX, and mine neutralization).

(*4*) Should national security present a requirement for the use of explosives in the area, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports.

(B) 4-Islands Region Mitigation Area (November 15–April 15):

(*1*) The Navy shall not use MFAS sensor MF1 during training or testing activities from November 15–April 15.

(*2*) Should national security present a requirement for the use of MF1 in the area from November 15–April 15, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.

(ii) [Reserved]

(2) *Mitigation Areas Marine Mammals in the Southern California Portion of the Study Area* for sonar, explosives, and strikes.

(i) Mitigation Area Requirements—(A) San Diego Arc Mitigation Area (June 1–October 31):

(*1*) The Navy shall not exceed 200 hours of MFAS sensor MF1 (with the exception of active sonar maintenance and systems checks) per season annually.

(*2*) Should national security present a requirement to conduct more than 200 hrs of MF1 (with the exception of active sonar maintenance and systems checks) per year from June 1–October 31, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* hours of sonar usage) in its annual activity reports.

(*3*) The Navy shall not use explosives during large-caliber gunnery, torpedo, bombing, and missile (including 2.75

inch rockets) activities during training or testing activities.

(*4*) Should national security present a requirement to conduct large-caliber gunnery, torpedo, bombing, and missile (including 2.75 inch rockets) activities using explosives, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports.

(B) Santa Barbara Island Mitigation Area (year-round):

(*1*) The Navy shall not use MFAS sensor MF1 and explosives used in small-, medium-, and large-caliber gunnery; torpedo; bombing; and missile (including 2.75 inch rockets) activities during unit-level training or MTEs.

(*2*) Should national security present a requirement for the use of mid-frequency active anti-submarine warfare sensor MF1 or explosives in small-, medium-, and large-caliber gunnery; torpedo; bombing; and missile (including 2.75 inch rockets) activities during unit-level training or major training exercises for national security, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in its annual activity reports.

(ii) [Reserved]

§ 218.75 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 § 218.70 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 HSTT 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 HSTT Study Area marine species monitoring report. The Navy shall submit an annual report of the HSTT 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 three months after the calendar year, or three months 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 intermediate scientific objectives within the HSTT Study Area 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. As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across multiple Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring study question. This will continue to allow Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the HSTT, Gulf of Alaska, Mariana Islands, and the Northwest Study Areas, etc.

(e) Annual HSTT Training Exercise Report and Testing Activity Report. Each year, the Navy shall submit two preliminary reports (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 detailed reports to the Director, Office of Protected Resources, NMFS within 3 months after the anniversary of the date of issuance of the LOA. The HSTT annual Training Exercise Report and Testing Activity reports can be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. The annual reports shall contain information on 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 reports shall be based on the accumulation of data from the current year's report and data collected from previous reports. 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 HSTT 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; and

(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); and

(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); and

(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; and

(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) Humpback Whale Special Reporting Area (December 15–April 15). The Navy shall report the total hours of operation of surface ship hull-mounted mid-frequency active sonar used in the special reporting area.

(5) HSTT Mitigation Areas. The Navy shall report any use that occurred as specifically described in these areas. Information included in the classified annual reports may be used to inform future adaptive management of activities within the HSTT Study Area.

(6) 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 HSTT Study Area.

§ 218.76 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 § 218.70(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 § 218.77(c)(1)) required by an LOA, the Navy must apply for and obtain a modification of LOAs as described in § 218.77.

(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.

§ 218.77 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this subchapter and § 218.76 for the activity identified in § 218.70(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 § 218.76 for the activity identified in § 218.70(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 § 217.86, 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.

§§ 218.78–218.79 [Reserved]

[FR Doc. 2018–13115 Filed 6–25–18; 8:45 am]

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Federal Register

Vol. 83, No. 123

Tuesday, June 26, 2018

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

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FEDERAL REGISTER PAGES AND DATE, JUNE

25327–25544 1
25545–25848 4
25849–26202 5
26203–26346 6
26347–26546 7
26547–26832 8
26833–27286 11
27287–27504 12
27505–27680 13
27681–27888 14
27889–28150 15
28151–28350 18
28351–28520 19
28521–28760 20
28761–28976 21
28977–29434 22
29435–29664 25
29665–30030 26

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9704 (Amended by Proc. 9758) 25849
9705 (Amended by Proc. 9759) 25857
9710 (Amended by Proc. 9758) 25849
9711 (Amended by Proc. 9759) 25857
9739 (Amended by Proc. 9758) 25849
9740 (Amended by Proc. 9759) 25857
9756 25327
9757 25545
9758 25849
9759 25857
9760 25879
9761 26197
9762 26199
9763 26201
9764 27887
9765 28967

Executive Orders:
13547 (Revoked by 13840) 29431
13836 25329
13837 25335
13838 25341
13839 25343
13840 29431
13841 29435

Administrative Orders:
Memorandums:
Memorandum of May 16, 2018 28761
Space Policy Directive 3 of June 18, 2018 28969
Notices:
Notice of June 8, 2018 27287
Notice of June 22, 2018 29661
Notice of June 22, 2018 29663
Presidential Determinations:
No. 2018–08 of May 14, 2018 26345

6 CFR

46 28497

7 CFR

1c 28497
51 27289
52 27289
210 25349
225 25349
319 25547
400 25361
900 27681
932 28521
981 28523
1051 26547
1200 27681
1216 27683

Proposed Rules:
Subtitle A 28550
Subtitle B 28550
1 26865
66 28547
301 29465
319 27918
3555 28547

8 CFR

Proposed Rules:
103 25951

9 CFR

1 25549
2 25549
3 25549
145 28351
146 28351
147 28351

Proposed Rules:
Ch. I 28550
Ch. II 28550
Ch. III 28550

10 CFR

Ch. I 29437
170 29622
171 29622
745 28497

Proposed Rules:
Ch. I 26611
431 29048

11 CFR

Proposed Rules:
100 29056
110 29056

12 CFR

12 26347
151 26347
201 28526
204 28527
344 26347
611 27486
615 27486
702 25881
723 25881

Proposed Rules:
612 27922
701 25583

13 CFR

Proposed Rules:
107 .....26874, 26875

14 CFR

11 28528
25 25361
39 ....25363, 25556, 25882, 25885, 25891, 25894, 25898, 26349, 26352, 26556, 26559, 26564, 26833, 26836, 27889, 27891, 28151, 28528, 28763, 29665
71 ....25558, 25901, 25902, 25904, 25905, 26203, 26566, 26568, 26838, 26839, 28356, 28977, 28978, 28980
73 28981
95 29667
97 ....25907, 25909, 27686, 27688
404 28528
405 28528
420 28528
431 28528
435 28528
437 28528
460 28528
1230 28497

Proposed Rules:

29 ....26225, 26226
31 29472
39 ....25405, 25408, 25410, 25412, 25415, 25417, 25419, 25587, 25590, 25595, 26381, 26383, 26387, 26389, 26877, 26880, 26882, 26884, 26887, 27718, 27721, 27724, 28171, 28551, 28553, 28558, 29056, 29059, 29061, 29474, 29476, 29479
71 ....25967, 25969, 25971, 25973, 26612, 26889, 29064, 29065, 29066

15 CFR

27 28497
744 26204
748 25559

16 CFR

1028 28497
1112 ....28358, 29672
1220 26206
1231 28358
1235 29672
1252 28983

Proposed Rules:

Ch. II 26228
1112 28390
1238 28390

17 CFR

49 27410
200 ....25365, 29158
201 25365
230 29158
239 29158
240 29158
249 29158
270 29158
274 29158

Proposed Rules:

1 27444
210 26891
229 26891
230 ....26788, 26891
232 26891
240 26891
242 26788
270 ....26788, 26891
274 26891

18 CFR

40 27505
401 26354
420 26354

19 CFR

12 27380
113 27380
122 27380
141 27380
178 27380
192 27380

20 CFR

404 28992
416 28992
431 28497
725 27690

Proposed Rules:

401 27728

21 CFR

74 26356
101 27894
862 25910
866 ....25910, 27699, 28994
876 ....25910, 27702, 27895
878 26575
880 25910
884 25910
888 26577

Proposed Rules:

3 26392
892 25598
1100 ....26617, 26618
1130 26619
1140 ....26617, 26618
1143 ....26617, 26618
1308 27520

22 CFR

225 28497

23 CFR

Proposed Rules:

635 29713

24 CFR

1 26359
8 26359
16 26359
40 26359
60 28497

Proposed Rules:

100 28560

25 CFR

Proposed Rules:

543 26620

26 CFR

1 26580

Proposed Rules:

1 ....27302, 28397
301 29716

29 CFR

21 28497
2510 28912
4022 27898
4044 27898

Proposed Rules:

1910 25536
1926 28562

30 CFR

901 28996

Proposed Rules:

56 29716
75 29716

31 CFR

592 28370

Proposed Rules:

34 28563

32 CFR

65 26840
149 27704
219 28497
287 27290
290 26840
538 26841
706 ....26210, 28375
736 29001
806 26361

33 CFR

100 ....25366, 25561, 25563, 26361, 29438
117 ....25369, 25370, 25566, 26364, 26365, 26593, 26841, 27704, 28153, 28154, 29001, 29438, 29440
155 26212
165 ....25370, 25371, 25373, 25566, 25568, 25570, 25575, 25577, 25579, 26365, 26367, 26842, 26844, 27290, 27511, 27513, 27704, 27706, 27707, 27709, 27899, 28154, 28155, 28376, 28378, 28379, 28538, 28539, 28541, 28766, 28770, 28771, 29002, 29003, 29005, 29007, 29011, 29440, 29442, 29444, 29446, 29682, 29684, 29686, 29687, 29689

Proposed Rules:

100 28173
105 29067
110 ....27932, 29081
117 ....27730, 28785
165 ....28175, 28787, 29719, 29721

34 CFR

97 28497
668 28543

Proposed Rules:

Ch. III 28566
668 28177

36 CFR

1 26594
4 26594

37 CFR

202 25375

Proposed Rules:

201 ....26229, 28178, 28789
202 ....28178, 28179

38 CFR

16 28497
17 ....25915, 29447

39 CFR

Proposed Rules:

265 27933
266 27933
3050 ....26392, 27523

40 CFR

26 28497
35 29691
52 ....25375, 25378, 25920, 25922, 26221, 26222, 26596, 26597, 26598, 26599, 27901, 27910, 28157, 28382, 28543, 29449, 29451, 29455, 29694, 29696, 29698
60 ....25382, 25936
61 ....25382, 25936
62 ....26599, 29458
63 ....25382, 25936
70 26599
81 ....25390, 25776, 28543
170 29013
180 ....25936, 25944, 26369, 27711, 29014, 29017, 29023, 29028, 29033, 29702
228 29706
372 27291

Proposed Rules:

Ch. 1 27524
26 28401
50 26752
52 ....25604, 25608, 25615, 25617, 25975, 25977, 25979, 25981, 26912, 27732, 27734, 27738, 27936, 27937, 27938, 28179, 28402, 28568, 28577, 28582, 28789, 29483, 29486, 29723, 29727
55 28795
60 28068
62 ....25633, 25983
63 29085
80 27740
81 ....25422, 28402, 29486
151 29499
180 ....27743, 27744
271 ....25986, 26917, 29520
272 25986
300 ....25635, 28586, 29731
721 26922
1500 28591
1501 28591
1502 28591
1503 28591
1504 28591
1505 28591
1506 28591
1507 28591
1508 28591

41 CFR

Proposed Rules:

105 28592
106 28592
107 28592
108 28592
109 28592
110 28592
111 28592
112 28592
113 28592
114 28592
115 28592
116 28592
117 28592
118 28592

119 28592
120 28592
121 28592
122 28592
123 28592
124 28592
125 28592
126 28592
127 28592
128 28592
129 28592
130 28592
131 28592
132 28592
133 28592
134 28592
135 28592
136 28592
137 28592
138 28592
139 28592
140 28592
141 28592
142 28592
143 28592
144 28592
145 28592
146 28592
147 28592
148 28592
149 28592
150 28592
151 28592
152 28592
153 28592
154 28592
155 28592
156 28592
157 28592
158 28592
159 28592
160 28592

42 CFR

10 25943
405 27912
414 25947
417 27912
422 27912
423 27912
460 27912
498 27912
510 26604

Proposed Rules:

2 29736
10 29736
12 29736
13 29736
18 29736
26 29736
59 25502
411 29524
412 28603
413 28603
424 28603
495 28603

44 CFR

64 27915

Proposed Rules:

67 ....27745, 27746

45 CFR

46 28497
690 28497

46 CFR

401 26162
404 26162

Proposed Rules:

10 26933
11 26933
15 26933

47 CFR

2 29710
54 27515
73 25949
90 29710
300 28161

Proposed Rules:

1 ....26396, 27846
27 26396
54 ....27528, 27746
64 27746
73 27537
74 26229

48 CFR

Ch. 1 ....28140, 28149
1 ....28141, 28145
4 28141
9 28145
12 28145
13 ....28141, 28145
39 28141
52 ....28141, 28145
222 26846
237 26846
252 26846
1519 28772
1552 28772
1801 28386
1802 29038
1803 28386
1804 28386
1815 28386
1827 29039
1843 29040
1852 ....28386, 29039, 29040

Proposed Rules:

15 27303
3019 25638
3052 25638

49 CFR

11 28497
172 28162
173 28162
180 28162
373 26374
383 28774
384 28774
390 26846
391 ....26846, 28774
395 ....26374, 26377

Proposed Rules:

Ch. III 26942

50 CFR

17 25392
20 25738
216 29460
622 ....27297, 27300, 28169, 28387, 29041, 29044
648 ....27713, 28388, 28545
655 27716
660 ....25581, 28783, 29461
679 ....27518, 28169, 29463

Proposed Rules:

17 26623
20 27836
217 29212
218 29872
300 27305
622 28797
660 26640
679 ....26237, 28604
697 27747

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 1900/P.L. 115–186

National Veterans Memorial and Museum Act (June 21, 2018; 132 Stat. 1487)

H.R. 2333/P.L. 115–187

Small Business Investment Opportunity Act of 2017 (June 21, 2018; 132 Stat. 1489)

H.R. 2772/P.L. 115–188

Department of Veterans Affairs Senior Executive Accountability Act of 2018 (June 21, 2018; 132 Stat. 1490)

H.R. 4743/P.L. 115–189

Small Business 7(a) Lending Oversight Reform Act of 2018 (June 21, 2018; 132 Stat. 1492)

H.R. 1397/P.L. 115–190

To authorize, direct, facilitate, and expedite the transfer of administrative jurisdiction of certain Federal land, and for other purposes. (June 22, 2018; 132 Stat. 1499)

H.R. 1719/P.L. 115–191

John Muir National Historic Site Expansion Act (June 22, 2018; 132 Stat. 1501)

Last List June 20, 2018

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